

POLICY REPORT

HUMAN RIGHTS,
CLIMATE CHANGE
AND CROSS-BORDER
DISPLACEMENT:

**the role of the international human
rights community in contributing to
effective and just solutions**

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UNIVERSAL RIGHTS GROUP

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PREFACE

The links between climate change and human rights are more widely accepted than ever before. The Human Rights Council has adopted a series of resolutions calling attention to the effects of climate change on the full enjoyment of human rights, and the Conference of the Parties to the UNFCCC has also recognised that 'the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights.' While climate change impacts have implications for the human rights of individuals in all parts of the world, it is well established that the rights of those in already vulnerable situations are at particular risk. As sea levels rise and extreme weather events increase in frequency and magnitude, more and more people in such situations are expected to be displaced by disasters, some of them across international borders. And yet, despite a growing recognition of the human rights implications of climate change, including in the context of human displacement, and despite an understanding that adherence to international human rights commitments and principles can help to strengthen policymaking in response to global warming, relatively few concrete steps have been taken to bring a human rights perspective to climate negotiations. Likewise, beyond expressing concern about a possible human rights protection gap for the increasing number of people who are expected to be displaced across borders in the context of climate change, the international community has not done enough to consider how to fill that gap. This report is an important step towards clarifying what UN bodies can and should do to begin to safeguard human rights against the effects of climate change, including in the context of human displacement.

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EXECUTIVE SUMMARY

In October 2014, in his first press conference after being appointed UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein spoke of the 'stark and vital' implications of climate change for the full enjoyment of human rights, and drew attention to the 'multiple implications' of climate change 'for displacement, statelessness, land-rights, resources, security and development.'¹

Some may find it strange that the UN's most senior human rights official would use his first press conference to highlight an issue seemingly far beyond his official remit: climate change. However, as the High Commissioner made clear, global warming is not only one of the greatest environmental challenges of our time, it is also one of the greatest human challenges, with immediate and acute implications for the enjoyment of human rights.

With that in mind, the 21st Conference of the Parties (COP21) to the United Nations Framework Convention on Climate Change (UNFCCC), to be held in Paris later this year, will not only be one of the most important environmental conferences ever held, but also one of the most important human rights gatherings of the past half-century. The ability of states to reach – or not – a new and ambitious global agreement in Paris will have a determinative impact on the lives, prospects, hopes, dignity and rights of millions of people around the world.

The consequences of climate change for the enjoyment of human rights have been considered and recognised by the UN on many occasions. Both the UN Human Rights Council (the Council)² and the Conference of the Parties to the UNFCCC (COP UNFCCC)³ have recognised that climate change impacts, such as rising sea levels and more frequent and severe extreme weather events, undermine a range of internationally-protected human rights – from the rights to water and sanitation, to food, to health, to adequate housing, and even to life. What is more, the Council and the COP UNFCCC have acknowledged that these consequences are felt most acutely by individuals in already vulnerable situations, such as young children, the elderly, persons with disabilities, and indigenous groups. This, in turn, raises concerns about equality and non-discrimination, and highlights the issue of 'climate injustice' – that those

suffering most due to climate change have contributed least to the problem.

The international community has also repeatedly called for human rights principles to be integrated into global climate change policy responses, in order to strengthen those responses and make them more reflective of, and accountable to, the needs of vulnerable people.

For example, in resolution 10/4, the Council stated that 'human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change.'⁴ The UNFCCC Cancún Agreements emphasise that states should, 'in all climate change related actions, fully respect human rights.'⁵ A human rights framework, or a 'rights-informed approach,'⁶ thus offers climate policymakers a tool to help devise, develop and implement better, fairer, more effective and more sustainable policy responses.

Procedural rights are particularly important in this regard. Protecting rights such as access to information, decision-making and justice, means that consultation with affected communities must be a key part of interventions that will have an environmental impact, including policies responding to climate change. This is important both in terms of adaptation policies and mitigation actions (such as reducing emissions from deforestation and forest degradation – REDD).

As the High Commissioner for Human Rights noted at his press conference, the human rights implications of climate change are particularly striking in the case of displacement. Climate change is anticipated to lead to more frequent and severe natural disasters, and in some cases its impacts may render certain parts of the world uninhabitable. Some people will seek to migrate before conditions deteriorate, while others will be displaced by sudden-onset disasters (e.g. cyclones) or slower-onset processes (e.g. drought). In other cases, governments may relocate people out of hazardous areas for their own safety (i.e. planned relocation).

Even if one focuses on just one of these scenarios – displacement in the event of sudden-onset disasters – the scale of the (actual and potential) human rights challenges are enormous. Major extreme weather events have already resulted in significant displacement, and the increased frequency and magnitude of such events in the context of climate change will amplify the challenges and risks associated with it. 'Between 2008 and 2012, sudden-onset disasters displaced an estimated 144 million people.'⁷ In 2013, almost three times as many people were newly displaced by disasters than by conflict.⁸ Some 22 million people were displaced in at least 119 countries, mostly by rapid-onset weather-related disasters.⁹ The vast majority of such displacement, 97% between 2008 and 2013, occurred within developing countries (almost 81% in Asia).¹⁰

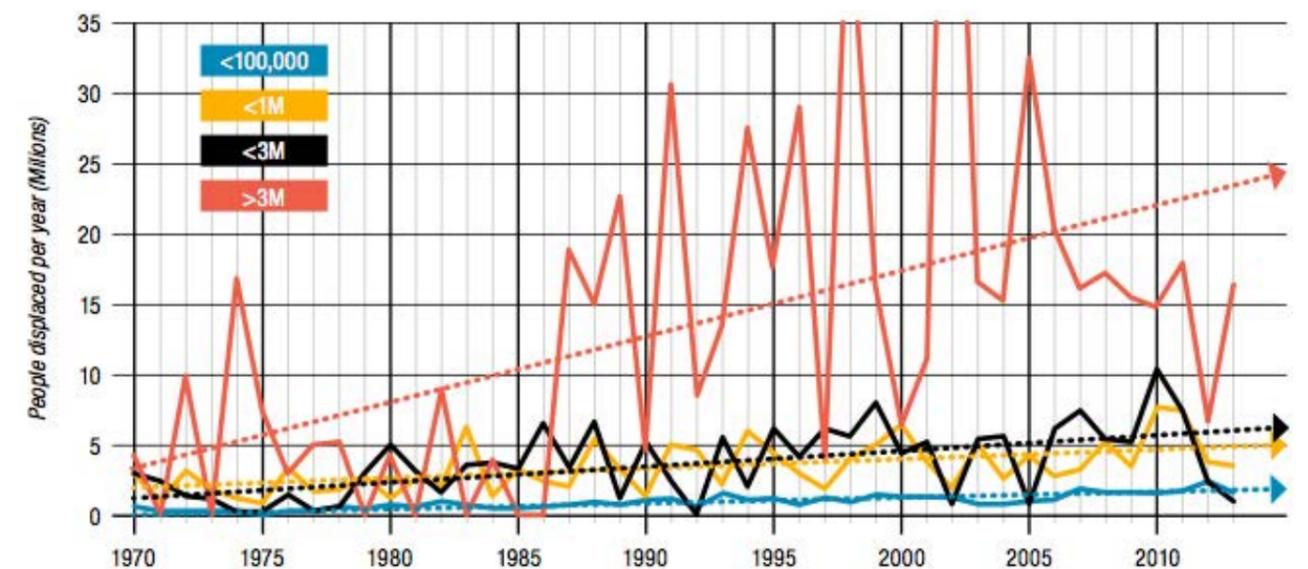
It is harder to quantify the number of people displaced by the slower-onset impacts of climate change, partly because it is impossible to attribute movement to 'climate change' alone, but also because mitigation and adaptation over time may mean that people are able to remain in their homes. Nevertheless, national and local case studies give a sense of the possible

scale of the phenomenon and, by extension, the human rights implications. For example, in 2011 some 1.3 million people were internally displaced in the context of drought and instability within Somalia.¹¹

While the vast majority of people displaced in the context of disasters will remain within their own country,¹² some may seek protection in another country. Like internal displacement, this cross-border displacement will be linked both to slow-onset processes (e.g. drought) and sudden-onset events (e.g. a higher frequency and intensity of extreme hydro-meteorological events). As an example of the former, during the above-mentioned drought in the Horn of Africa, over 290,000 people crossed an international border in search of assistance.¹³ They moved for a range of intersecting reasons, including famine, conflict, food insecurity and environmental degradation.

Displacement can have devastating effects on people and communities, and create complex challenges for recovery and reconstruction efforts. All this has clear and immediate implications for a range of internationally protected human

FIGURE 1: MODELLED ANNUAL DISPLACEMENT & HISTORIC DISPLACEMENT TRENDS (1970-2013)



From: Justin Ginnetti, Disaster-Related Displacement Risk: Measuring the Risk and Assessing its Drivers (Internal Displacement Monitoring Centre, 2015).

rights, particularly the rights of people in already vulnerable situations, whether due to geography (e.g. low-lying and deltaic regions), underlying socio-economic conditions (e.g. poverty, weak governance), or individual circumstances (e.g. gender, age, disability) – or a combination of these. Indeed, as states recognised in the Sendai Framework for Disaster Risk Reduction (2015–2030), adopted in March 2015, displacement is one of the most devastating consequences of disasters, and disaster risk reduction is about ‘protecting persons and their property, health, livelihoods, and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights.’¹⁴

With all this in mind, it is clear that as the international community looks towards the Paris COP21 meeting in December, it should take concrete steps to ensure that human rights concerns are an accepted and integral part of any new international responses to climate change. At a practical level, this means that the human rights community (led by the Council, its mechanisms, and the Office of the High Commissioner for Human Rights) and the climate change community (led by states parties to the UNFCCC) must work together to introduce a rights-informed approach that supports better and more effective climate action. It also means that the Paris agreement, like the Cancún Agreements, should explicitly recognise the important contribution to be played by human rights in shaping an ambitious, fair and workable international response to one of the greatest challenges of the 21st century: anthropogenic climate change.

Looking ahead to COP21, this Policy Brief makes a number of recommendations to human rights policymakers:

- Make relevant Council deliberations and information on human rights and climate change available to the states parties to the UNFCCC.
- Further develop platforms and initiatives, like the Geneva Pledge, to bring the international human rights and climate change communities together to develop policy responses that safeguard the environment and protect human rights.

- Provide expertise, where requested, on what it means, in practical terms, to adopt a rights-informed approach to climate change policy and action.

- Leverage reporting processes under both the Council (i.e. the Universal Periodic Review) and the UNFCCC (i.e. national communications).

- Promote the ‘bridging role’ of Special Procedures, especially the new Special Rapporteur on human rights and the environment.

At the same time, the international human rights community, led by the Council, should consider how best to promote and protect the human rights of those directly affected by the impacts of climate change, including people displaced across borders. Discussions over the past several years in the Council demonstrate a broad awareness of the scale of the human rights challenge posed by climate change-related displacement, but to date states have failed to match expressions of sympathy and anxiety with concrete steps to understand the nature of the human rights challenge, and to consider and implement the most effective policy interventions.

