

Environmentally displaced persons – how can they be protected by international law



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The dramatic consequences of a warming planet have captured the attention of scientists, scholars, and politicians worldwide. Apart from the meteorological and geographical effects, changes to the Earth's climate have the potential to compromise the realization of human rights for affected individuals, communities, and peoples. Land, rendered uninhabitable, will have to be abandoned, and its inhabitants forced to seek sanctuary, internally or externally, temporarily or permanently. Despite these challenges, the legal protection of such individuals and communities remains vague.

Current public international law, with regard to environmentally displaced persons, will prove inadequate in many cases. The human rights of affected individuals will be jeopardised and will prove difficult to protect for those who migrate. There remains a normative gap in international law which must be filled to help deal with the consequences of this impending humanitarian crisis. In this article I focus on two particularly worrying aspects: the “sinking island” scenario and the effects on indigenous populations.

The question is whether this gap can be filled through the clarification, adaptation, and extension of current international law to better cover environmentally displaced persons, or whether it will be necessary to create new specific international law instruments.

The climate change-displacement nexus

In its fourth Assessment Report, the International Panel on Climate Change reiterated their expectations of temperature extremes, an increasing frequency and intensity of heat waves, an increasing risk of droughts due to longer periods between rainfalls, and a rising sea level.¹ Needless to say, this will have devastating effects for nations, communities, and individuals around the globe.

That climate change will lead to displacement is inevitable. Certain livelihoods connected to the cultivation or use of land will deteriorate with changing meteorological circumstances, and some land will be rendered completely uninhabitable by permanent flooding. In fact, there are estimates, although disputed, that between 150 and 200 million persons will be displaced due to climate change by 2050.²

Internal displacement – non-binding principles and insufficient protection

Empirical evidence on climate-change-induced migration has shown that movement has been predominantly internal. The first concern should therefore be to ensure that displaced persons are protected within their own states. Although there is no binding global treaty on state responsibility regarding internally displaced persons (IDPs), the UN General Assembly and Commission on Human Rights endorsed the Guiding Principles on Internal Displacement (GPs) in 1998. These principles award protection to those within state parties that “as a result of or in order to avoid the effects of [...] natural or human-made disasters, and who have not crossed an internationally recognised state border” have been displaced internally.³ The GPs, which are a synthesis of human rights, refugee and

humanitarian law, could therefore award protection to those displaced due to climate change induced disasters.

While states are not legally bound to enforce the GPs' stipulations, and a lack of political will or resources may further reduce the likelihood that they are taken into consideration, cases exist in which they have been implemented. The governments of Mozambique and Madagascar, attempting to meet the challenges posed by IDPs following periods of recurring floods that displaced tens of thousands, saw the implementation of the principles as a success.

However, with regard to those displaced due to environmental, slow-onset degradation, there is considerable risk that the GPs are not applicable. The references within the GPs of "forced" or "obliged" abandonment of land, rather than voluntary migration, could mean that certain individuals that have fled due to economic considerations may not be protected, apart from by general international human rights law. There may therefore be a need to extend the concept of environmental displacement in the GPs to include voluntary displacement.

In addition to the GPs, the African Union adopted in 2009 the Kampala Convention, which entered into force on 6 December 2012 following ratification by fifteen nations.⁴ This is the first legally binding regional instrument that imposes obligations on states to protect IDPs, which indicates that regional agreements might be the way forward in providing better protection to environmental IDPs. How the convention will be implemented and whether it will lead to similar initiatives in other regions, however, remains to be seen.

External displacement – regional and national initiatives to show the way

External displacement due to climate-induced environmental damage will prove a reality to some. The existing international legal framework is inadequate for environmentally displaced persons, as the Refugee Convention (1951) offers protection only for people specifically fleeing persecution, thereby not including those displaced due to climate change. A more inclusive definition of refugees that encompasses environmental refugees has been considered but remains unlikely to come to fruition.

In Europe, attempts have been made to provide legal protection for environmentally displaced persons. The EU Temporary Protection Directive offers protection for those environmentally displaced. The directive includes any applicant who does not qualify for Refugee protection within the 1951 Convention, but who may still be awarded subsidiary protection if the applicant faces "a real risk of suffering serious harm."⁵ However, the TPD offers only temporary protection and would prove insufficient for those that require long term protection.

On the national level, Finland has shown the way with their Alien Act, which prescribes that residence permits are to be issued to individuals that seek humanitarian protection and asylum in Finland following an environmental catastrophe.

The "sinking-island" scenario

The International Scientific Congress on Climate Change concluded that sea levels could rise by one meter or more by 2100. This would be sufficient to completely inundate islands such as Tuvalu, Kiribati, and the Maldives, potentially affecting some ninety-thousand people over thirty-three islands. Migration will be the only option in these circumstances.

This dramatic yet plausible scenario raises the question of state survival and what the consequences would be for the legal status of these states' populations?

Although there is currently no generally accepted and satisfactory legal definition of statehood, the Montevideo Convention on the Rights and Duties of States offers what could constitute as evidence of statehood, and this has generally been accepted as representing customary international law.⁶ These include:

- a) a permanent population;
- b) a defined territory;
- c) a government; and
- d) the capacity to enter into relations with other states.

Statehood should not be questioned if the territory's submersion is due to fleeting storm surges or flooding, regardless of whether these transpire on a regular basis, and provided it does not render the territory derelict. But could a state exist if its territory was permanently submerged and its population having migrated?

Statehood could ostensibly be maintained with a government in exile. Governments in exile could arguably still enter into treaties, maintain diplomatic relations, and hold jurisdiction over its nationals. A submerged state would only cease to exist if the international community agreed that it was no longer in existence.

