

RESEARCH NOTE

Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses

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The Intergovernmental Panel on Climate Change (IPCC)² and the Stern Review,³ among many others, warn that the effects of climate change – including rising sea levels, heavier floods, more frequent and severe storms,⁴ and drought – will cause large-scale human displacement.⁵ Although precise figures cannot be known, Myers estimates that, by 2050, as many as 200 million people, or one in every forty-five,⁶ could be overtaken by such events. Dasgupta et al note in a World Bank report that

the overall magnitudes for the developing world are sobering: Within this century, hundreds of millions of people are likely to be displaced by SLR [sea level rise]; accompanying economic and ecological damage will be severe for many. The world has not previously faced a crisis on this scale, and planning for adaptation should begin immediately.⁷

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² See Intergovernmental Panel on Climate Change, *Climate Change 2007 - The Physical Science Basis: Working Group I Contribution to the Fourth Assessment Report of the IPCC*, Cambridge University Press, Cambridge, 2007; *Climate Change 2007 - Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Fourth Assessment Report of the IPCC*, Cambridge University Press, Cambridge, 2007; and *Climate Change 2007 - Mitigation of Climate Change: Working Group III Contribution to the Fourth Assessment Report of the IPCC*, Cambridge University Press, Cambridge, 2007.

³ Nicholas Stern, *The Economics of Climate Change: The Stern Review*, Cambridge University Press, Cambridge, 2007.

⁴ With particular reference to rising sea levels, heavier floods and more frequent and severe storms see, in addition to the IPCC and Stern (see note 2 above) and Dasgupta et al (see note 7 below), Gordon McGranahan et al, 'The rising tide: assessing the risks of climate change and human settlements in low elevation coastal zones' (2007) 19(1) *Environment and Urbanization* 17; Nick Brooks et al, *Sea Level Rise: Coastal Impacts and Responses*, Norwich, Berlin, 2006; German Advisory Council on Global Change, *The Future Oceans – Warming Up, Rising High, Turning Sour*, German Advisory Council on Global Change, Berlin, 2006; and Papua New Guinea and Pacific Islands Country Unit, The World Bank, *Cities, Seas, and Storms*, The World Bank, Washington, DC, 2000.

⁵ See note 10 below.

⁶ Norman Meyers, 'Environmental Refugees: An Emergent Security Issue,' 13th Economic Forum, Prague, May 2005.

⁷ Susmita Dasgupta et al, *The Impact of Sea Level Rise on Developing Countries: A Comparative Analysis*, World Bank Policy Research Working Paper 4136, World Bank, Washington, DC, February 2007, p 44.

This research note outlines our study which seeks to address the problem of climate change displacement. The study proposes a draft Convention for Persons Displaced by Climate Change (the Convention) which would establish an international regime for the status and treatment of such persons. This note also invites comments and suggestions on the Convention.

The study

The status of persons displaced by climate change is unclear.⁸ Although often referred to as 'environmental refugees' or, more specifically, 'climate change refugees',⁹ such persons are not afforded protected under the 1951 Convention Relating to the Status of Refugees,¹⁰ for example, and there is no consensus for amending that Convention to provide for them.

There has been no coordinated response by governments to address human displacement, whether domestic or international, temporary or permanent, due to climate change. Given the nature and magnitude of the problem which climate change displacement presents,¹¹ ad hoc measures based

⁸ See Jane McAdam, 'Climate Change 'Refugees' and International Law,' NSW Bar Association, 24 October 2007; David Keane, 'Graduate Note: The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees,"' (2003-2004) 16 *Georgetown International Environmental Law Review* 209; and Diane Bates, 'Environmental Refugees? Classifying Human Migrations Caused by Environmental Change' (2002) 23(5) *Population and Environment* 465.

⁹ See, generally, International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, International Council on Human Rights Policy, Versoix, 2008; Human Rights and Equal Opportunity Commission, *Human Rights and Climate Change*, Background Paper, Human Rights and Equal Opportunity Commission, Canberra, 2008; Derek R Bell, 'Environmental Refugees: What Rights? Which Duties?' (2004) 10 *Res Publica* 135; and Richard Black, *Environmental refugees: myth or reality?*, New Issues in Refugee Research, Working Paper No 34, Evaluation and Policy Analysis Unit, United Nations High Commissioner for Refugees, 2001.