What is clear is that the Council, acting on its own, will not be able to close the human rights protection gap for individuals displaced across borders in the context of disasters and climate change. Rather, developing and implementing workable policy solutions will require the UN’s human rights pillar to work consistently and diligently with other relevant parts of the international system, such as the Nansen Initiative on Disaster-Induced Cross-Border Displacement, the United Nations High Commissioner for Refugees, the International Organization for Migration and the UN Office for Disaster Risk Reduction, that are themselves grappling with the difficult and complex question of how best to protect individuals in such situations.

INTRODUCTION

This Policy Brief on human rights, climate change and cross-border displacement is the result of a project led by Professor Jane McAdam, Scientia Professor of Law and Director of the Andrew & Renata Kaldor Centre for International Refugee Law at the University of New South Wales, and Marc Limon, Executive Director of the Universal Rights Group (URG). It reflects primary and secondary research; the outcome of a meeting during the 25th session of the Human Rights Council (the Council) on the ‘human rights implications of displacement in the context of disasters’ organised by the URG, the Nansen Initiative on Disaster-Induced Cross-Border Displacement (the Nansen Initiative) and the Governments of Costa Rica, Norway and Switzerland; and a range of interviews with state delegates, and other stakeholders, dealing with human rights, climate change and displacement. The project builds on previous research and publications by Marc Limon on human rights and climate change, and by Professor McAdam on international refugee law and forced migration in the context of climate change and disasters. Professor McAdam and Marc Limon (for the URG) are both members of the Consultative Committee of the Nansen Initiative. The Policy Brief is primarily aimed at a human rights audience, and intends to both inform human rights policymakers and provide guidance on how international human rights law, institutions and mechanisms might contribute to more effective, just and sustainable policy responses (at the international and national levels) to climate change and cross-border displacement.

Part I describes past progress, driven by the international human rights community, to establish and leverage the relationship between human rights and climate change, and explains key contemporary debates as well as challenges to further progress. Part II looks at the particular case of cross-border displacement in the context of climate change and disasters, which has often been raised as an issue of concern in the Council but has never been grasped in a meaningful way. Part III offers ideas and recommendations for future action.

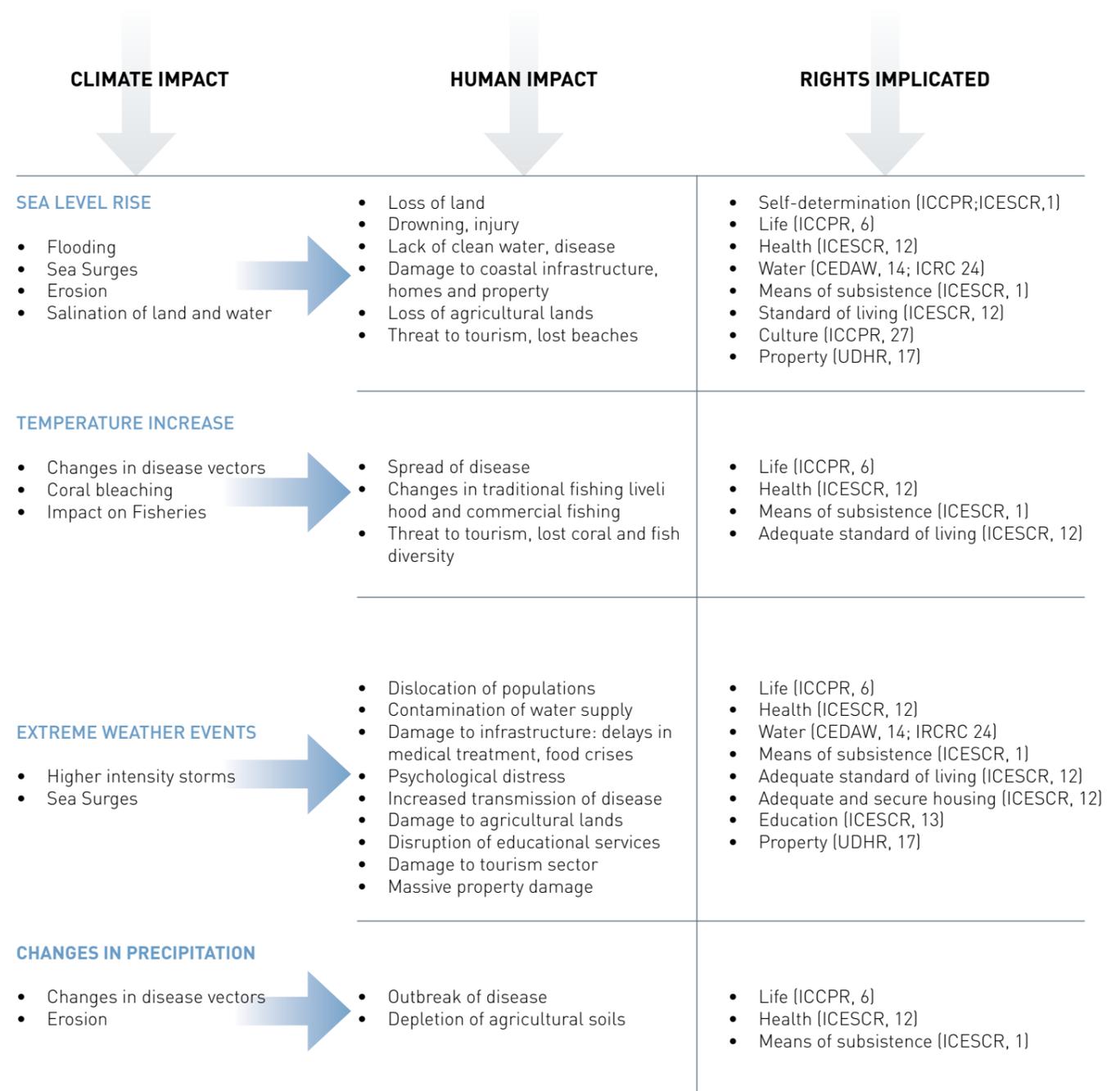
PART I

HUMAN RIGHTS AND CLIMATE CHANGE: FROM MALÉ TO GENEVA, FROM CANCÚN TO PARIS

At an institutional level, the links between human rights and climate change first began to be drawn during the 7th session of the Council in March 2008. Prompted by the Malé Declaration of November 2007, a number of countries noted the serious consequences of climate change for the full enjoyment of human rights and called on the Council to address the human rights dimension. On 28th March 2008, a group of states led by the Maldives secured the adoption, by consensus, of Council resolution 7/23 on 'human rights and climate change.' For the first time in an official UN resolution, this stated explicitly that climate change posed 'an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights,' and asked the Office of

the High Commissioner for Human Rights (OHCHR) to prepare a study on the nature and extent of those implications. That study detailed the adverse impacts of global warming on a spectrum of human rights, including the rights to life, food, water, the highest attainable standard of health, housing and self-determination; examined its effects on specific groups, including women, children and indigenous peoples; and presented a survey of possible state obligations related to climate change (see Figure 2 for a summary of some relevant impacts and rights). As will be discussed in the following section of this Policy Brief (see page 18), the OHCHR study also drew particular attention to the human rights implications of displacement.

FIGURE 2: EXAMPLES OF SOME OF THE IMPACTS OF CLIMATE CHANGE ON THE ENJOYMENT OF HUMAN RIGHTS



From: Marc Limon, 'Human Rights and Climate Change: Constructing a Case for Political Action' (2009) 33 *Harvard Environmental Law Review* 439, 476.

1. INTRODUCING HUMAN RIGHTS INTO THE UNFCCC

The Council's first and primary goal was to introduce human rights concepts and principles into the United Nations Framework Convention on Climate Change (UNFCCC) process so as to highlight the human dimension of global warming, and to use human rights principles, such as equality, non-discrimination, access to information, access to decision-making and access to justice, to qualitatively improve climate policy.

In furtherance of this goal, in 2009 the Maldives and Swiss delegations to the Conference of Parties to the UNFCCC (COP UNFCCC) [two of the ten member states of the 'human rights and climate change core group' at the Council]²¹ took the information transmitted by the Council on the relationship between human rights and climate change, and used it to urge states parties to include human rights in what was expected to be a new climate change treaty to be agreed at COP15 in Copenhagen.²² After states failed to agree on a new binding treaty at COP15, the Maldives and Switzerland pushed again one year later, during COP16 in Cancún, and eventually succeeded in integrating explicit language on the promotion and protection of human rights into the Cancún Agreements (a non-binding COP 'decision', not a new treaty).²³

Preambular paragraph 7 of decision 1/COP.16 noted:

Resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that

the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability.

Building on this, operative paragraph 8 (under 'a shared vision for long-term cooperative action') affirmed that: 'Parties should, in all climate change related actions, fully respect human rights.'

This paragraph is particularly important because it was included in part I of the operative section of the agreement, thus making clear that states must be guided by human rights considerations across all of the climate change building blocks: mitigation, adaptation, finance and technology. In addition, a number of other operative paragraphs, in other parts of decision 1/COP.16, emphasised the importance of equality and non-discrimination principles and procedural rights. The Cancún Agreements also called on states parties to undertake 'measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.'²⁴ This paragraph helped provide, *inter alia*, an impetus behind, and framework for, the Nansen Initiative on Disaster-Induced Cross-Border Displacement (see page 22).

The adoption of decision 1/COP.16 was an important breakthrough for the human rights and climate change agenda, since it was the first time that human rights language and principles had been included in an international climate change agreement. It happened despite considerable opposition, on the part of a wide range of delegations at the COP, to the inclusion of any mention of human rights. This opposition – sometimes bordering on antipathy – was the result of 'path dependence': a belief that human rights should be dealt with by the Council and climate change by the COP, and 'never the twain shall meet.' There was also (and indeed there remains to this day) a lack of understanding about the added value of a rights-informed approach to climate change (i.e. the benefits) and what it entails,



President Mohamed Nasheed of the Maldives at COP15 in Copenhagen. © Presidency Maldives

and a genuine concern that bringing 'controversial issues like human rights'²⁵ into climate change decision-making would further complicate and politicise what was already a difficult negotiation process.

In the end, opposition to including human rights principles and obligations in the Cancún Agreements was only overcome by the determined and persistent advocacy of the Maldives and Switzerland, and by a dramatic late intervention by Mexico's Special Envoy for climate change, Ambassador Luis Alfonso de Alba, who had earlier been the first President of the Human Rights Council (2006-2007) and thus both understood and was sympathetic to the integration of a 'rights-informed' approach.

It was the hope of the Maldives and Switzerland that, once embedded in the Cancún Agreements, this human rights language would act as a catalyst for a wider range of states and civil society actors to 'operationalise' the integration of human rights into climate change policy at both the international level (e.g. through a further COP decision setting out a new UNFCCC work programme) and the national level (e.g. by integrating procedural rights into domestic mitigation and adaptation policies). This hope was not to be realised, however.

2. MOBILISING THE HUMAN RIGHTS MECHANISMS, AND THE CLARIFICATION OF NORMS

The second goal of the lead sponsors of resolutions 7/23 and 10/4 was to mobilise international human rights mechanisms as an additional and complementary (to the UNFCCC) means of mobilising international action on climate change.

