Introduction and overview

As early as 1990, the Intergovernmental Panel on Climate Change (IPCC) concluded that one of the most significant impacts of climate change would be on human mobility. Climate change is anticipated to both trigger forced displacement and contribute to voluntary migration both within countries and across international borders, in some cases permanently. While at present there is insufficient data regarding the full extent to which climate change is contributing to human mobility, there is ample evidence that events directly linked to climate change are already acting to influence population movements. For example, climate change–related effects on the Arctic – which is warming at twice the rate of the rest of the planet – are already forcing Alaskan native communities to retreat inland. While the future magnitude of displacement and migration owing to climate change will depend on both the extent to which governments successfully act to curb greenhouse gas emissions and the ability of vulnerable communities to successfully adapt, it is likely that in the absence of ambitious action, hundreds of millions of people could be uprooted due to climate change in the coming decades. The threat that this presents to the enjoyment of human rights triggers an obligation of states to take action to protect at-risk populations:

States have obligations at the national level to take adaptation actions to protect their vulnerable populations from the effects of climate change, and at the international level to cooperate in order to facilitate the protection of vulnerable communities wherever they are located.

The threat that climate change presents to human rights is amplified for displaced persons, as well as for migrants who resort to irregular migration as strategy to cope with climate-related disasters or stress. Displaced persons and undocumented migrants are highly vulnerable to exploitation, abuse and other human rights violations, including lack of access to adequate shelter, food, safe drinking water, healthcare and education.

Yet, at present, existing national and international laws and policies for protecting the human rights of refugees, internally displaced persons (IDPs) and migrants are insufficient and ill-suited
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to protect those uprooted by climate change–related effects. Moreover, to the extent that these frameworks are designed largely to protect the human rights of people who are already on the move, they do not sufficiently emphasize the obligations of governments to proactively prevent or minimize climate displacement risk and associated threats to human rights.

Given the shortcomings and gaps in the existing national and international framework for protecting the human rights of those facing climate change–related displacement and migration, this chapter discusses several recent initiatives that provide important opportunities to design more effective, practical and politically-viable strategies. As discussed below, rather than aspiring to a new international agreement or convention, a more effective approach will entail the adoption of voluntary regional and bilateral arrangements, as well as national laws and policies to more effectively prevent, minimize and address the threat to human rights arising from climate change–related human mobility.

Evidence that climate change is already dislocating vulnerable communities, and the fact that the future effects of climate change will undoubtedly have a far greater impact on displacement and migration, clearly implicate the human rights obligations of states to proactively address this issue. The scale of future displacement will depend on the extent to which governments act now to substantially reduce carbon emissions, build the resilience of vulnerable communities, mitigate climate risk and adapt to climate change effects.

**Climate change impacts on displacement and migration: human rights implications**

*The links between climate change and human mobility*

The most direct pathway between climate change and human mobility is forced displacement resulting from the increasing incidence and changing intensity of extreme weather events associated with climate change.4 As such, disasters resulting from extreme weather are often equated with displacement from climate change, despite the fact that it is not always possible to link an individual weather event to climate change (see Challenges to Addressing Climate-Change Related, Cross-Border Movements). Climate-related disasters such as floods and tropical cyclones not only threaten the rights to life and health, but also trigger displacement by destroying homes, assets and livelihoods. Between 2008 and 2015, 203.4 million people – or an average of 25.4 million people per year – were displaced by rapid-onset disasters brought on by natural hazards, primary weather-related hazards such as floods, hurricanes and tropical cyclones.5 (Notably, the number of people displaced by disasters in 2015 was twice the number of people displaced by violence.)6 Not included in this figure were those uprooted by slow-onset, weather-related hazards such as droughts, as there are no global estimates available for drought-related displacement and migration.7

Other more gradual processes of environmental degradation associated with climate change, such as increased temperatures, more erratic rainfall patterns, decreased water availability and more frequent or intense drought, threaten to undermine agricultural livelihoods and food and water security, thereby prompting the movement of people. Poor and underdeveloped regions of the globe are particularly at risk, such as West Africa’s Sahel region, where 80 percent of the population is reliant upon natural resource-dependent livelihoods to survive.8

Melting of glaciers brought on by climate change will also impact human mobility. For example, the melting of Himalayan glaciers threatens the drinking water supplies of hundreds of millions of people in Asia. The melting of the Greenland ice sheet and the Antarctic ice shelf are particularly concerning due to the magnitude of their potential impact on sea level rise.9
Accelerated coastal erosion, saltwater inundation of freshwater sources and sea level rise contribute to permanent changes to land and ecosystems upon which human settlements depend, thereby rendering some areas uninhabitable. Most at risk are populations living in river deltas, the inhabitants of low-lying coastal areas and island atolls, and Arctic communities. In such areas, climate change adverse effects are more likely to lead to permanent displacement.

The potential of climate change to permanently displace the inhabitants of certain Small Island Developing States (SIDS) has been long recognized. Island nations like the Maldives, Tuvalu and Kiribati, which lie between one and three meters (three to nine feet) above sea level, have repeatedly called upon the United Nations (UN) member states to act immediately to address the threat that climate change presents to their human rights (and their very existence) by mitigating greenhouse gas emissions. Leaders of the Alliance of Small Island States (AOSIS), a coalition of over 40 small-island and low-lying coastal countries, have issued numerous declarations expressing their grave concern regarding scientific evidence that the effects of human-induced climate change are happening faster than anticipated and are already being felt and will further intensify. The declarations urge UN member states “to consider and address the security implications of climate change including violation of territorial integrity, more frequent and severe climate-related disasters, threats to water and food security, increased natural resource scarcity, and forced displacement.”

