

[DRAFT]

Climate Change Migrants and Unicorns: A discussion note on conceptualising climate change displaced people

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The human consequences of climate change will be immense.¹ In particular, it seems likely that significant numbers of people will be displaced, either temporarily or permanently, from their homes as a consequence of global warming.² The impact of climate change on human populations, although relatively neglected in comparison with its ecological effects, presents an urgent problem for the international community.

We may currently be witnessing the first movements of persons affected by climate change. The forced migration of populations from the Cartaret islands in Papua New Guinea, the Lateu village in Vanuatu, the Shishmaref village in the Sarichef island in Alaska and the Lohachara island in India's Hooghly river, have been identified as signalling the beginnings of climate-change induced displacement.³ The conflict in Darfur, which has led to the displacement of over 4 million people, including 200,000 refugees in Chad, began, according to the UN Secretary General, 'as an ecological crisis, arising at least in part from climate change.'⁴ It should be emphasised that the role of climate change in these movements continues to be a matter of debate. However, it is clear that the issue can no longer be considered in abstract terms or in the future tense.

This discussion note has been produced as part of a project that advocates an international convention for persons displaced by climate change ('the convention').⁵ In conformity with that project, this note refers to persons forced to migrate, temporarily or permanently, as a consequence of global warming as 'persons displaced by climate change.' A provisional definition, adapted by Dominic Kniveton, Kerstin Schmid-Verker, Christopher Smith and Richard Black (Kniveton et al) from

¹ Mary Robinson, 'Forward', to the International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, Versoix, Switzerland, (2008), p.iii.

² Nicholas Stern, *The Economics of Climate Change: The Stern Review* (Cambridge: Cambridge University Press, 2006), pp.111 - 114. However, despite 'the growing awareness of the nexus between climate change and migration the subject has not been explored empirically in a way that generates conclusive results': Dominic Kniveton, Kerstin Schmid-Verker, Christopher Smith and Richard Black, *Climate Change and Migration: Improving Methodologies to Estimate Flows*, International Organisation for Migration Research Series, Geneva, Switzerland, 2008, p.5.

³ Oli Brown, *Climate Change and Forced Migration*, Background Paper for the 2007 Development Report, (2007) pp.16 – 17. Brown emphasises that there is little scientific consensus that these four cases are definitely a result of climate change.

⁴ Ban Ki Moon, 'A Climate Culprit in Darfur' (16 June 2007) www.washingtonpost.com cited in Jane McAdam, 'Climate Change "Refugees" and International Law', New South Wales Bar Association address, (24 October 2007), p.2.

⁵ David Hodgkinson, Tess Burton, Simon Dawkins, Lucy Young and Alex Coram, 'Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses' *The New Critic* 8 (September 2008) <http://www.ias.uwa.edu.au/new-critic>.

the International Organisation for Migration's definition of 'environmental migrants, is as follows. Climate change displaced people are --

-- persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment as a result of climate change that adversely affect their lives or living conditions are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their own country or abroad.⁶

The existence and the scope of the issue of climate displacement are often established by reference to the likely numbers of displaced people. The figure ranges from 50 million to 1 billion, but is usually estimated to be around 200 million people by 2050.⁷ These estimates generally derive from the environmental academic, Norman Myers, and are contested. The fact is, as Oli Brown observes, that 'nobody really knows with any certainty what climate change will mean for human population distribution.'⁸ However, regardless of precise estimates and questions of geographic distribution, it does seem that global warming could lead to 'major forced displacements' over time.⁹ Etienne Piguet argues that forced displacement will --

-- result principally from rising sea levels, but will only progressively manifest itself over the coming centuries, with the exception of the flooding of certain islands. The increase in droughts and meteorological disasters predicted by climatic models will also have impacts in terms of migrations, but these will remain regional and short-term, and are at present difficult to estimate.¹⁰

The key issues raised by the debate around the existence, numbers and characteristics of climate change displaced people may be delineated as follows:

⁶ Kniveton et al., *Climate Change and Migration: Improving Methodologies to Estimate Flows*, p.31.

⁷ Myers's estimate of 200 million climate migrants by 2050 has become the accepted figure. See, for instance, Norman Myers, 'Environmental Refugees: An Emergent Security Issue', 13th Economic Forum, Prague, 23 – 27 May 2005; Intergovernmental Panel on Climate Change, *Third Assessment Report of the Intergovernmental Panel on Climate Change*, (Cambridge: Cambridge University Press, 2001). Stern describes Myer's assumptions as 'conservative': *The Economics of Climate Change: The Stern Review*, p.77. However, if it comes true, 1 in every forty-five people will have been displaced by climate change, a ten-fold increase over today's entire documented refugee and internally displaced populations: Brown, *Climate Change and Forced Migration*, p.4. Myers has more recently revised the figure to closer to 250 million: see Christian Aid, *Human Tide: The Real Migration Crisis* (May 2007), p.50, endnote 10. See generally, McAdam, 'Climate Change "Refugees" and International Law', p.1, footnote, 2.