At an institutional level, following the adoption of resolution 10/4 in 2009, a number of UN Special Procedures focused their annual reports to the UN on the issue of climate change.²⁶ Some of them also conducted missions to explore the impact of climate change on human rights in particular countries and regions.²⁷ Treaty Bodies also began to show an informal interest in the issue,²⁸ while the Maldives, Bangladesh, Philippines and others used the Council's Universal Periodic Review (UPR) mechanism to ask vulnerable states about the impacts of climate change on human rights, and to challenge industrialised or rapidly industrialising states on the same matter.²⁹ For example, during the first cycle of the UPR, 31 states included a consideration of the impacts of climate change on human rights in their national reports, and the issue was raised in 33 UPR working group meetings.³⁰

Equally importantly, in 2012 the Council, led (broadly) by many of the same states that were behind the initiative on human rights and climate change (most notably the Maldives, Costa Rica and Switzerland), established a new UN Special Procedure – the Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (the Independent Expert). The Independent Expert was given a mandate to: (a) clarify states' human rights obligations as they pertain to environmental harm (both internally and extraterritorially), including in the context of climate change; and (b) reach out to and work with relevant international institutions and processes (including the COP UNFCCC). This latter point is particularly important: Special Procedures are the only mechanism within the international human rights system that can project influence by travelling beyond the meeting rooms of the *Palais des Nations* in Geneva to engage with other multilateral processes. This capacity can be seen in the close cooperative relationship established between, for example, the Special Rapporteur on the human rights of migrants and the International Organization for Migration; the Special Rapporteur

on adequate housing as a component of the right to an adequate standard of living and UN-Habitat; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the World Health Organization. The main sponsors of the resolution establishing the new mandate of the Independent Expert envisaged that he/she would develop a similarly close relationship with the UN Environment Programme (UNEP) and the COP UNFCCC.³¹

The Independent Expert's first three-year mandate (2012–2015) focused on studying and clarifying 'the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.'³² As the mandate progressed, the mandate-holder, Professor John Knox, increasingly looked at how this evolving normative framework might be usefully applied to environmental challenges at both a country level (e.g. through his visits to Costa Rica and France) and at a thematic level.

Regarding the latter, during the course of his mandate he increasingly turned his attention to climate action, providing information on what a rights-informed approach to climate action is and how such an approach could support more effective climate policy, as well as offering guidance on the mechanics of how to do this in practice. For example, during 2014, the Independent Expert, *inter alia*: (a) addressed climate change in his 2014 report to the Council; (b) presented a mapping report on how the Council, Treaty Bodies, Special Procedures and regional human rights mechanisms have addressed the relationship between human rights and climate change;³³ (c) held an expert consultation on the subject in Chamonix, France; and (d) spearheaded a joint open letter submitted in October 2014 by Special Procedures to states parties to the UNFCCC, calling on them 'to include language in the 2015 climate agreement that provides that the Parties shall, in all climate change related actions, respect, protect, promote and fulfil human rights for all.'³⁴ Building on this, the Special Procedures mandate-holders also made a joint statement on climate change and human rights to mark Human Rights Day on 10th December 2014.³⁵

3. HUMAN RIGHTS AND CLIMATE CHANGE: PROGRESS STALLS

Despite the hopes of the Maldives and Switzerland, between late 2011 (the adoption of the Cancún Agreements) and the end of 2014, little progress was made in integrating human rights obligations and principles into climate change policy.

At the COP UNFCCC, states parties failed to follow-up on preambular paragraph 7 and operative paragraph 8 of decision 1/COP.16.

It is true that various COP decisions were adopted that touched upon certain aspects of a rights-informed approach, such as equality and non-discrimination; the rights of people in vulnerable situations, including women, children, persons with disabilities and indigenous persons; and procedural rights, including participation, access to information and transparency.³⁶

It is also true that some states began to include human rights considerations in their national communications (national reporting) under the UNFCCC. A recent report by the Mary Robinson Foundation – Climate Justice (MRFJ) found that, of those countries that have submitted National Communications and National Adaptation Plans of Action (NAPAs), 49 made explicit reference to human rights.³⁷ Most of those references were either general commentary on the country's commitment to human rights or to the human rights implications of climate change (17 %),³⁸ although some developed countries did report on the importance of adopting a rights-based approach to climate action through international climate cooperation.³⁹ It is interesting to note that of the 49 countries that mentioned human rights in their national communications, 25 (over half) were initial co-sponsors of Council resolution 7/23.⁴⁰ Likewise, 50% of the countries that included a reference to climate change in their national reports under the UPR⁴¹ also explicitly mentioned human rights in their national communications. This suggests both a weakening of the 'path dependence' described above, and a level of coordination between human rights policymakers and climate change policymakers.

However, such moderately positive steps should not be allowed to mask what has been a broad failure, on the part of international climate change policymakers, to implement and give practical meaning to operative paragraph 8 of decision 1/COP.16. There have been no further COP decisions to elaborate on paragraph 8 or to operationalise it by establishing a new work programme or mechanism, or by producing tools (such as draft principles or guidelines on a rights-informed approach to climate policy). And no steps have been taken to build on the evolving state practice of integrating human rights considerations into national reporting under the UNFCCC by, for example, explicitly including human rights in reporting guidelines.

A similar malaise struck the human rights and climate change agenda at the Council.

In 2011, the core group of states that originally led the human rights and climate change initiative split over the decision to push for the establishment of a Special Procedures mandate with a broader environmental focus, rather than one dedicated to climate change. Bangladesh and the Philippines disagreed with this decision, left the core group (now the core group on human rights and environment), and continued to draft and table resolutions on human rights and climate change – one in

2011 (resolution 18/22), one in 2014 (resolution 26/27), and one in 2015 (resolution 29/15).

Whereas resolution 18/22 was broadly consistent with the original goals of the cross-regional initiative on human rights and climate change (i.e. to understand the relationship between human rights and climate change and use that understanding to influence international climate policy), an abortive draft resolution tabled (and withdrawn) in June 2013, and the resolutions adopted in June 2014 (resolution 26/27) and June 2015 (resolution 29/15), represented a clear departure from this approach. These texts were characterised by a rather unwieldy agglomeration of all previous paragraphs from the Council's resolutions on climate change and on the environment, together with a large number of principles, issues and debates lifted directly from the UNFCCC process – such as common but differentiated responsibilities (CBDR), and an assertion of the need to calibrate climate change responses with the 'legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty.'⁴² The sponsors of resolutions 7/23 and 10/4 had resisted this 'absorption' by the Council of questions normally dealt with by the COP UNFCCC, on the grounds that it represented a blurring of the two bodies' respective competences. There was also a widely held concern that the inclusion of CBDR in a human rights context could be taken to suggest that developing and developed countries have differentiated responsibilities to respect human rights, depending on their levels of development.

As well as seeking to introduce climate change issues and principles into the work programme of the Council, resolution 26/27 also called for the convening of a full-day panel discussion on human rights and climate change during the Council's 28th session. The subsequent debate (which took place on 6th March 2015) was aimed at a predominantly human rights audience. It focused on the negative implications of climate change for the enjoyment of human rights, especially in the Least Developed Countries (LDCs) and Small Island Developing States (SIDS), and sought to highlight how climate change undermines states' efforts to progressively realise economic, social and cultural rights, including the right to food and the right to development.⁴³ The emphasis was therefore on how climate change makes it harder for states to fulfil their human rights obligations, rather than on promoting a rights-informed approach to future climate policy. What is more, the cosponsors decided that the outcome would not be shared with the COP UNFCCC. Instead, in June 2015, the Council decided (resolution 29/15) to organise another panel discussion in Geneva (in March 2016) on the adverse impacts of climate change on the right to health.

4. RENEWED MOMENTUM ?

Despite this unpromising situation, there are signs, as the world looks towards the 21st Conference of the Parties (COP21), of moves to renew and re-energise the human rights and climate change agenda in order to drive an ambitious and just Paris agreement.

A number of actors have taken steps to leverage the language of human rights and climate justice to press for more urgency and ambition in the climate change negotiations, and to more robustly integrate human rights principles and obligations into international and domestic climate policy. These include the new High Commissioner for Human Rights,⁴⁴ the Independent Expert on human rights and the environment and other Special Procedures, certain states and state groupings like the Climate Vulnerable Forum (CVF), and NGOs such as the MRFJ.

In October 2014, 28 Special Procedures mandate-holders sent an open letter to states parties to the UNFCCC calling on them 'to include language in the 2015 climate agreement that provides that the Parties shall, in all climate change related actions, respect, protect, promote and fulfil human rights for all.' The letter also urged states parties to launch a UNFCCC work programme 'to ensure that human rights are integrated into all aspects of climate action.'⁴⁵

Then, on 10th December 2014, to mark Human Rights Day, all mandate-holders issued a joint statement urging states to 'integrate human rights standards and principles in the climate change negotiations during the [then ongoing] Lima Climate Change Conference [COP20]...and in the agreement to be adopted in Paris in 2015.'⁴⁶ After reminding states parties of the adverse implications of global warming for a range of internationally protected human rights, the joint statement noted that 'human rights can also be threatened through mitigation and adaptation measures...where such measures are adopted without the full and effective participation of concerned individuals and communities.' 'To prevent such adverse impacts,' it went on, 'States must incorporate their existing obligations under the human rights framework into the climate change negotiations.' The statement concluded by again calling for human rights wording to be included in any Paris agreement and for the establishment of a UNFCCC work programme on human rights.

In February 2015, on the eve of a meeting in Geneva of the UNFCCC's Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), Mary Robinson, the former High Commissioner for Human Rights and head of the MRFCJ, convened a 'climate justice dialogue' with the Deputy High Commissioner for Human Rights, Flavia Pansieri; the Executive Secretary of the Climate Change Secretariat, Christiana Figueres; the President of the Human Rights Council, Joachim Ruecker; and over 50 representatives from both the human rights and climate change policymaking communities. The meeting sought to remove one of the principal barriers to effectively integrating human rights into climate policy, namely 'path dependence' between the two policy communities (see page 8). This and other civil society interventions during the Geneva ADP meeting resulted in the integration of proposals for human rights wording throughout the draft negotiating text (in both the preamble and operative parts).⁴⁷

The MRFCJ 'climate justice dialogue' also saw the launch, by the Government of Costa Rica, of a further initiative to reduce path dependence: the Geneva Pledge for Human Rights in Climate Action. The original signatories to the Geneva Pledge⁴⁸ committed to 'enable meaningful collaboration between our national representatives in these two processes [i.e. the UNFCCC and the Council] to increase our understanding of how human rights obligations inform better climate action,' and to 'facilitate the exchange of expertise and best practice between our human rights and climate experts.'

Developments during the 28th session of the Council in March 2015 offered further cause for cautious optimism.

First, as noted above, on 6th March the Council held a full-day panel discussion on human rights and climate change. While the emphasis of the discussion was on how climate change makes it harder for states to fulfil their human rights obligations, rather than on promoting a rights-informed approach to future climate policy, the meeting nevertheless provided a platform for the exchange of some useful ideas and interventions by a range of stakeholders.