In the Arctic, which is warming at twice the rate of the rest of the planet, the dramatic changes to the climate system are already forcing vulnerable communities to permanently abandon their villages. In the United States, numerous Native Alaskan communities already are being forced to retreat inland due to the rapid rise in temperatures along with permafrost melt, accelerated coastal erosion, increased storm surge and loss of sea ice.

Finally, it is important to note that one of the challenges to building political will among countries to develop an international protection framework for those forced from their countries due to climate change–related effects is a lack of understanding of the scale of the problem. Unlike estimates of internal, disaster-related displacement, at present there is no comprehensive and systematic data collection and analysis on cross-border movements associated with climate change. Going forward, there is an urgent need to develop methods for collecting such data. Compounding the problem is the complexity around accurately predicting climate change–related future effects, such as the rate of sea level rise, resulting in a frustrating lack of urgency despite more recent scientific evidence that climate change is happening faster than anticipated.

**Climate change, armed conflict and displacement**

Experts have also pointed to the propensity of climate change–related effects, such as decreased water availability, arable land or grazing grounds, to contribute to social unrest, violence or armed conflict, thereby triggering displacement. While there is limited evidence that changes in climate directly trigger armed conflict, studies show that climate change acts as a “threat multiplier” by compounding underlying socio-economic, ethnic or political tensions. For example, in pastoral societies in Africa and other resource-dependent economies, changes in rainfall can enhance the risk of localized violent conflict, especially in the absence of institutions for managing conflict. In fact, many of the factors that are linked with a higher risk of violent conflict (e.g., slow rates of economic growth, low per capita incomes and economic shocks) are themselves sensitive to climate change and variability.

Conversely, where conflict is resource-based, sound resource management has the potential to contribute to peacebuilding by channeling competing interests over resources into non-violent resolutions. There is evidence, for example, that trans-boundary water cooperation can
provide a basis for inter-state cooperation on a variety of contentious matters and that basin-wide institutional development focused on sharing resources can lower conflict potential.¹⁹

Moreover, ongoing or recent armed conflict enhances vulnerability and undermines the adaptive capacity of governments and populations by weakening government institutions, exacerbating poverty and constraining livelihoods.²⁰ The most recent IPCC report concludes that

> Violent conflict undermines human security and the capacity of individuals, communities and states to cope with changes. These observations suggest, with high confidence, that where violent conflict emerges and persists the capacity to adapt to climate change is reduced for affected populations.²¹

Given the links between state fragility, climate change vulnerability and conflict, the IPCC report identifies the effect of climate change on conflict and insecurity as one of several “emergent risk areas.”²²

Finally, it has been noted that climate change mitigation and adaption activities can also increase the risk of armed conflict and exacerbate the vulnerabilities of certain groups. This is especially so where climate change mitigation or adaption measures alter distribution of, or access to, natural resources.²³ For example, rapid expansion of biofuels production has been linked to land grabbing, land disposition and social conflict.²⁴ This suggests the need for more focus on building the adaptive capacity of fragile and conflict-ridden states, as risks to human rights abuses are perhaps highest in this context.

**Climate displacement, vulnerability and human rights**

Many of the factors that render certain geographic regions and groups more vulnerable to climate change likewise exacerbate their vulnerability to human rights threats associated with displacement and migration. For example, climate change impacts on permanent displacement in low-lying island nations and in the Arctic (discussed above) are demonstrative of the acute climate vulnerability of indigenous groups, whose way of life is inextricably tied to their land and/or natural resources.

Not only are certain groups more vulnerable to being uprooted by climate change—related effects, but they are also more vulnerable to protracted displacement or to risks associated with irregular migration once on the move. This is evident in recent case studies indicating that causes of social vulnerability such as poverty, gender, age or discrimination can contribute to prolonged, recurrent or permanent displacement, despite the common assumption that most people displaced by disasters return home as soon as possible once the hazard has passed. During Hurricane Katrina in the United States, for example, many poor minorities whose homes were destroyed by the storm never returned.²⁵ In the wake of Typhoon Haiyan in the Philippines, poor, landless households living in informal settlements along the coast were at greater risk of eviction and protracted displacement.²⁶ Moreover, in the aftermath of disasters, the specific protection and assistance needs of women and children, the elderly, persons with disabilities, the poor and those belonging to socially marginalized groups (e.g., migrants, Indigenous Peoples, minorities) are often not sufficiently addressed. In such crises, pre-existing vulnerabilities and patterns of discrimination are often enhanced, leaving already marginalized and vulnerable groups at heightened risk of human rights abuses.²⁷

Regardless of the cause, displaced people face an increased risk of human rights violations stemming from their lack of access to adequate shelter, food, health services, jobs and social safety nets, as well as from other adverse material, social and psychological effects commonly
associated with displacement. Although moving to a safer location (e.g., via planned or spontaneous evacuation) provides temporary protection from immediate risk of harm, prolonged displacement exacerbates existing vulnerabilities and generally leads to a number of serious protection, humanitarian and human rights challenges. As the Special Rapporteur on the Human Rights of IDPs has recognized,

As levels of displacement rise in the context of climate change, the urgency of finding long-lasting solutions for affected populations and avoiding the precariousness, marginalization and instability associated with situations of protracted displacement, will become a national, and potentially regional, security imperative.