⁸ Brown, *Climate Change and Forced Migration*, p.5.

⁹ Etienne Piguet, *Climate Change and Forced Migration*, UNHCR New Issues in Refugee Research, Paper No.153, (January 2007), p.8.

¹⁰ Piguet, *Climate Change and Forced Migration*, p.8. This is not the place for a detailed discussion of *how* climate change might cause population movements, but it is a subject dealt with in some length at a generalised level in the literature. See, for instance, Brown, *Climate Change and Forced Migration*, pp.8 - 10, 18 - 20; Vikram Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, Norwegian Refugee Council, Oslo, Norway (April 2008), pp.13 – 24; Piguet, *Climate Change and Force Migration*, pp.5 – 8; Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', *Law & Policy* 30 (4) (October 2008), pp.504 – 506.

- (1) the extent to which 'climate change displaced persons' constitute identifiable or distinguishable category of persons (in other words the extent to which climate change and population movements can be said to have a causal relationship);
- (2) whether it is possible to predict with any degree of certainty the likely numbers and distribution of persons displaced by climate change; and
- (3) how climate change displaced persons should be defined (and indeed, given the issues raised at (1) and (2) whether it is *possible* for them to be defined at all).

These questions are important in themselves, but they are also important because they demonstrate that current institutions, knowledge levels and indeed, some of our existing discourses or habits of thought, are inadequate to respond to the needs of the people who are likely to experience the most catastrophic impacts of climate change. Once it is accepted that climate change will be a significant factor in causing or intensifying disadvantage and compelling population movements, the existence and scope of the issue for the international community is not limited to the highly contentious issue of the potential numbers of 'climate refugees', but far more crucially, becomes a matter of the assessment of the capacity of our institutions and normative frameworks to respond to the needs of the vulnerable.

Before the issues that have been identified above are discussed in more detail, it is necessary to turn to the existing literature around 'environmental refugees', as it is from this literature that most of the discussion on the existence, predictability and estimates of climate displaced people is derived.

1. 'Environmental refugees'

Discussions concerning persons displaced by climate change often take place with reference to debates that have arisen over the past twenty years in the context of the broader or parent category of 'environmental refugees' or 'environmental migrants'.¹¹

The term 'environmental refugees' was introduced into the international lexicon in the mid-1980s by the International Institute for Environment and Development and the United Nations Environment Programme.¹² Most predictions of the potential numbers of environmental refugees are based on those of Myers, whose estimates of the number of people that will be forced to migrate are based on the approximate populations of regions that may be affected by environmental degradation.¹³ Myers's most recent estimate is of 250 million people displaced by climate change by 2050.¹⁴

¹¹ See Kniveton et al, *Climate Change and Migration: Improving Methodologies to Estimate Flows*, pp.29 – 31; Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, pp.8 – 9; Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', pp.507 – 510.

¹² For useful breakdowns of the various definitions of 'environmental refugee' in circulation, see Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, pp.8 – 9; Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', p.507.

¹³ See, for instance, Norman Myers, 'Environmental Refugees in a Globally Warmed World: Estimating the scope of what could well become a prominent international phenomenon' *Bioscience* 43 (11) (December 1993), 752 – 761. Myers emphasises that his analysis is 'essentially exploratory', p.753.

¹⁴ See ft 7 above.

The estimates propounded by Myers and others have been criticised, particularly by migration experts, on the grounds that there is 'no evidence that environmental change leads directly to mass refugee flows, especially flows to developed countries.'¹⁵ Migration researcher, Richard Black, provides the following criticisms of much of the literature on 'environmental refugees': (a) there is a failure to exclude, alternative explanations for migration; (b) there are faults in some of the statistical analysis; (c) the causal link between an identified environmental event, such as drought, and human movement is seldom established; (d) there is a failure to identify the precedents which would provide concrete evidence that climatic shifts, such as rising sea levels, cause population movements.¹⁶ Moreover, given the multi-causal nature of population movements, there appears to be little consideration of what Stephen Castles describes as 'the basis on which environmental factors are assigned primacy in complex situations'.¹⁷ The problem, argues, Black is that in the debate over 'environmental refugees', 'lists of factors have overcome theoretical rigour':