France, the incoming chair of the COP UNFCCC, for example, called for human rights to be integrated into the Paris negotiations in order to reach 'an ambitious and just agreement' at COP21. Quoting President Hollande, who has said that COP21 should be the moment when, in addition to talking about the rights of individuals, 'we talk of the rights of humanity...the right of all the inhabitants of the Earth to live in a world where the future is not compromised by the irresponsibility of the present,' the French delegation highlighted the importance of strengthening exchanges between human rights and climate change experts, including under the auspices of the Geneva Pledge.⁴⁹ France's position found support from a wide range of delegations,

including the Nordic states, which called on the international community to build on the Geneva ADP meeting and 'ensure that the new [Paris] agreements contain a reference to human rights.'⁵⁰ Dan Bondi Ogolla, Coordinator and Principal Legal Advisor at the UNFCCC Secretariat, offered thoughts on how to operationalise the integration of 'a human rights dimension in the climate change framework and policies' and ensure 'the full protection of human rights in the implementation of climate-related actions.'⁵¹ Building on these ideas, Mary Robinson proposed three specific actions:

- 1 The creation of fora under the UNFCCC and the Council to allow the human rights and climate change communities to share examples and good practices (building on the Geneva Pledge);
- 2 The development of guidelines, by the human rights community, on how to integrate human rights obligations, standards and principles into climate policy (i.e. how to operationalise a rights-informed approach); and
- 3 That states include consideration of the linkages between human rights and climate change in their reporting to the Council (i.e. the UPR) and their reporting under the UNFCCC (i.e. national communications).⁵²

A final promising step taken during the Council's 28th session was the renewal and strengthening of the Special Procedures mandate on human rights and the environment. This is important because the mandate is ideally placed to play a bridging role between the work of the Council and negotiations under the UNFCCC, including by facilitating and leveraging the concrete steps proposed by Dan Bondi Ogolla and Mary Robinson.

With resolution 28/11, the Council decided to transform the Independent Expert on human rights and the environment into a Special Rapporteur. This means, *inter alia*, that the focus of the mandate will shift from the clarification and elaboration of human rights norms as they relate to environmental harm and environmental policymaking, to promoting and supporting the implementation of those norms. Importantly, when supporting such implementation, the new Special Rapporteur is likely to focus, in particular, on climate change.

In an early signal of this intent, in April 2015 the Special Rapporteur spearheaded a joint submission by 14 Special Procedures mandate-holders to the COP UNFCCC, on the potential implications for global human rights of a 2°C or a 1.5 °C increase in global average temperatures.

PART II

HUMAN RIGHTS AND CLIMATE CHANGE-RELATED DISPLACEMENT

As noted in Part I, over the course of the UN's deliberations on the links between human rights and climate change, one particular area of concern has been human displacement. The Council, the High Commissioner for Human Rights, Special Procedures mandate-holders and Treaty Bodies have all repeatedly drawn attention to this issue.

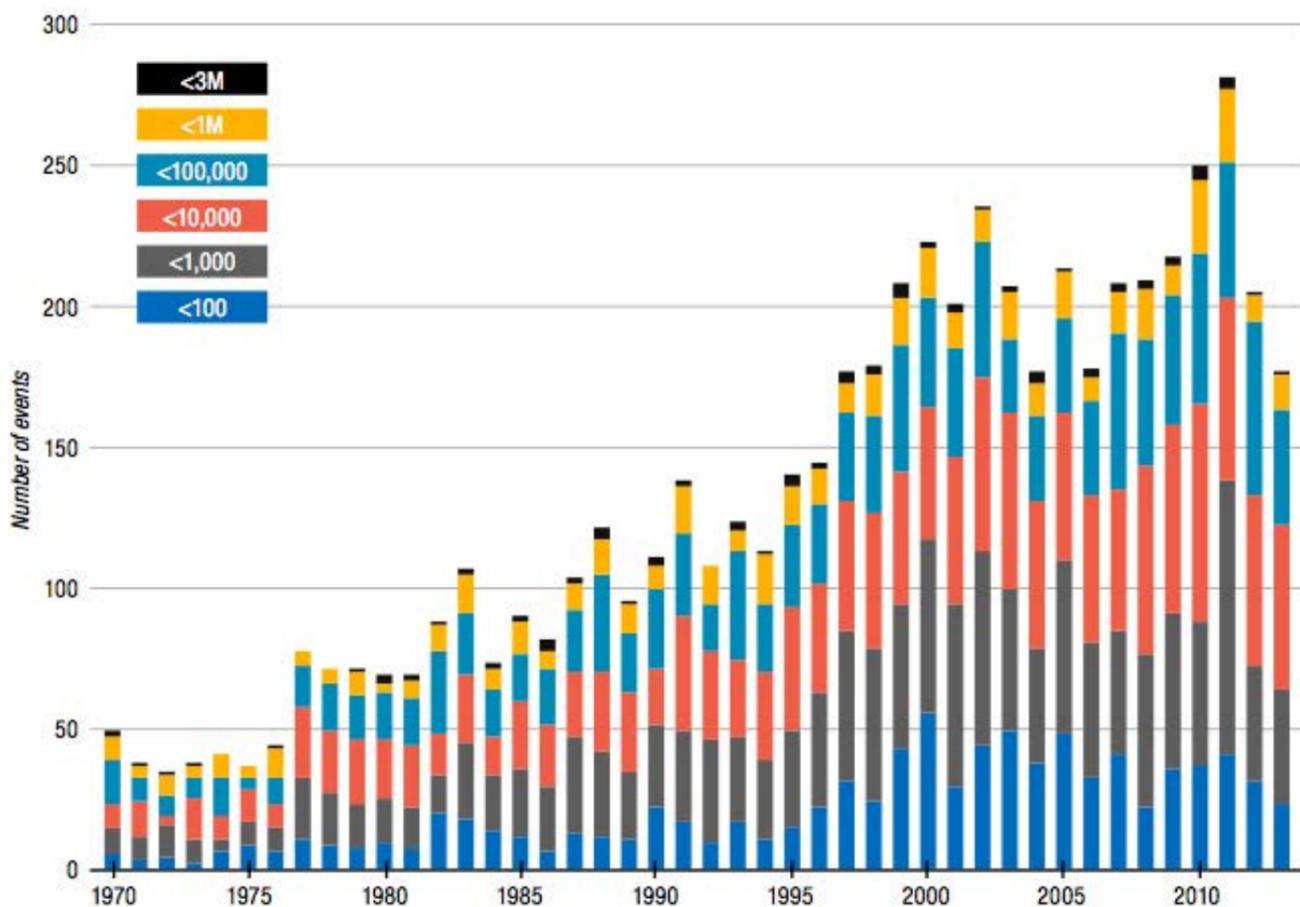
1. CLIMATE CHANGE, DISASTERS AND DISPLACEMENT

'Displacement' describes the forced movement of people from their homes. It may be temporary or permanent, small-scale or large-scale, and may occur within a country or across an international border. In the context of climate change, people may be displaced when the impacts of extreme weather events, such as floods, cyclones and hurricanes, or slower-onset processes, such as sea-level rise, temperature increases, erosion and drought, mean they can no longer remain in their homes and need to seek safety, assistance and protection elsewhere. Climate change acts as a threat amplifier: disasters become more frequent and more intense, while droughts become more prolonged.

Slow-onset processes, such as sea-level rise, may have both long-term and short-term impacts. For instance, cyclones drive storm surges, which can cause extensive flooding of coastal areas.⁵³ The 20 centimetre increase in global sea levels since the mid-19th century means that there is now much more water riding on a storm surge, which makes flooding more extensive and severe.⁵⁴ Such effects were seen in Cyclone Pam in Vanuatu in March 2015. In addition, higher water surface temperatures in that region created higher wind speeds and more damaging rainfall.⁵⁵

While disasters can occur anywhere, displacement that follows a disaster stems not just from the event itself, but also from a lack of adequate responsive capacity. Estimates by the Internal Displacement Monitoring Centre indicate that the vast majority of displacement over the period 2008–12 – around 98% – occurred in developing countries.⁵⁶ Many of these countries are not only more susceptible to disasters, but they lack the capacity (technical, financial, political) to cope with them once they have occurred, especially in densely populated areas. For example, the devastating consequences and mass displacement caused by the 2010 Haiti earthquake were not replicated in the aftermath of a seismically larger earthquake in Chile in the same year: the impact was relatively modest because of Chile's higher level of development.⁵⁷ As such, the extremely high proportion

FIGURE 3: MODELLED ANNUAL INTERNAL DISPLACEMENT EVENT BY MAGNITUDE OF DISPLACEMENT



From: Justin Ginnetti, Disaster-Related Displacement Risk: Measuring the Risk and Assessing its Drivers (Internal Displacement Monitoring Centre, 2015).

of displacement in developing countries reflects 'the strong correlation between poverty, the number of people exposed to hazards and displacement.'⁵⁸

There are no robust global estimates of future population movements linked to the impacts of climate change. This is due both to conceptual and methodological challenges. One problem is working out who should be counted. Since displacement will be driven by a number of different factors, isolating the role of 'climate change' is impossible (see Box 1).⁵⁹ Nevertheless, much of the literature suggests that the risk of displacement will increase because of the amplifying effect that climate change has on the frequency and severity of disasters.⁶⁰

2. PROTECTING THE HUMAN RIGHTS OF THOSE DISPLACED IN THE CONTEXT OF CLIMATE CHANGE AND DISASTERS

As this report shows, there is a long-standing and deeply held concern in the international human rights community about the human rights of people displaced in the context of climate change and disasters.

Yet, regular expressions of anxiety on the part of the High Commissioner for Human Rights, member states of the Council, Special Procedures mandate-holders and NGOs (both in the context of Council debates on climate change, and also in the context of Council discussions on the rights of migrants and displaced persons) have not yet been translated into a policy roadmap – or even a set of incremental steps to guide a coherent response. This is partly due to the problems of definition and causation already recounted in this report. But according to some diplomats, it is also due to political concerns about the potential scale and complexity of the issue.⁶¹

Under international human rights law, states have the primary responsibility to promote and protect the human rights of all people within their territory or jurisdiction – both citizens and non-citizens. Where people are displaced within national borders, the obligations of states under international human rights treaties is clear, and are further clarified by relevant soft

BOX 1: A WORD ON CAUSATION

While disasters and climate change will impact on people's decisions to move, they will never be the sole cause of that movement. Research shows that the reasons for movement will always be multi-causal: a combination of factors such as the general environmental fragility of an area, poverty, weak governance, and individual vulnerabilities (e.g. illness). The impacts of climate change may exacerbate existing economic, social and political pressures, acting as a 'tipping point.' This is why already vulnerable communities are the ones most at risk.

While displacement may be a sign of vulnerability, not moving may be a sign of even greater risk. As the Inter-Governmental Panel on Climate Change (IPCC) has observed, vulnerability is 'inversely correlated with mobility.'⁶² This means that the most vulnerable people in a community (e.g. the elderly or the ill) may be unable to move at all, effectively becoming trapped.⁶³ The human rights impacts on people in these situations may be particularly dire.

law instruments and guidelines such as the Guiding Principles on Internal Displacement⁶⁴ and the IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters. The Guiding Principles, adopted in 1998, identify and clarify universal rights and guarantees relevant to the protection of displaced persons during all phases of displacement – from pre-displacement through to recovery and return. They relate to protection against arbitrary displacement, access to protection and assistance during displacement, and guarantees during return or alternative settlement and reintegration. The Guiding Principles are also relevant to displacement in the context of disasters and climate change.⁶⁵

If people are displaced across an international border, the receiving state is still obliged to treat them in accordance with its international human rights obligations. But questions remain as to whether they are required to offer protection to people who flee in the aftermath of a natural disaster, or who want to escape the possibility of future environmental harm. The next section examines the scope of existing international legal frameworks in this regard.