At the same time, it is important to recognize that when well planned and voluntary, migration can serve as an effective adaptation strategy for populations facing climate change–related disasters or stress. Migration to urban areas, or to pursue economic opportunities abroad, by one or more family members not only relieves the pressure on the household by reducing the burden on limited resources, but also provides an important source of additional income to those left behind via remittances. However, given the current lack of available safe and legal pathways for international labor migration, migrants from climate-vulnerable countries may be forced to resort to irregular migration, leaving them at a heightened risk of trafficking, abuse and other human rights violations.

Gaps in the current international and national frameworks for addressing climate change impacts on human mobility

Despite the well-recognized threat to the full enjoyment of human rights that climate change–related displacement and migration poses to vulnerable people around the globe, at present there is no comprehensive international legal framework for protecting people who are forcibly displaced or who migrate to another country in the context of climate change. As discussed below, those uprooted due to disasters, environmental factors or climate change effects do not fit neatly within existing national and international laws and policies for protecting traditional refugees, migrants and IDPs. While there have been some efforts to extend refugee-like protections to climate-displaced persons on a regional level, distinctions regarding both the cause and voluntariness of the movement, which are critical under refugee law and trigger a duty to protect, are less relevant, if not impossible to ascertain, in the case of people who move in the context of climate change.

Challenges to addressing climate change–related, cross-border movements

Limitation on the applicability of refugee law

Despite the fact that people who flee their countries due to disasters and other climate change–related effects may be in “refugee-like” situations, refugee law, which prohibits the forced return of a person to a country of persecution, provides limited protection in such situations. The 1951 UN Convention Relating to the Status of Refugees and its protocol (Refugee Convention) protects people who are forced to flee their countries owing to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” As such, it does not extend to people fleeing their countries due
climate change–related effects. A decision by the High Court of New Zealand rejecting a Kiribati man’s request for asylum as a “climate change refugee” is illustrative of the limitations of refugee law in protecting those forced to flee abroad due to climate change. In that case, Ioane Teitiota argued he should be entitled to protection as a refugee because rising sea levels and environmental hazards caused by climate change were endangering his life on Kiribati, a low-lying island nation in the South Pacific. The Court concluded that Teitiota’s claim fell short of the Refugee Convention legal criteria because he was unable to show that by returning to Kiribati, he would suffer “a sustained and systematic violation of his basic human rights such as right to life . . . or the right to adequate food, clothing and housing.”

Several regional instruments in Africa and Latin America extend the Refugee Convention to those fleeing events “seriously disturbing public order” or other forms of “generalized violence.” While theoretically these regional conventions could be applied to protect those forced to flee large-scale climate change impacts that arguably disturb public order, their application in such contexts is largely untested and likely to serve only as a partial response to the challenges of climate change–induced displacement and migration. Given that many of the signatory countries to the Organization for African Unity Convention already host large numbers of refugees, there may be limited appetite to expand this protection more broadly to displacement caused solely by climate change, as opposed to mixed movements where both conflict and disasters act as a dynamic push factor (such as was the case in the 2011 famine in Somalia).

A further challenge to applying traditional laws and policies related to refugees and asylum seekers to those who move across a border in the context of climate change is determining whether the movement is voluntary or forced. The question of voluntariness is important given the legal distinction that has developed around voluntary economic migrants on the one hand (who are understood to have willingly migrated to another country for reasons of economic opportunity and whose migration is governed by rules relating to territorial sovereignty), and asylum seekers and refugees on the other, who are forced to cross an international border due to persecution and therefore recognized as in need of international protection. In the case of those who migrate due to more gradual climatic changes, the anticipatory nature of the movement and the perceived element of choice in their decision to move means that from a legal and political standpoint, they are likely to be equated with economic migrants, even if migration is the option of last resort (which is likely to be the case for inhabitants of SIDS).

There are a significant number of instances where temporary humanitarian protections have been extended on a bilateral basis to receive persons from, or to avoid their deportation to, countries experiencing natural disasters and other humanitarian emergencies. However, an analysis of the law, relevant institutions and operational responses pertinent to the protection and assistance of cross-border disaster-displaced persons reveals a general lack of preparedness leading to ad hoc responses in most cases.

Defining a protection framework for those uprooted by climate change–related effects will also require identifying who is moving due to climate change as opposed to other factors. Yet given myriad external and internal factors that ultimately cause a person to move, establishing climate change as a sole or primary driver of displacement or migration is problematic. The first challenge is attributing the event — e.g., a storm, flood or drought — to climate change as opposed to a naturally occurring or human-made event. Scientific understanding of whether the intensity or likelihood of extreme weather events can be attributed to anthropogenic climate change is still evolving. Moreover, despite recent improvements to “event attribution science,” in most cases available evidence linking specific events, hazards or changes that trigger human mobility to anthropogenic climate change will be scant. And in the case of weather events (as opposed to temperature rise), there are many other natural and human-made factors that also play a role.
Finally, human-made factors often play a role and contribute to the extent of displacement resulting from climate change–related hazards. For example, the historic 2010 floods in Pakistan, which displaced nine million people, were reportedly made worse by rapid deforestation in high mountain areas and the uncontrolled expansion of informal settlements into river basins.41 (However, it is important to note that the contribution of human factors that act to increase the risk of displacement from climate–related hazards is relevant to the obligation of states to take proactive measures to mitigate such risks and thereby safeguard human rights.)42