¹⁰ As McAdam notes, 'people forced to move as a result of climate change do not fit the international legal definition of "refugee", which requires individuals already outside their country of origin to show that they have a well-founded fear of being persecuted because of their race, religion, nationality, political opinion or membership of a particular social group ... [and t]he inapplicability of international refugee law is linked to the challenge of how to describe people displaced by climate change.' McAdam, note 8 above, pp 1-2 and 6. In addition to references at notes 8 and 9 above, see also Luke T Lee, 'The Refugee Convention and Internally Displaced Persons' (2002) 13(3) *International Journal of Refugee Law* 363.

¹¹ See, generally, Walter Kalin, 'The climate change – displacement nexus,' Brookings-Bern Project on Internal Displacement, Bern, 2008; Dominic Kniveton et al, *Climate Change and Migration: Improving Methodologies to Estimate Flows*, International Organization for Migration, Geneva, 2008; Vikram Kolmannskog, *Future floods of refugees: A comment on climate change, conflict and forced migration*, Norwegian Refugee Council, Oslo, 2008; George Black, 'The Gathering Storm,' *onearth*, Summer 2008; Christian Aid, *Human tide: the real migration crisis*, Christian Aid, London, 2007; Nils Petter Gleditsch et al, *Climate Change and Conflict: The Migration Link*, International Peace Academy, New York, 2007; Fabrice Renaud et al, *Control, Adapt or Flee: How to Face Environmental Migration?*, UNU Institute for Environment and Human Security, Bonn, 2007; Oli Brown, *Climate change and forced migration: Observations, projections and implications*, Human Development Report 2007/2008, Fighting climate change: Human solidarity in a divided world, United Nations, Geneva, 2007; and Stephen Castles, *Environmental change and forced migration: making sense of the debate*, New Issues in Refugee Research, Working Paper No 70, Evaluation and Policy Analysis Unit, United Nations High Commissioner for Refugees, 2002.

on existing domestic regimes are likely to lead to inconsistency, confusion and conflict.¹² The international community has an obvious interest in resolving human displacement in an orderly and coordinated fashion.

After examining the scale of likely human displacement due to climate change and the necessity of establishing a convention for climate change displaced persons (CCDPs), our study outlines a draft Convention framework, proposes the creation of an international organisation under the Convention with responsibility for climate-induced displacement, and suggests specific matters which the Convention would address. It also raises key issues and problems in any international effort to provide for CCDPs.

Calls for action are common across the debate on the human impact of climate change. However, few concrete and no detailed and substantive proposals have been made in relation to CCDPs. Our study seeks to focus debate by proposing mechanisms through which an international approach to persons displaced by climate change might be coordinated. It also articulates underlying issues that may currently be impeding proposals for action in order to stimulate further discussion towards their resolution.

Convention framework

The main features of the Convention include:

- the long-term resettlement of CCDPs, either internally within affected countries (as a priority) or internationally, including prior to displacement, and obligations of Convention parties in this regard;
- in common with principles set out in the United Nations Framework Convention on Climate Change, a provision that Convention parties would provide for resettlement and CCDP assistance

on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities ... developed country parties [of the Convention] should take the lead in combating climate change and the adverse effects thereof;¹³

- a requirement that Convention parties accommodate or assist CCDPs on the basis of the parties' historical greenhouse gas emissions by volume (while recognising that international resettlement should involve, to the extent possible, CCDPs being received by parties in the same geographic area of, or with particular connections to, affected countries);

¹² A concern about the impact on national security of persons displaced by climate change has become a theme in the literature: See Oli Brown, note 11 above, p 23; Alan Dupont and Graeme Pearman, *Heating Up the Planet: Climate Change and Security*, Lowy Institute Paper 12, Lowy Institute for International Policy, Double Bay, 2006; and Ross Garnaut et al, *Garnaut Climate Change Review Draft Report*, Commonwealth of Australia, Canberra, 2008, pp 190 – 192.

¹³ United Nations Framework Convention on Climate Change (UNFCCC), Article 3.1.