3. A HUMAN RIGHTS PROTECTION GAP?

Movement away from harm is a normal and rational climate change adaptation response. However, current legal frameworks neither facilitate nor support cross-border movement in the context of climate change-related impacts, including natural disasters. International law places an obligation on countries to protect a very small class of people: 'refugees,' those eligible for 'complementary protection,' and 'stateless persons.' This means that unless people fall within one of those categories (or can migrate lawfully for reasons such as employment, family or education) they run the risk of interdiction, detention and expulsion if they attempt to cross an international border without a legal entitlement to travel to and/or remain in the destination country.⁶⁷

REFUGEE PROTECTION

Under the 1951 Refugee Convention and its 1967 Protocol, a refugee is someone who, 'owing to 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.'

There are a number of problems with the application of refugee law to climate change-related displacement.

First, refugees must show that they fear persecution. Persecution entails violations of human rights that derive from human actions, and that are particularly egregious in their inherent nature or cumulative impact. While the adverse impacts of climate change and disasters are certainly harmful,

BOX 2: WHERE WILL PEOPLE MOVE?

Most displacement in the context of climate change and disasters will occur within countries, rather than across international borders.⁶⁶ Nevertheless, the impacts of climate change and disasters are likely to cause some cross-border displacement. For example, where a disaster happens near a border, the closest place of safety may be on the other side. Or, a state's responsive capacity may be insufficient to deal with the scale of the disaster, and people may seek assistance elsewhere. In other cases, areas of land may be rendered uninhabitable, and internal migration may not be a viable option. This may happen, for example, in some low-lying Small Island Developing States (SIDS).

they do not satisfy the concept of 'persecution' as it is currently understood in international and domestic law.

Second, even if it were possible to establish that the impacts of climate change and natural disasters amounted to persecution, the Refugee Convention poses an additional hurdle: persecution must be for reasons of an individual's race, religion, nationality, political opinion, or membership of a particular social group. The impacts of climate change and natural disasters are largely indiscriminate, rather than tied to particular characteristics.

In exceptional cases, the refugee definition might apply – for instance, if, on the basis of one of the five Convention grounds, a government restricted access to fresh water supplies or agricultural land, or to humanitarian assistance in the aftermath of a disaster. However, in such cases, it would be the act or omission by the government that would constitute the harm, rather than the disaster or resource scarcity itself.⁶⁸

BOX 3: WHY THE TERM 'CLIMATE REFUGEE' IS ERRONEOUS

*'There is widespread agreement in the scientific and legal literature that the use of the term climate refugee is scientifically and legally problematic. McAdam calls the concept 'erroneous as a matter of law and conceptually inaccurate.' The reasons are threefold. First, most migration and climate studies point to the environment as a trigger and not the cause of migration decisions. Second, some studies focus on the negative geo-political implications of changing the Geneva Convention on refugees to include environmental migrants as well as the lack of global instruments to handle internal displaced peoples or international migrants. Third, many SIDS are reluctant themselves to have their international migrants designated as being victims of climate change.'*⁶⁹

COMPLEMENTARY PROTECTION

Human rights law has expanded states' protection obligations beyond the 'refugee' category to include people at risk of arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment. This is known as 'complementary protection' because it describes protection that is complementary to that provided by the Refugee Convention. It derives from the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), and is also reflected in regional instruments, such as the European Convention on Human Rights and the American Convention on Human Rights.

It is possible that conditions in a disaster-affected area, or an area rendered uninhabitable by the impacts of climate change, could be such that returning someone there would expose them to a real risk of death or inhuman or degrading treatment. This is especially so when the conditions are considered cumulatively (for example, if an area is disaster-prone, there are extreme water shortages, crops can no longer be grown, and there is a heightened risk of illness).

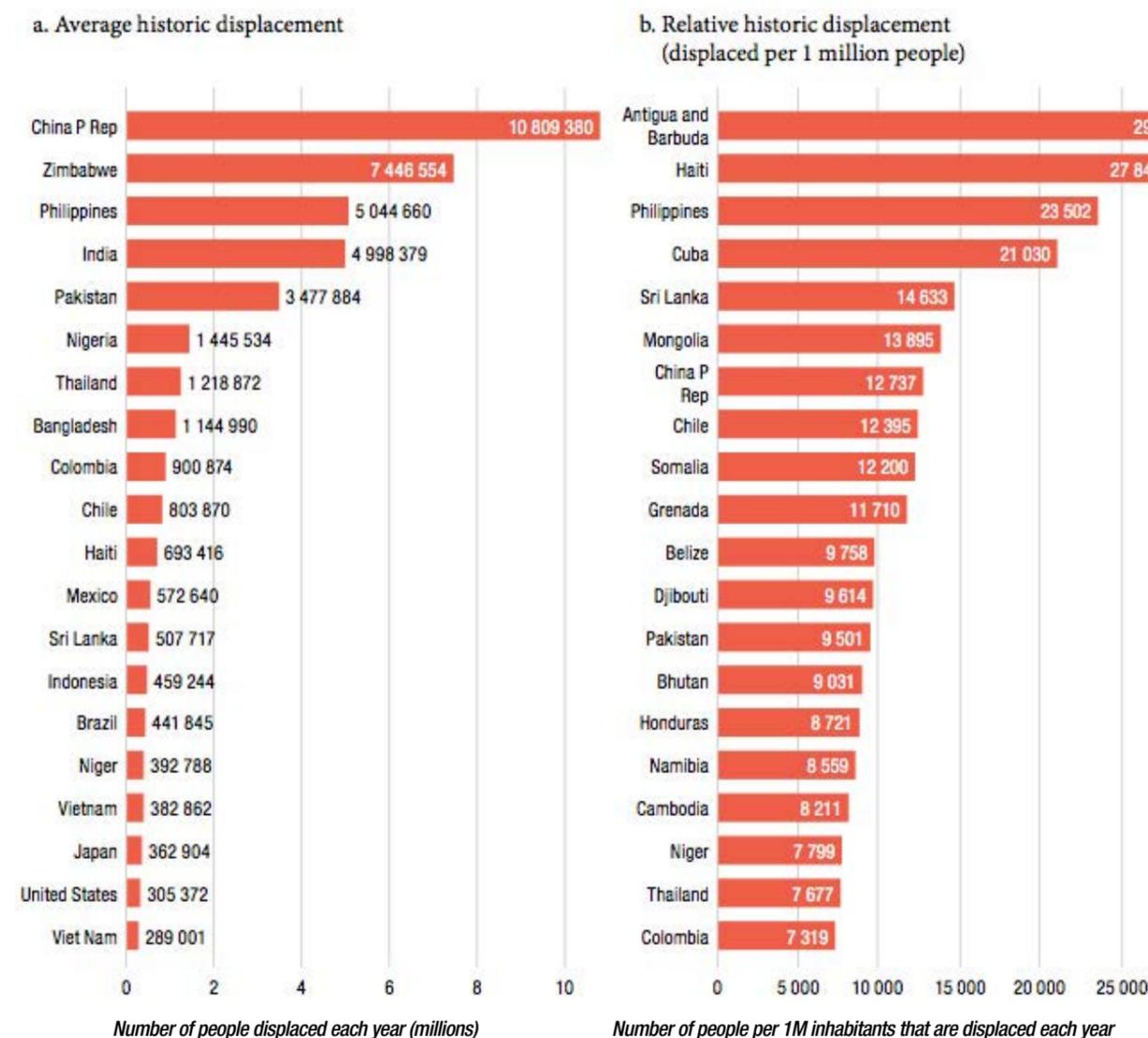
Courts have observed that 'destitution' or 'dire humanitarian conditions' can amount to inhuman or degrading treatment in certain cases. However, the meaning of 'inhuman or degrading treatment' has been carefully circumscribed so that it cannot be used as a remedy for general poverty, unemployment, or a lack of resources or medical care, other than in truly exceptional cases. In particular, courts have been reluctant to recognise an international protection need unless a state deliberately withholds resources or actively occasions harm. It is therefore unlikely that a lack of basic services alone would substantiate a complementary protection claim, unless it made survival upon return impossible.

Timing also matters: it seems that harm needs to be relatively immediate for a complementary protection claim to succeed. For example, in a 2014 case involving a man from Kiribati, the New Zealand Immigration and Protection Tribunal (whose approach was upheld by the High Court and the Court of Appeal) found that there was no evidence to establish that the environmental conditions that would be faced by the man upon his return to Kiribati would be 'so parlous that his life [would] be placed in jeopardy, or that he and his family [would] not be able to resume their prior subsistence life with dignity.'⁷⁰ The Tribunal emphasised that the man could not show that there was a sufficient risk to his life 'at the present time.'⁷¹

Likewise, in another 2014 case before the New Zealand Tribunal, a family from Tuvalu was unable to show that they would be arbitrarily deprived of life or subjected to cruel or inhuman treatment if sent home. The harm faced was not dire and imminent, nor was it a consequence of an act or omission by the Tuvaluan Government.⁷² In this case, the Tribunal also analysed the meaning of 'treatment.' It observed that the drafters of the ICCPR never intended that general socio-economic conditions should constitute 'treatment' for the purposes of article 7, but rather that in certain circumstances, state acts or omissions resulting in socio-economic harm could constitute 'treatment.'⁷³ This could include such things as the discriminatory denial of humanitarian relief or the arbitrary withholding of consent for necessary humanitarian assistance.⁷⁴

This apparent 'imminence' requirement means that complementary protection mechanisms will not be of much use to those seeking to escape the future impacts of climate change, including the risk of more frequent and severe disasters.

FIGURE 4: AVERAGE ANNUAL DISPLACEMENT RISK BASED ON DATA FROM 1994-2003



From Justin Ginnetti, Disaster-Related Displacement Risk: Measuring the Risk and Assessing its Drivers (Internal Displacement Monitoring Centre, 2015)

STATELESSNESS

Sea-level rise is considered to pose a particularly severe threat to coastal and low-lying areas.⁷⁵ This has led to a popular assumption that some SIDS will be subsumed by rising sea levels, rendering their people 'stateless.'

'Statelessness,' however, has a particular meaning in international law, and it is not a good fit in the present context.⁷⁶

First, at a practical level, it is important to appreciate that long before territory itself is submerged, other factors will render land unsuitable for human habitation (such as insufficient fresh water supplies). This means that people will need to move well before the land is inundated.⁷⁷

Second, the international legal regime on statelessness is unlikely to be of assistance in protecting people who move. That

is partly because the two relevant treaties – the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness – are poorly ratified, and very few states have a procedure for identifying stateless people in their territory. More significantly, though, the legal definition of a 'stateless' person is very narrow: someone who is 'not considered as a national by any State under the operation of its law.' It is deliberately confined to *de jure* statelessness, and does not extend to *de facto* statelessness – that is, where someone formally possesses a nationality, but is denied the rights of a citizen.