**Gaps in laws and protections relating to migration**

With respect to migratory movements, human rights law provides robust protection for migrants who are moving for a range of reasons and under an array of circumstances. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights guarantee civil, political, social, economic and cultural rights to all individuals without discrimination, thereby ensuring such fundamental rights extend to migrants. Several other conventions applicable to migrant workers also contain important provisions reaffirming the human rights of migrants.43 In addition, the conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) has also recognized that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, [including the rights of] migrants.”44

However, given that climate change–induced migrants are among many categories of vulnerable migrants in need of human rights protection, the Special Rapporteur on the human rights of migrants has suggested that rather than create a specific category of climate migrants, coherent policies regarding the rights of all migrants should be developed “which take[] into account the myriad circumstances which lead people to migrate, including the need for human rights protections, in particular for those who are ‘induced’ or ‘forced’ to migrate.”45 Thus, despite the fact that increasing numbers of people from poor and vulnerable countries (such as those in sub-Saharan Africa) who have little to no responsibility for climate change could increasingly be forced to resort to international migration as the only option to cope with climate change–related stress (a.k.a. “survival migration”), under current definitions they are not entitled to any protections beyond what are available to economic migrants.

Given the unclear status of those who cross borders in the context of climate change and the fact that they do not fit neatly into existing definitions, it is not surprising that, at present, no international agency or institution has been given the mandate to protect climate change–induced migrants. Although both the Office of the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) have led much of the research and advocacy in this area, the lack of institutional responsibility or a UN mandate creates challenges in efforts to develop strategies and marshal political will and resources to better protect climate change–induced migrants.

**Challenges to addressing climate change–related internal displacement**

Despite the focus on the gap in the international legal frameworks for addressing so-called climate refugees who will be forced to abandon their countries due to climate change–related effects, experts agree that the vast majority of people uprooted by climate change will be internally displaced.46 The term “internal displacement” refers to situations in which individuals and groups are (1) forced or obliged to leave and remain away from their homes, but (2) remain
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within the borders of their own countries. It is important to note that national governments (as opposed to UNHCR or the international community) bear primary responsibility for protecting those who are forcibly displaced or who migrate within their own countries.

In recognition of the specific vulnerabilities and human rights challenges that confront persons who are forcibly displaced within their countries, the Representative of the Secretary General on the Human Rights on Internally Displaced Persons, Francis Deng, developed the UN Guiding Principles on Internal Displacement, which were presented to the Human Rights Commission in 1998. Drawn from humanitarian, human rights, and refugee law, the Guiding Principles outline the assistance and protection obligations of national governments with respect to persons

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.

Two regional instruments have been adopted by African nations that reinforce the protection obligations outlined in the Guiding Principles: the 2009 Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) and the 2006 Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons. The Inter-Agency Standing Committee (IASC) Operational Guidelines on Human Rights and Natural Disasters also outline the human rights protections that humanitarian workers should seek to uphold in natural disaster situations.

The Guiding Principles obligate governments to protect and assist those forced to flee not only conflict and persecution, but also “natural or man-made disasters.” The Kampala Convention goes further to obligate states to protect and assist “persons who have been internally displaced due to natural or human made disasters, including climate change.” Yet neither of these instruments proposes a satisfactory method for national governments to determine who or when someone is displaced by a climate change–related hazard or effect as opposed to a “disaster.”

In the case of climate change, the hazards resulting therefrom will vary widely in terms of intensity, scale, degree and timeframe. While the protection obligations are clear in the case of those displaced by large-scale, extreme events like acute flooding, superstorms and protracted drought, which are likely to overwhelm local coping capacities and give rise to a “disaster,” they are far murkier in the case of those affected by other climate change–related hazards, like decreased seasonal rains, gradual coastal erosion or sea level rise. The latter occurrences may not be recognized as “disasters.” Whether and at what point the hazard becomes significant enough to trigger movement is likely to be highly subjective.

In addition, many of the more complex effects of climate change on displacement do not align with the bulk of experience and practice regarding IDPs, which has largely focused on responding to sudden, often en masse, forced movements in situations of armed conflict and large-scale disasters. While most governments have civil protection authorities responsible for protecting IDPs in such situations, in the case of smaller-scale or more slowly unfolding climate-related hazards, it is unclear which government authorities are responsible for preventing and managing displacement. In short, existing laws, policies and operational practices for protecting the human rights of IDPs will need to be adapted and expanded to adequately protect those who are internally displaced due to climate change–related effects.
Opportunities to develop a new framework to more effectively protect the human rights of persons uprooted in the context of climate change

In the past several years, numerous initiatives have emerged that present an opportunity to develop new and more suitable approaches to prevent, minimize and address climate change–related displacement and migration, as well as to support, where appropriate, migration and planned relocation as an adaptation strategy. Rather than pursuing the lofty – and in many ways, impractical – goal of securing international agreement on a new international convention to address so-called climate refugees, these initiatives seek to build upon existing regional and bilateral arrangements related to displacement, migration and complimentary protection. Recognizing the climate impacts on internal displacement and the likelihood that increasing numbers of people living in at-risk areas will need to be supported to move out of harm’s way, other initiatives and guidance have emerged that center on the development of national laws, policies and strategies for planned relocation.