Practical concern with the plight of poor people leaving fragile environments has not translated into hard evidence of the extent or fundamental causes of their problem. Moreover, there remains a danger that academic and policy writing on "environmental refugees" has more to do with bureaucratic agendas of international organizations and academics than with any real theoretical or empirical insight.¹⁸

The critique advanced by Black and Castles, that research has been sidelined by 'common-sense' policy and legal prescriptions provides a salutary warning. Clearly, the policy paradigms that have been constructed have, historically, had very little evidentiary basis. While most criticisms of the burgeoning 'discourse' of 'climate change refugees' argue that it is the consequence of what Black describes as 'the bureaucratic agendas of international organizations and academics', it may (also) be that the powerful imagery of destabilised populations in a globally warmed world is a compelling factor in driving academic articles and policy interventions. In other words, there seems to be a discursive conjunction between the apocalyptic visions often associated with global warming or environmental disaster, and predictions of mass exodus – a conjunction that has a particular resonance in a climate in which 'refugees' are a prominent and emotive category.

At the risk of stating the obvious, it is also the case that there is no objective category of 'climate change displaced persons' that simply exists, out there in the world, waiting to be discovered by migration researchers. Such legal designations are created, not found. Moreover, they are over-simplifications of the real world. Policy and the law are blunt instruments. The bases for protection under the 1951 Refugee Convention are no doubt inadequate to describe the complex and multi-factorial causes behind population movements. It is arguable that they were not intended to do so, but rather to prescribe circumstances in which individuals would be admitted by signatory states.

In making these observations we are not dismissing the need for evidence-based research into the relation between environmental changes and population

¹⁵ Stephen Castles, *Environmental Change and Forced Migration: Making Sense of the Debate*, UNHCR New Issues in Refugee Research, Paper No.70, (October 2002),p.2, paraphrasing Richard Black, *Environmental Refugees: Myth or Reality?* UNHCR New Issues in Refugee Research, Paper No.134, (March 2001).

¹⁶ Black, *Environmental Refugees: Myth or Reality?*

¹⁷ Castles, *Environmental Change and Forced Migration: Making Sense of the Debate*, p.4.

¹⁸ Black, *'Environmental Refugees: Myth or Reality?',* p.14.

movements. Rather, we are emphasising the need to distinguish between research into why people move and the policy frameworks which prescribe the consequences of particular movements. In so doing, it may be possible to open up the debate further, to move beyond the existing paradigm of research versus policy, and begin to consider questions such as whether particular recognition and protection of the category of 'environmental' or 'climate change' displaced person is justifiable (which is a different question from establishing that such a category exists), as well as an analysis as to the nature of the perverse incentives that may be created by such a designation.

Debate around 'environmental refugees' has centred around the viability of predicting environmental migration, and also around the interlinked questions of whether 'environmental refugees' can be identified, and how they should be defined. The substance of these debates has been translated, often with good reason, into the narrower context of climate change displaced people and is discussed in more detail below. However, it is also possible that the influence of debates around 'environmental refugees' upon discussions around climate change displaced people has led to a focus on *defining* environmental or climate migrants, such that determining a definition of climate change displaced people is sometimes conceived as the necessary precondition to further action. We will argue that while some certainty around the impact of climatic shifts on migration and clarity around the nature of a climate change displaced person is needed, constructing international responses around a definition of such people may not be the most effective strategy for addressing climate induced displacement. In other words, we propose that taking the findings of migration researchers seriously, requires a shift in policy and legal paradigms, to find creative and innovative ways of responding to the world that migration researchers describe.

2. The category of 'climate change' displaced people: issues of causality

The term 'climate change displaced people' implies that a causal line can be drawn between climate change and displacement.¹⁹ It cannot. The category of climate migrants presumes an artificial mono-causality, whereas in reality, migration experts agree that migration decisions are based upon multiple factors.²⁰ Kniveton et al state the position as follows:

It has become evident ... that the assumption that climate variability leads to migration in a linear way is not supported by empirical investigation. In short, these studies have found that many other factors play into the nexus between climatic factors and migration.²¹

As the environmental researcher, Steve Lonergan argues:

There is too often an uncritical acceptance of a direct causal link between environmental degradation and population displacement. Implicit in these writings is the belief that environmental degradation – as a possible cause of population displacement – can be separated from other social, economic or political causes. It must be recognized that the degradation of the environment is socially and spatially constructed: only through a structured

¹⁹ Brown, *Climate Change and Forced Migration*, p.5.

²⁰ Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, p.4 & p.11.