The 'statelessness' definition would not assist people whose country were at risk of inundation by sea-level rise unless the country formally withdrew nationality from them (which, as a matter of human rights law, it is obliged not to do). A question remains as to its possible application if a country were considered to no longer exist, because then there would be no



Damage in the aftermath of Typhoon Haiyan on the east coast of the Philippines (November 2013). © Globovisión

'state' to provide nationality. However, history shows that the international community tends to presume the continuity of states, even when some of the formal criteria of statehood start to wane.⁷⁸ Thus, there is no clear means by which the treaties' benefits could be accessed.

Notwithstanding these limitations, the United Nations High Commissioner for Refugees (UNHCR) does have a mandate to prevent and reduce statelessness.⁷⁹ UNHCR has suggested that in cases where states are threatened in the long term by rising sea levels, and where their populations would be likely to find themselves largely in a situation that would be similar to if not the same as if statehood had ceased,⁸⁰ its mandate to prevent and reduce statelessness would be triggered.⁸¹

4. THE ROLE OF THE HUMAN RIGHTS COUNCIL

It is clear that there is a significant protection gap in the international human rights architecture for people displaced across an international border in the context of climate change and disasters. This gap relates in particular to questions of admission, legal status during stay, and conditions for return.

So what is the international human rights community doing to confront this issue?

As noted earlier in this report, the international community, led by the Council, has regularly acknowledged and expressed its concern about the negative human rights implications of climate change, and has consistently drawn particular attention to the human rights consequences of climate change-related displacement.

For example, OHCHR's landmark 2009 report on the relationship between human rights and climate change (see page 6) devoted an entire section to displacement.⁸² It looked at the human rights implications of a range of climate change-related displacement scenarios (i.e. extreme weather-related disasters, gradual environmental deterioration, increased disaster risk resulting in relocation from high-risk zones, and social upheaval and violence attributable to climate change-related factors), and drew an important distinction between protection afforded to internally displaced persons and those displaced across international borders.

The OHCHR asserted that people displaced within national borders are entitled to the full range of human rights guarantees by a given state, including protection against arbitrary or forced displacement and rights related to housing and property restitution for displaced persons. To the extent that movement has been forced, people would also qualify for increased assistance and protection as a vulnerable group in accordance with the Guiding Principles on Internal Displacement.

For those moving across an international border due to climate change-related factors, however, OHCHR recognised that

while individuals should be entitled to general human rights guarantees in the receiving state, in reality they would generally not have a right of entry to that state in the first place. OHCHR noted that the Representative of the Secretary-General on the human rights of internally displaced persons (as the role then was) had suggested that a person who could not reasonably be expected to return (e.g. if assistance and protection provided by the country of origin were far below international standards) should be granted at least temporary stay.⁸³

Concern about the human rights of people displaced across an international border in the context of disasters and the effects of climate change has also been a regular preoccupation for member states of the Council.

For example, during a 2009 panel debate on human rights and climate change at the Council, a number of states asserted that climate change-related displacement is already a major humanitarian challenge and will become increasingly significant as the planet continues to warm. They drew particular attention to the important human rights protection gap for displaced persons. Azerbaijan, for example, referred to a June 2009 report by the Norwegian Refugee Council, which showed that in 2008 alone, more than 20 million people were displaced internally by climate change-related disasters.⁸⁴

A number of delegations also highlighted the human rights protection gap for countries that, over time, may be rendered largely uninhabitable. For example, the Maldives, on behalf of twelve 12 SIDS, drew attention to a joint submission by UNHCR and others to the UNFCCC's Bali Process, which stated that the 'entire populations of low-lying States such as the Maldives, Tuvalu, Kiribati and the Marshall Islands may in [the] future be obliged to leave their own country as a result of climate change. Moreover, the existence of their State as such may be threatened.'⁸⁵

The Council has also adopted resolutions recognising the human rights implications of displacement in the context of disasters and the effects of climate change. For example, resolution 20/9 'recognised the adverse effects of climate change as contributors to environmental degradation and extreme weather events, which may, among other factors, contribute to human displacement,' while resolution 23/8 expressed concern at displacement caused by natural disasters, exacerbated by the expected effects of climate change and by poverty, and recognised the need for a human rights-based approach to disaster risk reduction, early warning, disaster contingency planning, disaster management and mitigation, as well as recovery efforts, to find durable solutions.⁸⁶ Most recently, Council resolution 29/15 on human rights and climate change expressed concern (in operative paragraph 1) that: 'climate change has contributed to the increase of both sudden-onset natural disasters and slow-onset events, and that these events

have adverse effects on the full enjoyment of all human rights.'

The human rights implications of climate change-related displacement have also been addressed by UN Special Procedures. For example, in August 2012, the UN Special Rapporteur on the human rights of migrants submitted a report to the General Assembly on the consequences of climate change.⁸⁷

In his report, the Special Rapporteur, François Crépeau, drew states' attention to the fact that 'climate change is likely to exacerbate the frequency and intensity of extreme weather events (e.g. tropical storms, floods, heat waves) and the gradual processes of environmental degradation (e.g. desertification and soil and coastal erosion)' and asserted that 'those effects of climate change and their adverse consequences for livelihoods, public health, food security and water availability will have a major impact on human mobility.'⁸⁸

Although these and similar interventions by the Council, OHCHR, Special Procedures and other parts of the international human rights system have consistently drawn attention to the scale and the nature of the human rights challenge posed by climate change and disasters, and to the related protection gap, they have been unable to propose a coherent strategy or action plan for addressing that gap.

For example, states raising the issue of climate change-related displacement during the 2009 Council debate were not able to put forward any concrete policy prescriptions beyond saying that 'this new phenomenon...creates new and complex judicial issues' and thus requires further consideration.⁸⁹ Similarly, the conclusions of the 2012 report of the Special Rapporteur on the human rights of migrants focused heavily on the definitional complexities of climate change-related displacement and migration, in particular the fact that people moving may 'fall in between' traditional categories of 'voluntary economic migrant' and 'asylum seekers and refugees.' The mandate-holder noted that such complexities 'may require rethinking of the human rights categories afforded to migrants and the development of eventual protection mechanisms for persons on the move.'⁹⁰ The only concrete policy proposal levelled by the Special Rapporteur was a suggestion for states to 'devise and implement regional migration policies and strategies to facilitate international climate-change-induced migration.'⁹¹



Aftermath of Typhoon Haiyan in Tacloban, Philippines © Balazs Gardi

PART III

WHAT NEXT?

Long-serving diplomats at the Council, worn down by an increasingly heavy agenda covering a growing range of issues, often complain that 'every issue is, potentially, a human rights issue.'

And yet the Council has neither the capacity (it sits for only 10 weeks per year, while the UN's human rights pillar receives only around 3% of the organisation's regular budget), the mandate, nor the expertise to address and solve every challenge facing humanity in the 21st century.

This, in turn explains the importance of mainstreaming human rights across other UN policies and programmes. This importance has been recognised and emphasised at the highest political levels. In General Assembly (GA) resolution 60/1 presenting the outcome of the 2005 World Summit, heads of state pledged to 'support the further mainstreaming of human rights through the United Nations system,' while GA resolution 60/251 establishing the Council mandated the new body to 'promote effective coordination and the mainstreaming of human rights.'

Mainstreaming rests upon a recognition that the Council and its mechanisms are not able to resolve every global challenge that has implications for the enjoyment of human rights. And nor should they – there are myriad other UN bodies and agencies specifically mandated to promote, for example, sustainable development, health, access to food, water and housing, gender equality, and child welfare. The role of the UN human rights system, as decided by heads of state and the GA, is rather to

work with and support these other organisations by helping to integrate a rights-informed approach into the development and implementation of their respective fields of policy.

The application or mainstreaming of human rights principles and norms into these other areas of UN policy brings a range of benefits. These include emphasising the plight of individual people and communities; drawing attention and giving voice to the concerns and opinions of vulnerable and marginalised groups; enhancing equity in international decision-making; encouraging more effective, fair and sustainable outcomes through the promotion of accountability concepts and participatory and democratic principles in decision-making; emphasising international cooperation; and responding to gaps in the existing policy architecture.⁹²

The importance and value of effective human rights mainstreaming is equally evident in the areas of climate change and displacement.

The problem of climate change will not be solved in Room XX of the Palais des Nations (i.e. by delegates of the Council). It will be solved – if it is to be solved through intergovernmental negotiation – by climate change negotiators acting within the framework provided by the UNFCCC. The role of the Council is to help the COP UNFCCC arrive at an agreement that, in its ambition, formulation and implementation, serves to respect, protect and fulfil internationally guaranteed human rights.

This means, in concrete terms:



Secretary-General Ban Ki-moon at the Climate Summit 2014 at UN headquarters in New York. © United Nations Photo

- 1 Making relevant Council deliberations and information available to the COP UNFCCC. As a starting point, the main sponsors of the Council's resolutions on human rights and climate change, Bangladesh and the Philippines, should ensure that future resolutions serve to transmit information on the Council's deliberations (for example, summaries of panel discussions) to the COP UNFCCC.
 - 2 Further developing platforms and initiatives, like the Geneva Pledge, to bring the international human rights and climate change communities together to develop policy responses that safeguard the environment and protect human rights. In addition to increasing the number of signatories to the Pledge, states should consider, as proposed by Mary Robinson, establishing regular fora under the Council (e.g. biannual seminars or roundtables) and under the UNFCCC (such as informal 'spaces for dialogue' similar to those organised by Belgium and Nordic states on the issue of equity in 2012–14);
 - 3 Providing expertise, where requested, on what it means, in practical terms, to adopt a rights-informed approach to climate change policy and action. For example, the human rights community might help the COP UNFCCC to develop guidelines on how to integrate human rights obligations, standards and principles into climate policy; and/or advise states parties on how to revise UNFCCC national communication reporting guidelines to include human rights;
 - 4 Leveraging reporting processes under both the Council and the COP UNFCCC. States should be further encouraged and supported in their efforts to include consideration of the linkages between human rights and climate change in their reporting to the Council (i.e. under the UPR) and their reporting under the COP UNFCCC (i.e. national communications);
 - 5 Promoting the 'bridging role' of Special Procedures. The new Special Rapporteur on human rights and the environment should play a key role, both formally and informally, in promoting the realisation of the above steps, and should also actively participate in relevant activities (e.g. seminars at the Council and informal 'spaces for dialogue' under the COP UNFCCC).
- Likewise, the Council on its own will not be able to close the human rights protection gap for individuals displaced across borders in the context of disasters and climate change. Rather, it will require the UN's human rights pillar to work consistently and diligently with other relevant parts of the international system, such as the Nansen Initiative on Disaster-Induced Cross-Border Displacement, UNHCR, IOM and the UN Office for Disaster Risk Reduction, that are themselves grappling with the difficult and complex question of how to best protect individuals in such situations.