Developing a protection framework using this piecemeal approach may appear less than ideal to the extent that it lacks the consistency and coherence of an international framework. On the other hand, as acknowledged by many governments during the Nansen Initiative consultations (discussed below), when it comes to climate change impacts on displacement and migration, a “one size fits all approach” may not be appropriate. As discussed above, climate change will affect different regions of the globe in myriad ways and contribute to myriad forms of human movement (e.g., anticipatory, temporary, circular and permanent movements; forced displacement, multi-causal migration or something in between). The need for regional and/or bilateral approaches, combined with national-level strategies, is supported by the complex, and often multi-causal, link between climate change and human movements.

Finally, from a practical standpoint, climate-related initiatives will need to adapt to the political realities within and between states. Solutions for West African states may not be well suited for Central American nations or Pacific Island states. Rather, solutions will need to not only build on existing agreements, policies, tools and measures for addressing displacement and migration but also be integrated across numerous other sectors, including climate change adaptation, disaster risk reduction, agricultural policy and land use planning.

Initiatives to address cross-border movements

The Nansen Initiative and its successor, the Platform on Disaster Displacement

The most comprehensive initiative to date aimed at addressing gaps in the international legal framework has been the Nansen Initiative on Cross-Border Displacement in the Context of Disasters and Climate Change (Nansen Initiative) launched in 2012 by Norway and Switzerland. Recognizing the resistance among governments of extending the Refugee Convention to a new category of “climate refugees,” as well as the implausibility of attaining a new international convention or agreement on disaster- and climate-displaced persons, the Nansen Initiative sought to build consensus among governments using a bottom-up, state-led consultative approach. Notably, the Initiative is aimed at cross-border, “forced” movements and, as such, extends more broadly to all disasters (whether they be climate-related, geological or human-made) given the involuntary nature of the movement and the recognized need for complementary protection in such contexts.

Over three years, the Nansen Initiative convened a series of regional consultations across the globe. The goal of these consultations was to convene government representatives, experts and
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members of civil society to examine the current and anticipated impacts of disasters and climate change on human movement in their region, explore the existing landscape of laws, policies and “tools” for preventing, minimizing and addressing migration and displacement and identify how they might be adapted to the context of disasters and climate change.56

The culmination of the process was the adoption in October 2015 by more than 100 governments of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Nansen Protection Agenda).57 The Nansen Protection Agenda consolidates legal standards and protection mechanisms to provide a framework for measures at the local, regional, sub-regional, national and international levels applicable to “disaster-displaced” persons. The Protection Agenda recommends three areas that can serve to enhance coordination and action between these multiple levels of authority. First, it recommends multilateral efforts to collect data and share knowledge on cross-border disaster displacement. For example, international organizations and agencies are encouraged to share technical advice and offer operational support to governmental authorities. Second, the Protection Agenda encourages the application of humanitarian protection measures for cross-border, disaster-displaced persons through the harmonizing of approaches at the sub-regional level. Lastly, the Agenda recommends enhancing coordination with respect to disaster displacement risk management in the country of origin; more specifically, it suggests that human mobility considerations be integrated into national laws, policies and strategies related to disaster risk reduction and climate change adaptation in recognition that internal, disaster-related displacement, when not managed properly, can lead people to seek assistance abroad.

The Nansen Initiative has since been replaced by the Platform on Disaster Displacement (PDD), which, with the support of Germany, Bangladesh and a handful of other countries, will seek to move forward with concrete actions to implement the Nansen Protection Agenda.58 In late 2016, the PDD adopted a Strategic Plan and Work Plan aimed at undertaking activities outlined in the Nansen Protection.59

The implementation of the PDD Strategic Plan and Work Plan, which will be supported by governments, UN agencies including UNHCR and IOM, academic institutions and civil society organizations, presents an important opportunity not only to collect and share relevant data, but also to adopt novel measures and strategies for enhanced human rights protections for people who are displaced or migrate due to climate change–related effects.

The UN Framework Convention on Climate Change and its climate displacement task force

The issue of how to address displacement and migration arising from the negative effects of climate change has also been taken up by state parties to the 1992 UN Framework Convention on Climate Change.60 Pursuant to a decision adopted in Cancun, Mexico, in 2010, parties to the Convention were invited to “enhance action on [climate change] adaptation . . . by undertaking . . . [m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement and planned relocation, where appropriate, at the national, regional and international levels.”61 This decision – known as the Cancun Adaptation Platform – clearly identifies measures to address climate displacement as a form of adaptation, thereby linking it to adaptation funds established under the UNFCCC, such as the Green Climate Fund.62

Climate change–related displacement and migration have also been identified under the UNFCCC as a form of “loss and damage.” The concept of loss and damage arose in acknowledgement of the fact that despite commitments of the developed country parties to the UNFCCC to stabilize greenhouse gas (GHG) concentrations in the atmosphere and to help developing countries adapt to climate change, some climate change impacts will be “unavoidable.” These
unavoidable or residual impacts are referred to under the UNFCCC as “loss and damage.” In 2012, the conference of the parties to the UNFCCC (COP) adopted a decision during the Doha Climate Change Conference that further defined the concept of loss and damage and explicitly identified displacement as a potential form of loss and damage by acknowledging the need to “advance the understanding of and expertise on loss and damage, which includes, inter alia . . . [h]ow impacts of climate change are affecting patterns of migration, displacement and human mobility.”63