If a state was to cease to exist, what would be the legal status of its former population? How can the international legal framework that aims to prevent statelessness be applied to protect those displaced due to climate change from a situation in which they are suddenly without any nationality?

The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness oblige states to award certain rights to stateless persons and award nationality to them under certain circumstances, respectively. However, the first problem is that both conventions have fairly low numbers of ratifications. Furthermore, the majority of persons to which they relate are those who are stateless but have not migrated, which might make them less applicable to environmentally displaced persons. The two conventions are also premised on the assumption that nationality has been denied by a particular state, not that a state has ceased to exist.

One solution to avoid statelessness would be the relocation of the state itself onto another state's territory. A state could cede territory to an affected state that would otherwise disappear, to ensure its continued existence. A variant of this could be for a state under threat to purchase land in another state in anticipation of future flooding, such as the Maldives purchasing land in Sri Lanka or India.

Another solution could be to offer the nationals of a state another nationality in anticipation of their state becoming inundated. However, these solutions are based on the submerged state losing its legal status and its nationals losing their original nationality, which in itself would have a potentially large impact on the realization of social and cultural rights by resettled communities.

Special considerations relating to indigenous populations

Given many indigenous peoples' affinity for their ancestral lands, both for cultural reasons and in terms of livelihoods, the effects of climate change are likely to be felt even more strongly by them. Those that avoid displacement may still be affected by the effects of climate change, such as the Sami peoples of Northern Norway, Sweden, Finland, and Russia, whose reindeer herding is under threat. Other indigenous peoples under threat include the Inuit, who have already had several villages destroyed as a result of coastal erosion, and pastoralists in Northern Kenya.

Indigenous peoples' specific protection requirements have been recognised in particular international law instruments, for example the Indigenous and Tribal Peoples Convention of 1989. But such specific protection needs have not yet been catered for with regard to climate change. It will be difficult to determine who has violated indigenous peoples' human rights when climate change leads to forced

displacement of indigenous groups. Furthermore, the structure of international law often ignores the symbolic and psychological consequences of resettlement of such groups.⁷

How can the needs of environmentally displaced persons be better protected?

It is clear that at least some number of environmentally displaced persons will not be sufficiently protected under current international law. This gap in current international law must be filled either by the extension of existing legal instruments or the creation of a new treaty.

The UN Guiding Principles on Internal Displacement could be developed to include slow-onset disasters and environmental damage that forces peoples to migrate. For externally displaced people, the 1951 Refugee Convention could be adapted to include those displaced due to climate change. However, there are concerns that this could lead to lowered protection standards for refugees in general and undermine the system as a whole.⁸ Sovereign nations admit only a small number of migrants and remain hesitant to lower the threshold to welcome further refugees.

The need for a new instrument to protect environmentally displaced persons has been recognised. The Council of Europe's Parliamentary Assembly Committee on Migration, Refugees, and Population suggested ways to enhance the human rights protection available for such migrants, pointing out that current international legal and normative frameworks have gaps in relation to those displaced due to environmental causes.

A new framework would need to be built on internationally agreed principles, be legally enforceable, and establish the rights that must be protected and the obligations of state parties. There are of course political obstacles to the creation of such a treaty as well as a lack of political will among states.

Concluding remarks

It is ironic that wealthier countries, which have produced vast amounts of harmful greenhouse gas emissions, might face less human damage as a result of climate change than developing countries. Mitigation measures are unlikely to be sufficient in all circumstances regarding those environmentally displaced. Therefore, more adaptation measures, such as compensation and support from the international community, may be necessary. However, for those whose islands have disappeared due to sea level rise, or for indigenous peoples, who rely on specific lands to maintain their culture, more drastic measures are called for.

Proposals have been made that the countries that are responsible for much of the greenhouse gas emissions should allow such populations to legally immigrate. Although unlikely to become reality, a further step would be to have those populations to remain under the jurisdiction of their own governments and even be granted new territory. A solution along these lines could help ensure the survival of indigenous peoples' cultural identities. Unfortunately, as this might prove to be unrealistic, it is important to consider at what level the ambition should be when trying to develop a solution to this impending crisis.

What is evident, however, is that a solution is needed. Therefore, further research on the characteristics of any upcoming catastrophe of this kind is required, as well as moves towards cooperation and burden sharing in the international community.

About the author

Apart from her research on the climate change-displacement nexus, for which she is currently in the process of developing a research topic, [Laura Wilson](#)'s professional interests include the monitoring, enforcement, and development of international human rights law and international humanitarian law. She is currently working as a Resettlement Worker with the [Refugee Council](#), in accordance with the [Gateway Protection Program](#).

Notes

¹ Intergovernmental Panel on Climate Change (IPCC) (2007), "[Climate Change 2007: The Physical Science Basis](#)".

² Global Humanitarian Forum (2009), "Human Impact Report: Climate Change", p. 49.

³ [Guiding Principles on Internal Displacement](#).

⁴ [African Union for the Protection and Assistance of Internally Displaced Persons in Africa \(Kampala Convention\)](#).

⁵ European Union, [Council Directive 2004/83](#), art. 15.

⁶ [Montevideo Convention on the Rights and Duties of States](#).

⁷ Timo Koivurova (2007), "International Legal Avenues to Address the Plight of Victims of Climate Change: Problems and Prospects", *Journal of Environmental Law and Litigation*, vol. 22, p. 270.

⁸ Antonio Guterres (2009), "[Climate Change, Natural Disasters and Human Displacement: a UNHCR Perspective](#)".

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