BOX 4: ADDRESSING THE PROTECTION GAPS RELATED TO CROSS-BORDER DISASTER-DISPLACEMENT

by Professor Walter Kälin, Envoy of the Chairmanship of the Nansen Initiative

Displacement in the context of disasters and the adverse effects of climate change raises a wide array of human rights considerations. Responses must respect the right to life and freedom of movement, as well as preserve economic, social and cultural rights. In situations where people are forced to flee across borders, international law does not adequately address when disaster displaced persons should be admitted into another country, their status during stay, and the conditions upon which such displaced persons can be returned or find another durable solution. The Nansen Initiative, led by the governments of Norway and Switzerland, seeks to build consensus among interested states, in consultation with other stakeholders, on how to address the legal, operational, institutional and knowledge gaps related to cross-border disaster-displacement, not through the drafting of new legal instruments or policies, but through the development of a non-binding 'Protection Agenda' that sets out examples of existing practice and areas for future action.



The Nansen Initiative process has highlighted that protecting the rights of cross-border disaster-displaced persons requires broadening the scope of discussions and policy developments beyond the humanitarian response phase. Over the past two years, the Nansen Initiative has sensitised stakeholders at national, (sub-)regional and international levels working in the areas of humanitarian action, human rights protection, migration management, disaster risk reduction, climate change adaptation, refugee protection and development, including in collaboration with UN Special Procedures that have an interest in the area. In particular, the Nansen Initiative process has emphasised the importance of providing meaningful information and opportunities for consultation and collaboration with disaster-displaced persons themselves, as well as other affected communities.

The Human Rights Council and its mechanisms could play an important role in furthering such conversations, particularly by triggering debates and action on how existing human rights law obligations can be interpreted in a manner that helps protect the rights of people displaced across borders in disaster contexts. For example, consideration could be given to whether existing human rights law obliges states to open borders to displaced persons in disaster contexts, similar to the non-refoulement principle in refugee law. Such considerations could contribute to strengthening policy responses to cross-border disaster-displacement, by showing that policies and actions should be informed by human rights principles and should respond to the needs of the most vulnerable.

Launched in October 2012 by the Governments of Norway and Switzerland, the Nansen Initiative is a state-led, bottom-up consultative process intended to build consensus on the needs of people displaced across international borders in the context of disasters and climate change. Through a series of five sub-regional consultations, the Nansen Initiative has gathered nuanced information about the challenges of disaster-related displacement in different parts of the world. By pinpointing protection gaps, as well good practices, it seeks to identify legal and policy interventions that may assist people to avoid displacement in the first place, and to respond more effectively when displacement occurs. For instance, consultations to date have revealed the importance of establishing effective disaster risk reduction and climate change adaptation mechanisms; creating temporary protection mechanisms to assist displaced people in the aftermath of a disaster; creating voluntary migration options to enable more permanent movement; and using carefully planned relocations as a means of moving

people out of hazardous zones. Human rights law and the principles of dignity and non-discrimination must underpin all such interventions. In October 2015, the Nansen Initiative will release its Protection Agenda, setting out the tools and strategies required at the national, regional and international levels to address mobility in the context of disasters and climate change.⁹³

The UN High Commissioner for Refugees, António Guterres, has personally championed the issue, stating that UNHCR has a 'duty to alert states to these problems and help find answers to the new challenges they represent.'⁹⁴ UNHCR was actively involved in drafting the Nansen Principles in 2011 – a set of ten non-binding, overarching principles designed to shape and inform further action on addressing the linkages between climate change and mobility, both normatively and practically. The Principles state, *inter alia*, that a 'more coherent and consistent approach at the international level is needed

to meet the protection needs of people displaced externally owing to sudden-onset disasters', and that 'States, working in conjunction with UNHCR and other relevant stakeholders, could develop a guiding framework or instrument in this regard.'⁹⁵

Nevertheless, UNHCR's legal mandate does not encompass climate change or disaster-related displacement and states have been adamant that they will not extend its mandate in this regard.⁹⁶ In fact, it was this position that prompted Norway and Switzerland to establish the Nansen Initiative outside formal UN structures.

IOM is not part of the UN system and does not have a protection mandate. Its role is to provide services and advice to governments and migrants aimed at orderly and humane migration. Since the 1990s, it has produced a number of significant research reports on the effects of climate change-related movement, sponsored conferences and workshops, and run its own high-level inter-sessional dialogues on the topic.

The Nansen Initiative, UNHCR, IOM and the UN Office for Disaster Risk Reduction have repeatedly demonstrated both their awareness of the human rights dimension of their respective areas of work, and their openness to engage with the

Council and its mechanisms – both formally and informally – to mainstream human rights.

In seeking to protect the rights of persons displaced across international borders in the context of disasters and climate change, the international human rights community, led by the Council, should reciprocate this openness and reach out to these organisations and initiatives.

That work, like the Council's engagement with the COP UNFCCC, should be led by Special Procedures, including the Special Rapporteur on the human rights of migrants, the Special Rapporteur on internally displaced persons, and the Special Rapporteur on human rights and the environment. Ideally, these mandates should work jointly to ensure a comprehensive and coordinated approach. To facilitate and catalyse the engagement of the international human rights system, with the full involvement of states and civil society, the Council should consider mandating OHCHR (in the context of its regular resolutions on climate change) to organise, with the UNFCCC Secretariat, the Nansen Initiative, UNHCR, the UN Office for Disaster Risk Reduction, and IOM, an inter-sessional seminar on human rights and displacement in the context of climate change and disasters.



Brookings Institution event on disaster-induced cross-border displacement (April 2014), with (left to right): Chaolka Beyani, UN Special Rapporteur on the human rights of internally displaced persons; Walter Kälin, Envoy of the Chairmanship of the Nansen Initiative; and Jane McAdam, Director of the Andrew & Renata Kaldor Centre for International Refugee Law, University of New South Wales. © Brookings Institution

NOTES

1 Press Conference by United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein (16 October 2014) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15173&LangID=E#sthash.szM1rhZS.dpuf>.

2 E.g. in UN Human Rights Council res 7/23, 'Human Rights and Climate Change' (28 March 2008); UN Human Rights Council resolution 10/4, 'Human Rights and Climate Change' (25 March 2009).

3 E.g. United Nations Framework Convention on Climate Change (UNFCCC), *The Cancún Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention*, UNFCCC Dec 1/CP.16, 9th plen. mtg, UN Doc FCCC/CP/2010/7/Add.1 (10–11 December 2010) <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.

4 UNHRC res 10/4, 'Human Rights and Climate Change' (25 March 2009) [adopted without a vote].

5 Cancún Agreements (n 3) art 8.

6 See Marc Limon, 'Human Rights and Climate Change: Constructing a Case for Political Action', (2009) 33 *Harvard Environmental Law Review* 439, 450.

7 Nansen Initiative, Perspective, 'Linking Human Mobility, Disasters and Disaster Risk Reduction' (September 2014).

8 Internal Displacement Monitoring Centre (IDMC), *Global Estimates 2014: People Displaced by Disasters* (2014) 7.

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10 Ibid.

11 UNHCR, 'Number of Somali Refugees in Horn of Africa Passes 1 Million Mark' (17 July 2012) <http://www.unhcr.org/500554ed9.html>.

12 The Government Office for Science, *Foresight: Migration and Global Environmental Change: Future Challenges and Opportunities* (The Government Office for Science, London, 2011) 37; Asian Development Bank, *Addressing Climate Change and Migration in Asia and the Pacific: Final Report* (Asian Development Bank, 2012) viii, 4.

13 UNHCR (n 11).

14 Sendai Framework for Disaster Risk Reduction 2015–2030, UN Doc A/CONF.224/CRP.1 (18 March 2015), Preamble, para 4; para 19(c) respectively.

15 Malé Declaration on the Human Dimension of Global Climate Change (Small Island States Conference, Malé, Maldives, Nov. 13–14, 2007) 2 http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

16 UNHRC res 7/23, 'Human Rights and Climate Change' (28 March 2008) UN Doc A/HRC/RES/7/23.

17 Office of the High Commissioner for Human Rights (OHCHR), *Report on the Relationship between Climate Change and Human Rights*, UN Doc A/HRC/10/61 (15 January 2009) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>. Scholars have also paid increasing attention to the topic. See e.g. John Knox and Ramin Pejan, 'Human Rights Principles, Climate Change and the Rights of the Child' in *The Challenges of Climate Change: Children on the Front Line* (UNICEF Office of Research and Innocenti Insight, Florence, 2014); Edward Cameron and Marc Limon, 'Restoring the Climate by Realizing Rights: The Role of the International Human Rights System' (2012) 21 *Review of European Community and International Environmental Law* 204; Stephen Humphreys (ed), *Human Rights and Climate Change* (Cambridge University Press, Cambridge, 2010); International Council on Human Rights Policy, 'Climate Change and Human Rights: A Rough Guide' (Report, 2008) http://www.ichrp.org/files/reports/45/136_report.pdf; Daniel Bodansky, 'Introduction: Climate Change and Human Rights: Unpacking the Issues' (2010) 38 *Georgia Journal of International and Comparative Law* 511; John H Knox, 'Climate Change and Human Rights Law' (2009) 50 *Virginia Journal of International Law* 163; Ole W Pedersen, 'The Janus-Head of Human Rights and Climate Change: Adaptation and Mitigation' (2011) 80 *Nordic Journal of International Law* 403; Pamela Stephens, 'Applying Human Rights Norms to Climate Change: The Elusive Remedy' (2010) 21 *Colorado Journal of International Environmental Law and Policy* 49.

18 UNHRC res 10/4, 'Human Rights and Climate Change' (25 March 2009) UN Doc A/HRC/RES/10/4.

19 For the concept note and a summary of the panel debate, see <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Panel.aspx>.

20 Interview by Marc Limon with an Asian delegate to the Human Rights Council (2010).

21 The 10 members of the core group were: Bangladesh, Costa Rica, Germany, Ghana, Maldives, Philippines, Switzerland, UK, Uruguay and Zambia.

22 UNFCCC 15th Session of the Conference of Parties (COP15) (7–18 December 2009).

23 Cancún Agreements (n 3) 2.

24 Ibid, para 14(f).

25 Interview by Marc Limon with AOSIS delegate to the UNFCCC (2009).

26 For a comprehensive early summary of how different Special Rapporteurs, the Council and treaty bodies have addressed climate change, see John Knox, Independent Expert on Human Rights and the

Environment, *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* (June 2014) <http://ieenvironment.org/2014/08/08/report-on-climate-change-and-human-rights/>.

27 See e.g. *ibid.*, reviewing reports from the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Rapporteur on the human rights of internally displaced persons. Since then, other Special Rapporteurs, such as the Special Rapporteur on the human rights of migrants, have similarly explored the relationship between climate change and human rights.

28 Most notably the UN Committee on Economic, Social and Cultural Rights, but also the Human Rights Committee.

29 See Cameron and Limon (n 17), 214.

30 *Ibid.*

31 Informal discussions by Marc Limon with diplomats from Costa Rica, Maldives and Switzerland.

32 UNHRC res 19/10, 'Human Rights and the Environment' (22 March 2012) UN Doc A/HRC/RES/19/10, preambular paragraph 12, operative para 1.

33 *Report of the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John H Knox: Mapping Report*, UN Doc A/HRC/25/53 (30 December 2013).