In 2013, the COP established the Warsaw International Mechanism for Loss and Damage (WIM) “to address loss and damage associated with impacts of climate change, including extreme events and slow-onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.”64 The implementation of the functions of the WIM is led by an Executive Committee (WIM ExComm), under the guidance of the COP. Given the recognition by the COP that climate change impacts on displacement and migration may constitute a form of loss and damage, the WIM ExComm’s initial two-year workplan included among its activities “[e]nhanc[ing] understanding of and expertise on how the impacts of climate change are affecting patterns of migration, displacement and human mobility; and the application of such understanding and expertise.”65 In addition, the decision reached by the COP in Paris in December 2015 requested the WIM ExComm to establish a task force to work with existing bodies and expert groups “to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.”66 The 22nd COP in Morocco approved an indicative five-year rolling workplan of the WIM ExComm, which includes among one of its five workstreams “[m]igration, displacement and human mobility, including the task force on displacement,” and activities under this workstream are now being developed.67

The ongoing work of the WIM ExComm – and the establishment of the climate displacement task force – present further opportunities to develop strategies for preventing, minimizing and addressing climate-related displacement and migration, both internally and on an inter-state level. However, given many of the political issues tied up in loss and damage, along with the small size (approximately 14 members)68 and hence limited capacity of the task force, it is likely that any action under the UNFCCC will proceed slowly and potentially be mired in other issues. However, what is important about including climate change–related displacement and migration under the UNFCCC is the opportunity to share knowledge and consolidate best practices to share with governments. Of particular importance will be increasing understanding and potentially developing more reliable estimates for the potential magnitude of displacement that can be linked to temperature rises above 1.5°C. This could present a key advocacy message for states regarding their obligation under human rights law to limit temperature rise to 1.5°C consistent with their obligation to avoid loss and damage.

The inclusion of climate change–related displacement and migration under the UNFCCC also provides opportunities to address the issue at the national level. In order to help Least Developed Countries (LDCs) identify activities necessary to adapt to climate change, the UNFCCC calls on LDCs to adopt National Adaptation Programs of Action (NAPAs). NAPAs are intended to “provide a process for [LDCs] to identify priority activities that respond to their urgent and immediate needs to adapt to climate change – those for which further delay would increase vulnerability and/or costs at a later stage.”69 These NAPAs present an opportunity for states to adopt measures and strategies to support migration as an adaptation strategy and to reduce climate displacement risk, including by implementing laws, policies and procedures for planned relocation of at-risk communities.
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The UN New York Declaration for Refugees and Migrants

As efforts continue on actions to better protect those displaced across borders due to disasters and other climate change–related effects, the numbers of traditional refugees and asylum seekers has continued to rise rapidly. By the end of 2015, UNHCR reported that the number of forcibly displaced persons worldwide was at historically high levels totaling 65.3 million, including 21 million refugees, three million asylum seekers or people in refugee-like situations, and more than 40 million internally displaced people (IDPs). The number of migrants is also at an all-time high, having surpassed 244 million by the end of 2015.

In order to address this global crisis, in September 2016 the UN General Assembly hosted a high-level summit to address large movements of migrants and refugees. The outcome of the summit was the adoption by all 193 member states of the New York Declaration for Refugees and Migrants. Importantly, the Declaration acknowledges the complex drivers of displacement and migration in the 21st century, among them, climate change.

Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors. Many move, indeed, for a combination of these reasons.

In order to address the crisis, the New York Declaration calls for the development of two global compacts: a global compact for safe, orderly and regular migration (GCM) and a global compact on refugees (GCR). In recognition of the lack of a specific legal regime concerning migrants (as opposed to refugees), the goal of the GCM is to set out a range of principles, commitments and understandings regarding international migration in all its dimensions. In contrast to the GCR, it will articulate, for the first time, a comprehensive framework for migration and be developed through a member state–driven process. The GCM will be elaborated through a process of intergovernmental negotiations starting in early 2017 and will culminate in an intergovernmental conference on international migration in 2018, at which the GCM will be presented for adoption.

The development of the GCM over the next few years presents an opportunity for states to develop principles, policies and processes to address those uprooted in the context of climate change using a human rights–based approach that will be incorporated into a global agreement on migration. Not only does the Declaration specifically identify climate change as a driver of human movement, but it also includes a commitment by states to address such drivers including by “combating environmental degradation and ensuring effective responses to natural disasters and the adverse impacts of climate change.” It further includes a commitment by nations to assist migrants in countries that are experiencing natural disasters and notes the Nansen Initiative Protection Agenda.