²¹ Kniveton et al, *Climate Change and Migration: Improving Methodologies to Estimate Flows*, p.6.

understanding of the environment in the broader political and cultural context of a region or country can one begin to understand the “role” it plays as a factor in population movement.²²

The matrix of factors that impact upon a decision to migrate are complex and contingent, as Kniveton and his co-authors emphasise. Answering the question ‘of how climate change impacts migration depends on understanding: the socio-cultural-political-economic environments that communities exist in; the cognitive processes of the people experiencing the impact of climate change; the individual, household and community attitudes to migration and migration outcomes; and the type of climate stimulus that migration may be responding to.’²³

In particular, it may be simply impossible to distinguish between economic and ecological stimuli for migration.²⁴ Indeed, it is rural communities dependent upon the environment for their sustenance that are often identified as amongst the most vulnerable to climate change. For these people, ecology is indistinguishable from economy, evidencing the futility of efforts to draw a neat box around the category of ‘environment’.²⁵ Brown writes that ‘deciding causality between economic “pull” and environmental “push” is often highly subjective ... disaggregating the role of climate change from other environmental, economic and social forces requires an ambitious analytical step in the dark.’²⁶

Finally, a number of migration experts agree that the people most vulnerable to climate change are not always the ones most likely to undertake transborder migration.²⁷ There is, Kniveton et al emphasise, ‘a broad theoretical consensus that it is generally not the poorest people who migrate overseas because international migration is an expensive endeavour that demands resources for the journey and for the crossing of borders.’²⁸

Does this mean that climate change displaced people are no more real than unicorns? Our interpretation of the discussion the contours of which we have traced briefly in the preceding paragraphs is not that climate change will *not* be a cause of population displacement, but that it is unlikely to be the *sole* or perhaps even the *obvious* cause of such displacements. Anthropogenic climate change will result in migration, but our tools of analysis are insufficiently sophisticated to designate who will migrate, when and why.

More disturbingly, migration is a strategy that appears more likely to be deployed entrepreneurially than as a last resort. The implication is that those most vulnerable to climate change will not be protected by the proposed convention. Given that the

²² Steve Lonergan, ‘The Role of Environmental Degradation in Population Displacement’ *Environmental Change and Security Project Report 4* (Spring 1998), p.8. cited in Oli Brown, *Climate Change and Forced Migration*, p.12.

²³ Kniveton et al, *Climate Change and Migration: Improving Methodologies to Estimate Flows*, p.57.

²⁴ Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, [PAGE], referring to W.B. Wood, ‘Ecomigration: Linkages Between Environmental Change and Migration’ in *Global Migrants, Global Refugees*. Oxford: Berghahn, 2001.

²⁵ See Myers, ‘Environmental Refugees in a Globally Warmed World, p.752.

²⁶ Brown, *Climate Change and Forced Migration*, p.5.

²⁷ Brown, *Climate Change and Forced Migration*, p.13.

²⁸ Kniveton et al, *Climate Change and Migration: Improving Methodologies to Estimate Flows*, p.29.

convention may well be based upon the claim that nations with high carbon emissions have an ethical obligation to assist those most affected by climate change, this is an issue that must be addressed for the sake of the coherence of the principles that underpin the convention. The problem we have raised are addressed in our discussion note, 'Towards a Convention for Persons Displaced by Climate Change: a discussion note on an ethical response to the human impacts of climate change and its implications for the relationship between adaptation and displacement'.

3. Predicting the volume and distribution of persons displaced by climate change

The 'generation of statistics' estimating the potential numbers of environmental refugees, observes Black, 'is critically dependent on the definition of "environmental refugees"'.²⁹ If a straight line cannot be drawn between the environmental impacts of climate change, population distribution and displacement, calculations that presume a stable relationship between them are unlikely to be accurate. Migration experts emphasise that in addition to exposure to climate change impacts, the vulnerability and resilience of areas and people need to be taken into consideration in determining likely levels of displacement.³⁰ As Brown comments, 'the science of climate change is complex enough – let alone its impact on societies of differing resources and varied capacity to adapt to external shocks.'³¹ The additional layers of complexity involved in determining the capability of societies or communities to adapt to climate change is further complicated by the subjective considerations involved in the decision to migrate.