- an acknowledgement/recognition that parties with populations at risk of climate change displacement continue to take climate change adaptation and mitigation actions. As part of such actions the Convention provides for financial mechanisms, including the leveraging of private capital and the application in affected countries (with incentives) of the Kyoto Protocol's Clean Development Mechanism;¹⁴
- provision for displacement flowing from sudden events (in addition to slow-onset climate change events) and for a fund to which developed country parties contribute to (a) assist internal resettlement; (b) enable responses to specific climate change events; and (c) assist adaptation and mitigation by affected parties; and
- as an initial step, parties agree to participate in a study conducted by the organisation established by the Convention to identify that part of each party's population (if any) at risk from climate change, the nature of the threat, and the potential for each party to resettle those at risk of climate change displacement.

Key issues and problems

In considering an international regime for the status and treatment of CCDPs and undertaking research regarding such a regime, a number of key issues and problems emerge. These issues and problems include the following:

1. There are complexities associated with efforts to define a CCDP.¹⁵ Issues include distinguishing between CCDPs and people requiring asylum, identifying the nature of the various 'climate change events' that would trigger protection measures under the Convention and determining the point at which such persons would require resettlement within another nation.
2. 'Perverse incentives:' The Convention may operate as a disincentive for nations to provide for its own CCDPS and, rather, rely on other Convention parties fulfilling their obligations to provide assistance and asylum.¹⁶
3. Incentives for States to sign the Convention: Many receiving States already seek to minimise or avoid their obligations to non-economic immigrants. Therefore, garnering support for the Convention – and ensuring that the Convention does not become a mechanism by which states can avoid their existing obligations – presents issues to be negotiated.

¹⁴ The Clean Development Mechanism is one of the three 'flexibility mechanisms' under the Kyoto Protocol to the UNFCCC under which developed countries invest in emissions reduction projects in developing countries: see David Hodgkinson and Renee Garner, *Global Climate Change: Australian Law and Policy*, LexisNexis/Butterworths, Sydney, 2008, pp 48-55.

¹⁵ McAdam, note 8 above, p 6. There is an extensive literature on the complexities of defining 'environmental refugees' of which CCDPs are often conceptualised as a subset. A summary of the literature is provided by Richard Black, note 9 above, pp 1 -3.

¹⁶ For previous consideration of the issue of perverse incentives in the context of climate change measures see Sofia Bettencourt et al, *Not If But When: Adapting to Natural Hazards in the Pacific Islands Region: A Policy Note*, The World Bank, Washington, DC, 2006, p viii.

4. The relationship between Convention and non-Convention parties – for example, the obligation on Convention parties to accept non-Convention party CCDPs.
5. The conduct, form and methodologies of the study conducted by the Convention organisation, and lack of incentives for parties to take mitigation and adaptation action until after the study is completed.
6. The treatment of CCDPs under the Convention, including their legal status and human rights issues.

Next steps

We plan on presenting an outline of the draft Convention at the University of Copenhagen's 'Climate Change: Global Risks, Challenges and Decisions' conference in Copenhagen in March 2009. The main aim of the conference is

to provide a synthesis of existing and emerging ... knowledge necessary in order to make intelligent societal decisions concerning application of mitigation and adaptation strategies in response to climate change ... [It] aims to identify and synthesise the science, technology and policy advances required in order to ensure sustainability of global communities in the current and coming decades.¹⁷

The conference findings will support the work of the IPCC, the Fifteenth Conference of the Parties (COP 15) to the UN Framework Convention on Climate Change (UNFCCC) and the Fifth Meeting of the Parties to the Kyoto Protocol in December 2009 in Copenhagen. We have been accredited to attend the Fourteenth Conference of the Parties (COP 14) to the UNFCCC and the Fourth Meeting of the Parties to the Kyoto Protocol in December 2008 in Poland¹⁸ at which an outline of the draft Convention will be exhibited.

We invite comments and suggestions on the proposed Convention for Persons Displaced by Climate Change. Expressions of interest in participating in a roundtable discussion on the Convention are also invited. Comments, suggestions and expressions of interest should be sent to David Hodgkinson.¹⁹

¹⁷ See <http://climatecongress.ku.dk/about/>.

¹⁸ As well as accreditation for the Fifteenth Conference of the Parties (COP 15) to the UNFCCC and the Fifth Meeting of the Parties to the Kyoto Protocol in 2009 in Copenhagen.

¹⁹ Contact details are at note 1.