Moreover, the New York Declaration reiterates and reaffirms in numerous places the human rights of refugees and migrants, and it includes a commitment by states to fully protect the human rights of all refugees and migrants, regardless of status, and to fully respect international human rights law in their response. With respect to commitments for migrants, the Declaration includes a commitment by states to “protect[] the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times,” and to “cooperate closely to facilitate and ensure safe, orderly and regular migration.” Among the inexhaustive list of 24 issues that could be included in a GCM is “the effective protection of the
human rights and fundamental freedoms of migrants, including women and children, regardless of their migratory status, and the specific needs of migrants in vulnerable situations.83

Finally, the Declaration encourages deeper interaction among governments and civil society to find responses to the challenges and opportunities presented by international migration and invites civil society, as well as the private sector, the diaspora and migrant organizations, to contribute to the process of developing the GCM.84

Nonetheless, there are some potential limitations on what can be achieved through the GCM. Though the process will be government-led, the extent to which non-state actors, such as civil society or migrants themselves, will be actively engaged in the development of the GCM remains to be seen. In order to fulfill their obligations to allow public participation of migrants and other climate change–affected communities, the process will need to include safeguards and mechanisms to ensure public participation. In addition, the final GCM will need to include more specific obligations to which states can be held accountable, such as granting work permits to migrants and opening up more migration opportunities for people from the most climate-vulnerable countries. Moreover, given the fact that the New York Declaration and GCM are aimed at addressing “large movements of refugees and migrants,” it is not entirely clear what types of events or situations will be considered large enough to trigger their commitments. As discussed above, many of the climate change–related drivers of human mobility are likely to unfold slowly, or sporadically, and it is difficult to predict the types of movement (with respect to both numbers of people and over what timeframe) they will precipitate. One hopes, however, that many of the overall commitments in the New York Declaration to respect the human rights of migrants and displaced people will be better respected going forward than at present.

Opportunities to address climate change–related internal displacement

The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has pointed out, “each State has an obligation to protect those within its jurisdiction from the harmful effects of climate change.”85 This includes the obligation to adopt a legal and institutional framework that assists those within their jurisdiction to adapt to the unavoidable effects of climate change. It also includes a duty to protect against “foreseeable environmental impairment of human rights whether or not the environmental harm itself violates human rights law, and even whether or not the States directly cause the harm.”86 While the UN Guiding Principles and other national and regional laws and instruments related to internal displacement provide a principled basis for extending human rights protections to those facing internal displacement due to climate change, unfortunately, only a limited number of governments have adopted binding laws on the treatment of IDPs.87 Even where they have, implementation is often weak. Thus, far more concerted effort is needed on behalf of national governments to develop and implement laws and policies related to IDPs that specifically incorporate people displaced by climate change effects (including large- and small-scale, recurrent, cumulative, sudden- and slow-onset effects).

Building upon traditional IDP laws and policies, national governments will also need to go further to consider strategies for preventing and minimizing climate-related displacement and migration, or where appropriate, supporting migration and planned relocation as adaptation strategies. A notable shortcoming of using traditional laws, policies and operational practices on internal displacement as a starting point is that they are, for the most part, focused on responding to people already uprooted or on the move and thus fail to take advantage of the enormous opportunities to avoid climate change–related displacement.
Although there is evidence that climate change is already dislocating vulnerable communities, the future effects of climate change threaten to have a far greater impact on displacement. The scale of future displacement will depend on the extent to which governments act now to substantially reduce carbon emissions, build the resilience of vulnerable communities, mitigate climate risk and adapt to climate change effects. Thus, any strategy aimed at addressing climate change-related displacement must place a premium on avoiding or minimizing displacement, i.e., on prevention.

Also needed are laws, policies, processes and institutional arrangements for relocating populations at risk of displacement from climate change-related affects, which are entirely absent. Recognizing the need for a normative framework to address climate change-related displacement within states, a group of climate change experts and international lawyers came together in 2013 to develop the Peninsula Principles on Climate Displacement Within States (Peninsula Principles).\textsuperscript{88} Drawn heavily from human rights principles, the Peninsula Principles outline a set of guidelines, principles and processes for the planned, internal relocation of communities away from at-risk, climate-vulnerable areas, such as low-lying coastal areas. The Peninsula Principles’ particular value is in articulating the rights of “climate-displaced persons,” especially their right to remain in place, as well as to initiate and undertake planned relocation. The Peninsula Principles also offer institutional planning guidance for many aspects of internal displacement, such as participation and consent of affected individuals, land identification and post-displacement return.\textsuperscript{89}

Given the need for a more comprehensive approach to managing cross-border displacement that considers root causes, the Nansen Protection Agenda also includes strengthening the management of disaster displacement risk in the country of origin among its three priority areas for action. According to the Nansen Protection Agenda, specific measures include the need to integrate human mobility within disaster risk reduction (DRR), climate change adaptation strategies and other relevant development processes. In addition, the Agenda emphasizes the need to improve the use of planned relocation for populations living in high-risk areas as a means to anticipate disaster displacement. It further prioritizes the importance of ensuring that relevant laws and policies on disaster risk management specifically address the needs of IDPs.\textsuperscript{90}

In short, addressing disaster or climate displacement risk in the country of origin will require adopting new strategies that are both far more contextual and better integrated across other sectors and that focus on climate displacement risk as its starting point. It is only by focusing on climate change-related risk that national and local governments will be able to take advantage of opportunities to implement more effective displacement prevention measures. Potential avenues for doing so include (a) improving understanding of climate displacement risk as a factor for hazard exposure, vulnerability and resilience; (b) emphasizing displacement avoidance/mitigation strategies; (c) integrating displacement risk considerations into relevant laws, regulations and policies at the national, sub-national and local levels, including disaster risk reduction, land use planning, natural resource management and climate change adaptation; (d) developing laws and institutional arrangements for managing climate displacement risk; and (e) empowering local governments and communities with the resources and tools to manage and mitigate climate displacement risk.\textsuperscript{91}