Even if all other factors could be excluded from consideration, such that the predicted impacts of climate change and population distribution were all that needed to be taken into account, calculating the numbers of people likely to be affected by climate change remains problematic. As Kniveton et al explain, reliable populations statistics do not exist in many of the areas that will be most affected. It is unlikely that a whole population would leave as a result of most forms of climate change, while even those who might are relatively unlikely to cross an international border.³²

Compared with determining the likely effects of climate change on the environment, efforts to ascertain its human impacts begin from a lower baseline. Far less research has been carried out on the latter as compared to the former.³³ But in either case, while it is possible to predict the impact of climate change up until 2050 with some certainty, based upon the presence of historical emissions in the atmosphere, what will happen subsequently 'depends to a great extent on what we do today', which means that what happens post-2050 is a matter of some speculation.³⁴

Finally, there is currently little international infrastructure for providing the kind of statistics necessary to gain some sense of the scale of climate change displacement. No over-arching organization collects or collates statistics on non-conflict

²⁹ Black, *Environmental Refugees: Myth or Reality?*, p.3.

³⁰ Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, p.4 & p.11.

³¹ Brown, *Climate Change and Forced Migration*, p.5.

³² Kniveton et al, *Climate Change and Migration: Improving Methodologies*, p.29.

³³ Brown, *Climate Change and Forced Migration*, p.5.

³⁴ Brown, *Climate Change and Forced Migration*, p.16.

displacement.³⁵ No international organization currently collects information on persons displaced (as opposed to affected) by natural disasters.³⁶ Nor is there much capacity in developing countries or the international community to gather this sort of data.³⁷

Moreover, even if we had some certainty about historical or current volumes of displacement, climate migration will, Brown contends, 'take place against unprecedented and dramatic shifts in the world's population', including increases in the global population and accelerating movements from rural to urban areas, particularly in the 'developing' world.³⁸

One solution to this situation would be to direct significant resources towards researching the likely human impacts of climate change. It is a solution proposed by a number of other papers,³⁹ and one that we would endorse.⁴⁰ However, the further question arises as to whether a coordinated international research effort would be best expended on determining whether people are likely to migrate as a consequence of climate change. While studies of migration decisions are important and useful, given the subjectivity and contingency of migration decisions, and the intensive research necessary to predict them with any confidence, it may be that this question should be answered in the negative.⁴¹ Determining the identity and numbers of climate change displaced persons seems to be a second order concern, while ascertaining the likely human *impacts* and the best possible measures of adapting to avoid them should be the primary focus of our attention. The work of migration researchers is not irrelevant here; in some circumstances, the decision to move may be the best form of adaptation.

4. Defining persons displaced by climate change

Much of the literature on this issue refers to the question of whether the people forced to migrate as a consequence of global warming should be described as 'climate change refugees'. There is a broad consensus among international refugee lawyers that persons displaced by climate change would not be the subject of protection under the 1951 Refugee Convention.⁴² It is generally agreed that a person displaced by climate change has not been 'persecuted' as required by the Refugee Convention and defined by the existing jurisprudence.⁴³ Further, it would be difficult to establish that any of the Convention grounds for protection applied. It has been argued that the ground of 'membership of a particular social group' may be extended

³⁵ The Internal Displacement Monitoring Centre collects information on persons displaced by conflict.

³⁶ Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, pp.13 – 14.

³⁷ Brown, *Climate Change and Forced Migration*, p.16

³⁸ Brown, *Climate Change and Forced Migration*, p.16.

³⁹ See Brown, *Climate Change and Forced Migration*, p.28; Friends of the Earth, *A Citizens Guide To Climate Refugees*; International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.19; Kniveton et al, *Climate Change and Migration: Improving Methodologies*, p.37.

⁴⁰ Although see the discussion below, which critiques the liberal presumption that knowledge of will, of itself, provide a 'solution' to issues posed by climate change.

⁴¹ For an overview of research methodologies in this area, see: Kniveton et al, *Climate Change and Migration: Improving Methodologies*.

⁴² See, for instance, McAdam, 'Climate Change "Refugees" and International Law', pp.4 – 5; Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', pp.507 - 508.

⁴³ McAdam, 'Climate Change "Refugees" and International Law', pp.4 – 5.

to encompass that category of persons displaced by environmental causes.⁴⁴ However, such arguments are often dismissed as a matter of academic interest.

Moreover, the concept of 'refugee status' in international law is predicated on being outside – and unable to return to – the country of habitation. However, on current predictions most people displaced by climate change will remain within their own nation.⁴⁵ The reference to 'refugee', while having some normative import and political utility, is without legal foundation.