34 Note, however, that we caution against using this framework of specific obligations as proposed language in Paris.

35 'Statement of the United Nations Special Procedures Mandate Holders on the occasion of the Human Rights Day: Climate Change and Human Rights' (Geneva, 10 December 2014) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393&LangID=E#sthash.dRE110Cw.dpuf>.

36 For example, some UNFCCC COP decisions have sought to take forward aspects of a rights-informed approach to climate change. A number of decisions have addressed (either explicitly or implicitly) equality, non-discrimination and the rights of vulnerable groups, including in relation to gender equality (decision 23/CP.18); children's rights (decision 1/CP.16; decision 2/CP.17; decision 15/CP.18); the rights of persons with disabilities (decision 1/CP.16; decision 2/CP.17; decision 15/CP.18); and indigenous rights (decision 1/CP.16; decision 15/CP.18; decision 10/CP.19). Other decisions have sought to promote better climate change policymaking by emphasising procedural rights including participation, access to information and transparency (decision 1/CP.16; decision 5/CP.17; decision 12/CP.18, decision 15/CP.18).

37 Mary Robinson Foundation for Climate Justice, 'Incorporating Human Rights into Climate Action' (October 2014) <http://www.mrfcj.org/pdf/2014-10-20-Incorporating-Human-Rights-into-Climate-Action.pdf>. They were: Afghanistan, Algeria, Angola, Bangladesh, Belgium, Benin,

Bhutan, Brazil, Czech Republic, Denmark, Dominica, DPR Korea, Ecuador, El Salvador, Estonia, EU, Finland, France, Greece, Haiti, Honduras, Iceland, India, Italy, Lesotho, Liberia, Liechtenstein, Mali, Mexico, Moldova, Monaco, Morocco, Namibia, Netherlands, Norway, Panama, Paraguay, Peru, Poland, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Sweden, Switzerland, Turkey, UK and Uruguay.

38 Belgium, Bhutan, Czech Republic, Denmark, Ecuador, EU, Greece, Honduras, Italy, Lesotho, Liechtenstein, Mali, Mexico, Moldova, Monaco, Namibia, Paraguay, Peru, Slovenia, South Africa, Sweden, Turkey and UK.

39 Belgium, Czech Republic, Denmark, Finland, Greece and Sweden.

40 The 25 that were also initial co-sponsors of UNHRC res 7/23 were: Bangladesh, Belgium, Bhutan, El Salvador, Estonia, Finland, France, Greece, Iceland, India, Italy, Mali, Monaco, Netherlands, Norway, Panama, Peru, Serbia, Seychelles, Slovakia, Slovenia, Sweden, Switzerland, UK and Uruguay.

41 UPR state reports presented between 2010 and 2014.

42 UNHRC res 26/27, 'Human Rights and Climate Change' (27 June 2014) UN Doc A/HRC/RES/26/27 [adopted without a vote].

43 28th Session of the Human Rights Council, 'Full-Day Discussion on Human Rights and Climate Change' (6 March 2015).

44 The new High Commissioner has repeatedly spoken of the importance, from a human rights perspective, of responding to climate change, for example in his first press conference, and in his statement to the Council under item 2 (*Annual Report of the United Nations High Commissioner for Human Rights*) during the 28th regular session (5th March 2014), [see Human Rights Council extranet].

45 'A New Climate Change Agreement Must Include Human Rights Protections for All: An Open Letter from Special Procedures Mandate-Holders of the Human Rights Council to the State Parties to the UN Framework Convention on Climate Change on the occasion of the Meeting of the Ad Hoc Working Group on the Durban Platform for Enhanced Action in Bonn (20–25 October 2014)' (17 October 2014) http://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf.

46 'Statement of the United Nations Special Procedures Mandate Holders' (n 35).

47 UNFCCC Ad Hoc Working Group on the Durban Platform for Enhanced Action, Implementation of All the Elements of Decision 1/CP.17: Negotiating Text, UN Doc FCCC/ADP/2015/1 (25 February 2015).

48 Geneva Pledge on Human Rights in Climate Action (13 February 2015), signed by Chile, Costa Rica, France, Guatemala, Ireland, Kiribati, Maldives, Marshall Islands, Micronesia, Mexico, Palau, Panama, Peru, Philippines, Uganda, Uruguay, Samoa and Sweden.

49 Statement by France, 28th session of the Human Rights Council (6 March 2015), translated from French.

50 Joint statement by Sweden, Denmark, Finland, Iceland and Norway, 28th session of the Council (6 March 2015).

51 Statement by Dan Bondi Ogolla (Coordinator and Principal Legal Advisor, UNFCCC Secretariat), 28th session of the Human Rights Council (6 March 2015) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15658&LangID=E>.

52 Statement by Mary Robinson, President of the Mary Robinson Foundation – Climate Justice, 28th session of the Human Rights Council (6 March 2015) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15658&LangID=E>.

53 Climate Council Australia, 'Damage from Cyclone Pam was Exacerbated by Climate Change' (Briefing Statement 2015) 2 <http://www.climatecouncil.org.au/uploads/417d45f46cc04249d55d59be3da6281c.pdf>.

54 *Ibid.*, 3.

55 *Ibid.*, 2.

56 IDMC (n 8) 7, 33.

57 International Federation of Red Cross and Red Crescent Societies (IFRC), *World Disasters Report 2012* (2012) 20 <https://www.ifrc.org/en/publications-and-reports/world-disasters-report/world-disasters-report-2012---focus-on-forced-migration-and-displacement/>.

58 IDMC (n 8) 7.

59 See W Neil Adger et al, 'Human Security' in Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, Cambridge, 2014) 767 and literature cited there.

60 *Ibid.*, 767.

61 Interview by Marc Limon with Western delegate at the Human Rights Council (2013).

62 IPCC (n 59), 767.

63 See e.g. Richard Black and Michael Collyer, "'Trapped' Populations: Limits on Mobility at Times of Crisis" in Susan F Martin, Sanjula Weerasinghe and Abbie Taylor (eds), *Humanitarian Crises and Migration: Causes, Consequences and Responses* (Routledge, Abingdon, 2014).

64 Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2 (1998) <http://www.unhcr.org/43ce1cff2.html>.

65 For the purposes of the Guiding Principles, 'internally displaced persons' are described in Principle 2 as: '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'. In 2013, a group of non-government experts drafted the Peninsula Principles on Climate

Displacement within States <http://displacementsolutions.org/wp-content/uploads/FINAL-Peninsula-Principles-FINAL1.pdf>. This is neither a formal nor a soft law instrument, but an attempt to 'provide a comprehensive normative framework, based on principles of international law, human rights obligations and good practice, within which the rights of climate displaced persons can be addressed' (Principle 1(a)). One concern to note is its definition of 'climate displacement' (movement 'due to the effects of climate change' (Principle 2(b)), given the multicausality issue outlined in Box 1 above.

66 The Government Office for Science (n 12) 37; Asian Development Bank (n 12) viii, 4.

67 More detailed analysis of these issues is contained in Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press, Oxford, 2012).

68 See the New Zealand cases discussed below.

69 IPCC (n 59) 771 (citations omitted). See that report for details of relevant scientific and legal literature.

70 *AF (Kiribati)* [2013] NZIPT 800413, para 74. See also the New Zealand courts' analysis of this case: *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 173; *Ioane Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2013] NZHC 3125.

71 *AF (Kiribati)* (n 70) para 89.

72 *AC (Tuvalu)* [2014] NZIPT 800517-520, para 100. See also the Tribunal's discussion of the meaning of 'treatment'.

73 *Ibid.*, para 76.

74 *Ibid.*, paras 84-98.

75 LA Nurse et al, 'Small Islands' in IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, Cambridge, 2014) 1619.

76 See McAdam (n 67) ch 5.

77 *Ibid.*, 131; IPCC (n 75) 1622-23.

78 See McAdam (n 67) ch 5; Jenny Grote Stoutenburg, 'Thresholds of Effective Statehood and the Continued Recognition of "Deterritorialized" Island States' in Michael B Gerrard and Gregory E Wannier (eds), *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate* (Cambridge University Press, Cambridge, 2013).

79 See e.g. UNGA Res 50/152 (9 February 1996), reiterated in UNGA Res 61/137 (25 January 2007), UNGA Res 62/124 (24 January 2008), UNGA Res 63/148 (27 January 2009).

80 UNHCR, 'High Commissioner's Dialogue on Protection Challenges: Breakout Session 1: Gaps in the International Protection Framework and its Implementation: Report by the Co-Chairs' (8–9 December 2010) 2.

81 See e.g. UNGA res 50/152 (9 February 1996), reiterated in UNGA

res 61/137 (25 January 2007), UNGA res 62/124 (24 January 2008), UNGA res 63/148 (27 January 2009).

82 OHCHR (n 17).

83 Ibid, para 59, citing the Representative of the Secretary-General on human rights of internally displaced persons, *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?* (Background paper, 2008) <http://www2.ohchr.org/english/issues/climatechange/submissions.htm>. State practice suggests that many states do provide temporary humanitarian stay in such circumstances, but they typically characterise this as an ad hoc humanitarian response rather than one mandated by law: see e.g. McAdam (n 67) ch 4.

84 Statement by Azerbaijan, panel debate, 11th session of the Human Rights Council (15 June 2009), cited in Marc Limon, 'Human Rights Obligations and Accountability in the Face of Climate Change', (2010) 38 *Georgia Journal of International and Comparative Law* 543. They were referring to Norwegian Refugee Council, Annual Report 2009 3 http://www.nrc.no/arch/img.aspx?file_id=9169043&ext=.pdf.

85 'Climate Change and Statelessness: An Overview', Submission by the United Nations High Commissioner for Refugees, supported by the International Organization for Migration and the Norwegian Refugee Council, to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA 6) under the UN Framework Convention on Climate Change (UNFCCC) (Bonn, 15 May 2009) <http://www.refworld.org/pdfid/4a2d189d3.pdf>.

86 UNHRC res 23/8 (2013), 'Mandate of the Special Rapporteur on the Human Rights of Internally Displaced Persons', para 11.

87 *Report of the Special Rapporteur on the Human Rights of Migrants*, UN Doc A/67/299 (2012).

88 Ibid, para 20.

89 Statement of Monaco, Panel Discussion on Human Rights and Climate Change, 11th session of the Human Rights Council (15th June 2009), cited in Limon (n 84) 581.

90 *Report of the Special Rapporteur* (n 87) para 65.

91 Ibid, para 93(f).

92 See Limon (n 6) 450–52.

93 'The Nansen Initiative, *Cross-Border Displacement in the context of Disasters and Climate Change: A Protection Agenda* (Draft, 8 April 2015) <http://www.nanseninitiative.org/global-consultations/>. For a detailed discussion of attempts by the international community to address the impacts of climate change and disasters on human mobility, see Jane McAdam, 'Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–13' (2014) 29(2) *Refugee* 11.

94 António Guterres, UN High Commissioner for Refugees, 'Opening Statement' (58th Session of the Executive Committee of the High Commissioner's Programme, Geneva, 1 October 2007).

95 Nansen Principle IX, in *The Nansen Conference: Climate Change and Displacement in the 21st Century* (Oslo, Norway, June 5–7, 2011) (Norwegian Refugee Council, Oslo, 2011) <http://www.unhcr.org/4ea969729.pdf>.

pdf.

96 See McAdam (n 93).



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