The question of whether climate change displaced people fall within the auspices of the Refugee Convention is, of course, a relevant one. However, we tend to agree with Walter Kalin, when he argues that:

We should not be distracted by semantic discussions with little practical meaning about whether to call affected persons 'climate change refugees', 'environmental migrants' or something else. Instead, what is needed is a thorough analysis of the different contexts and forms natural disaster induced displacement can take.⁴⁶

At another level, concern has been expressed by refugee advocates that the use of the term 'environmental refugee' (and perhaps by extension 'climate refugee' or even 'climate change displaced person') may assist the agenda of actors trying to further restrict asylum policies.⁴⁷ This is a real possibility. However, we do not think that it leads to the conclusion that agitation for international action on persons displaced by climate change should be abandoned.

Human rights advocates may legitimately adopt a strategy of supporting the maintenance of an imperfect status quo after having determined that to push for reform would be likely to result in the deterioration of existing rights and protections of a disadvantaged group. However, in the present case, we are in fact talking about *two* distinguishable, although overlapping, groups: the estimated 8.9 million Convention refugees and the potential 200 million persons displaced by climate change. As continuing silence on the issue would be likely to enable governments to continue to evade their responsibilities to persons displaced by climate change, it is not acceptable to sacrifice advocacy for recognition of their existence because it may result in further derogations in the protection of the Convention refugees. In the current climate of hostility towards asylum-seekers, the 'unpleasant politics of definitions' is, as Castles argues, best dealt with by doing 'our utmost to defend the

⁴⁴ McAdam, 'Climate Change "Refugees" and International Law', pp.4 – 5; Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', pp.508 - 509. For arguments that the Refugee Convention does encompass 'environmental refugees', see: Jessica Cooper, 'Environmental Refugees: Meeting the Requirements of the Refugee Convention' *New York University Environmental Law Journal* 6 (1988), 480 – 529; Alex Aleinikoff, 'Protected Characteristics and Social Perceptions: An Analysis of the Meaning of "Membership of a Particular Social Group"' in *Refugee Protection in International Law*, Feller, Turk & Nicholson (eds.) (Cambridge: Cambridge University Press, 2003).

⁴⁵ See Brown, *Climate Change and Forced Migration*, p.6.

⁴⁶ Walter Kalin, *The Climate Change – Displacement Nexus*, Brookings-Bern Project on Internal Displacement, Berne (2008), p.1.

⁴⁷ See Gaim Kibreab, 'Migration, Environment and Refugeehood' in B Zaba and J Clarke (eds.), *Environment and Population Change*, Liege, Belgium International Union for the Scientific Study of Population, 1998.

1951 Convention, while at the same time calling for improved international legal regimes and institutions to protect other types of forced migrants.⁴⁸

From a legal standpoint, having established that the 1951 Refugee Convention does not apply, the issue becomes how the category of climate change displaced people might be distinguished from other immigrants. It is an issue that we will discuss in more detail below. However, we will note here that drafting such a definition will be difficult because the impacts of climate change are likely, on the whole, to be 'cumulative and unspectacular.'⁴⁹ Constructing a link between displacement and gradual environmental degradation due to climate change is already proving to be problematic, as controversy over ascribing current population movements and existing conflicts to climate change demonstrates.⁵⁰

5. Shifting the optic: *en masse* CCDP designations determined by region through an internationally coordinated study

Human rights advocate Mary Robinson argues that:

Climate change shows up countless weaknesses in our current institutional architecture, including its human rights mechanisms. To effectively address it will require a transformation of global policy capacity – from information-gathering and collective decision-making to law enforcement and resource distribution.⁵¹

Similar observations have been made in the context of refugee law. Climate change and international refugee lawyer, Jane McAdam argues, that the 'traditional western approach of individualised decision-making on technical legal grounds seems highly inappropriate to the situation we are presently facing.'⁵² Similarly, international environmental law researcher, Angela Williams has observed that it 'appears there is increasingly a need to move away from traditional approaches of dealing with migration and the refugee problem created by environmental change.'⁵³

The 1951 Refugee Convention is centered around the definition of a 'refugee'. Its protections are triggered when an individual satisfies the following criteria: (a) they are outside their country of origin; (b) they are unable or unwilling to seek or take advantage of the protection of that country, or to return there; (c) such inability or unwillingness is attributable to a well-founded fear of being persecuted; and (d) the persecution feared is based on reasons of race, religion, nationality, membership of a particular social group, or political opinion.⁵⁴ The Refugee Convention has a highly *individualised* focus, characterised by the rigorous, and often narrow, application of a number of *definitional* criteria by admitting States.

⁴⁸ Castles, *Environmental Change and Forced Migration: Making Sense of the Debate*, p.10.

⁴⁹ Robinson, 'Forward', to the International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.iii.

⁵⁰ See, Brown, *Climate Change and Forced Migration*, pp.16 – 17,.

⁵¹ Robinson, 'Forward' to International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.iv.

⁵² McAdam, 'Climate Change "Refugees" and International Law', p.9.

⁵³ Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', p.514. Williams's solution differs from the one advocated here in that it, involves regional approach to climate change displacement.

⁵⁴ Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2006), p.37.

Given the existing international law on refugees, it is not surprising that a concern with ascertaining whether a particular individual fits the definition of a 'climate change refugee' has often dominated the debate. However, the construction of a new convention around definitional criteria or the assumption of individual processing of asylum claims is not the optimal solution for the issue posed by climate change displacement given that (a) it will not be possible to attribute population movements solely or perhaps even directly to climate change; and (b) that movements due to climate change are likely to be on a mass scale, making individual processing of claims highly impracticable and perhaps even, because of the resource intensity of case-by-case determinations, undesirable.

The draft convention proposed by our project requires that each country participate in a study to determine which elements of their population are at risk, the extent of the threat and the capacity of each party to resettle climate change displaced populations internally. The requirement of a study is consistent with the arguments of many experts that further research is necessary in order to understand the human impacts of climate change in general and the causes, consequences and numbers of climate migration in particular.⁵⁵ The arguments for – and parameters of – such a study are discussed in 'Towards a Convention for Persons Displaced by Climate Change: a discussion note on an ethical response to the human impacts of climate change and its implications for the relationship between adaptation and displacement'.

Rather than assigning rights and protections on the basis of individual satisfaction of definition-based criteria, we propose *en masse* regional designations of the status of 'climate change displaced person'.⁵⁶ Such designations would be determined by the study undertaken in accordance with our proposed convention. A determination that a population was 'at risk' would trigger action under the convention, which may include a combination of adaptation and asylum measures and would ideally be location specific and community generated.

Such an approach would refer to broad definitions or categorisations concerning climate change displaced people, however the focus would be on the large-scale human impacts of climate change rather than the individual or household-level decision to migrate. Regional designations of 'at risk' populations could thus be linked to adaptation measures, in ways that will be discussed in more detail in a note on 'adaptation and migration'. The issues around identifying and defining climate change displaced people are thus side-stepped, to some extent, with the focus shifting to the needs of those most vulnerable to climate change rather than their likely impact upon 'first world' receiving countries.

A shift away from individual rights towards mass recognition creates new dilemmas, however, particularly the prospect of discrimination against particular populations (on the basis of ethnicity or religion, for instance) by host countries and the attenuation of rights that often accompanies acceptance of refugees *en masse* by recipient states. Moreover, a system premised on individual rights determined by definitional criteria

⁵⁵ See Brown, *Climate Change and Forced Migration*, p.28; Friends of the Earth, *A Citizens Guide To Climate Refugees*; International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.19; Kniveton et al, *Climate Change and Migration: Improving Methodologies*, p.37.

⁵⁶ Such designations are not alien to international refugee law, countries do in fact accept asylum-seekers *en masse*, under specific criteria and often with reduced rights.

arguably allows the individual asylum-seeker more agency – to determine whether to flee, and where to seek asylum.

6. Issues associated with *en masse* designations on the basis of a study

The proposal to designate climate change displaced person status on the basis of *en masse* regional designations determined by a study creates issues of its own. We want to discuss two interrelated concerns here.

It is possible to fall into the trap of presuming that increased knowledge will provide a solution to the issues posed by climate change induced displacement. Such a presumption is appealing because it substitutes ‘information’ as the answer to the problem for the messy realities of political contestation and negotiation.⁵⁷ However, it ignores the political realities and global inequities that underpin the intransigence of states on issues of climate change and immigration and to that extent, is likely to be ineffective. The negotiations attending the broader issue of climate change may be viewed as an object lesson in this regard. While the Intergovernmental Panel on Climate Change is now able to make climate change predictions at the level of 95% likelihood, or in other words on the basis of very accurate knowledge, the behaviour of major state actors remains woefully inadequate.

The second concern is the narrower question of how resources should be allocated between researching the human impacts of climate change and responding to them. Given the resource intensity of some research methodologies, it is possible to imagine the expenditure of significant funds on ascertaining the problem, with the result that little will or capacity remain for the work of implementing solutions. Indeed, participating or funding studies may provide states with the appearance of action on the issue of climate change displacement, while allowing them to elude more substantive commitments. The International Committee on Human Rights Policy provides an excellent articulation of the considerations at stake:

Embedding human rights thresholds into policy objectives might first involve reviewing existing climate change scenarios to identify specific human costs across time and in different places, and then asking how countries – provincial and local governments, and eventually communities – are equipped to respond (socially, financially, technologically and institutionally). Down the road, real-time monitoring would need to be supplemented by predictive forecasting of human rights threshold levels under a series of scenarios.

Straightforward as this may sound, it is far from easy. Nothing in human rights reporting compares to the close monitoring and reporting on oceanic and atmospheric changes that has generated more than 50 years of records. Nothing compares either to the panoply of measurements and tools that scientists take for granted – not to mention the complex of tested assumptions, empirical data and computer generated modelling techniques that have been so essential to climate change analysis. Clearly a major investment in information gathering will be needed, especially in countries that are likely to be most affected and least equipped to conduct monitoring of this sort. New tools and techniques will be required, as well as a vast effort in training and capacity building, because so much of the information must be gathered locally at multiple locations. Moreover, although each element

⁵⁷ We are indebted in this analysis to David Ritter’s unpublished work on the assumptions and behaviours of key native title institutions in Australia.

appears simple in itself ... collating such information cogently will be demanding. Yet without such an effort, foreseeing and managing the human consequences of adaptation and mitigation policies will be guesswork at best.⁵⁸

The nature and extent of the study required under the draft convention is the subject of 'Towards a Convention for Persons Displaced by Climate Change: a discussion note on an ethical response to the human impacts of climate change and its implications for the relationship between adaptation and displacement'.

7. A brief discussion of possible definitions

Under the scheme proposed above, a definition of a 'climate change displaced person' would not form the centrepiece of an international effort to address the issue of climate induced migration. However, as Castles observes, 'we cannot get around definitional categories ... easily, for definitions are crucial in guiding the policies of governments and international agencies towards mobile people.'⁵⁹ Some categorisation or definition of climate change displaced people will be necessary in order to ensure coherency across regions and between populations.

A convenient starting point may be found in the definition of 'climate change migrants' proposed by Williams. She advocates a definition that functions not by imposing strict categories, but through a sliding scale of graduating recognition and protection is particularly useful.⁶⁰ Williams constructs a continuum between 'acute' climate change immigration, where relocation is essential and 'chronic' climate change immigration, where people could still remain in the same environment, albeit under increasingly challenging conditions.⁶¹ She suggests that a lower standard of protection should be accorded to persons who migrate due to 'chronic' climate change impacts. Williams acknowledges, however, the issues associated with maintaining an 'artificial distinction' between the two states.⁶² Indeed, 'chronic' climate change impacts may well compel those with resources to migrate before it reaches the 'acute' stage, at which point those who remain may no longer have the capacity to leave.

The concept of a 'sliding scale' that correlates with protection measures may be usefully adapted within a definition that focuses on the nature of displacement rather than the 'triggering' event. The background paper to a meeting on climate change human rights and forced human displacement provides the most comprehensive break-down of categories:

- (1) temporary: a climate event such as a hurricane, flood, storm surge or tsunami but where people are able to return to their homes;
- (2) permanent local displacement: groups are displaced locally but on a permanent basis due to irreversible changes to their living environment, in

⁵⁸ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.19.

⁵⁹ Castles, *Environmental Change and Forced Migration: Making Sense of the Debate*, p.9.

⁶⁰ Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', pp.521 – 523.

⁶¹ Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', pp.521 – 523.

⁶² Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', pp.521 – 523.

particular sea-level rise, storm surges, coastal inundation and the lack of clean water. This form of displacement implies that localised displacement solutions will be available to this group, such as higher ground in the same locality;

- (3) permanent internal displacement: where relocation is within the national borders but so far from the groups' original location that the move is permanent and may involve an entire lifestyle and livelihood change (eg from coastal subsistence to inland town-dwelling);
- (4) permanent regional displacement: where solutions within the national territory are non-existent or not possible (for whatever reason) and migrants must be received permanently in other countries in the region;
- (5) permanent inter-continental displacement: where no national and regional solutions are possible, and an internationally-coordinated relocation is required;
- (6) temporary regional or international displacement: where groups are received temporarily while permanent solutions are negotiated and planned.⁶³

Protection measures and the involvement of the international community should be determined on a sliding scale based around these six categories. The level of rights and protection accorded to climate change migrants would thus be determined by the duration and location of their displacement. Such an approach would address, to some extent, states concerns to do with international impingement upon their sovereignty, while ensuring general continuity across and between categories of climate change displacement as they are applied by the parties.

⁶³ Displacement Solutions, *Climate Change, Human Rights and Forced Displacement: Case Studies as Indicators of Durable Solutions*, 11 December 2008, p.4.