**Conclusion**

In the past several years, numerous initiatives and venues have emerged that present an opportunity for governments to both cooperate to address cross-border movements stemming from
climate change and to develop new laws, policies and processes at the national level for protecting the human rights of vulnerable communities who face displacement and dislocation due to climate change. At present, more comprehensive data on the extent of human mobility associated with climate change is sorely lacking. Nonetheless, governments must seize these opportunities. Unlike displacement from war and persecution, there are enormous opportunities to avert and minimize the foreseeable harms associated with climate change adverse effects – including forced displacement. But with climate change adverse effects unfolding more quickly than anticipated, governments – with the support and input of academics, the private sector, civil society and affected communities themselves – must do so now. The risk of displacement and dislocation facing hazard-prone coastal communities, low-lying island nations, communities in the Arctic, those living in fragile and conflict ridden states and those in developing and least-developed countries who rely on natural resources to survive are evident. Governments must act urgently to meet their obligation to protect them and others from the threat to the full enjoyment of human rights that climate change presents.

Notes

1 IPCC, Climate Change: The IPCC Scientific Assessment (1990), available online at www.ipcc.ch/ipcureports/far/wg_i/ipcc_far_wg_i_full_report.pdf, at 103.
6 Ibid., at 14.
7 Ibid., at 47.
9 Royal Geographic Society, Glacial Environments – How Will Melting Glaciers Affect People Living in Other Countries? Available online at www.rgs.org/OurWork/Schools/Teaching+resources/Key+Stage+3+resources/Glacial+environments/How+will+melting+glaciers+affect+people+living+in+other+countries.htm.
11 CIEL, Malé Declaration on the Human Dimension of Global Climate Change (14 November 2007), available online at www.ciel.org/Publications/Male_Declaration_Nov07.pdf (noting that the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights is recognized in the constitutions of over 100 states and in several international instruments; expressing concern that “climate change has clear and immediate implications for the full enjoyment of human rights including inter alia the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health”).


15 There are, in fact, numerous instances in which people affected by disasters (both weather-related and other forms of natural disasters, such as earthquakes or volcanic eruptions) have crossed a border in search of safety and/or protection and assistance in another country. Based on available data, Africa along with Central and South America, in particular, have seen the largest number of incidences of cross-border disaster displacement. In recent decades, at least 50 countries have received or refrained from returning people in the aftermath of disasters. Nansen Initiative, *Agenda for the Protection of Cross-Border, Displaced Persons in the Context of Disasters and Climate Change* (October 2015), available online at https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf, at 6.


21 *Ibid.*, at 774 (references omitted).


37 Kälin and Schrepfer, *supra* note 31, at 34.


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40 See e.g., National Academies of Science, Engineering, and Medicine, Attribution of Extreme Weather Events in the Context of Climate Change (2016). The report found clear links between anthropogenic climate change and heat waves, droughts and intense rain- and snowstorms. The report found less evidence linking climate change to tornadoes, hurricanes and wildfires.


42 UN Human Rights Council, supra note 3, at paras 37–38.

43 UNOHRCHR, supra note 38, at paras 54–56.


45 UNOHRCHR, supra note 38, at para 65.


48 Ibid.


52 Brookings Institution, supra note 46.


54 As defined by the UN International Strategy for Disaster Reduction (UNISDR), a “disaster” is “[a] serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources.” UNISDR, Terminology (30 August 2007), available online at www.unisdr.org/we/inform/terminology (last visited 16 May 2016). But see 16th Congress of the Republic of the Philippines, Act Protecting the Rights of Internally Displaced Persons and Penalizing the Acts of Arbitrary Internal Displacement (19 August 2014), Senate Bill 2368 (defining “internal displacement” to include “the involuntary movement or forced evacuation or expulsion of any person who flee or leave their homes or places of habitual residence, within the national borders, as a result of or in order to avoid or minimize the effects of . . . natural, human-induced and man-made hazards”; emphasis added).


56 Ibid.

57 Ibid.


62 Ibid., at paras 95–137.

63 UNFCCC, Report of the Conference of the Parties on Its Eighteenth Session, Addendum, Part Two: Action Taken by the Conference of the Parties at Its Eighteenth Session, Decision 3/CP.18, Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity, UN Doc. FCCC/CP/2012/8/Add.1 (28 February 2013), at para 7(a)(vi).

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66 UNFCCC, supra, note 44, at para 50.

67 UNFCCC, supra, note 65, Annex I – Indicative framework for the five-year rolling workplan of the Executive Committee of the Warsaw International Mechanism.

68 See UNFCCC, Task Force on Displacement, available online at http:// unfccc.int/adaptation/groups_committees/loss_and_damage_executive_committee/items/9978.php.

69 See UNFCCC, National Adaptation Programmes of Action (NAPAs), available online at http:// unfccc.int/national_reports/napa/items/2719.php.

70 This is due in part to the conflict in Syria but also to protracted conflict in places like Afghanistan, Somalia and Iraq. These are only the latest additions to the millions more refugees around the globe that continue to live in protracted displacement situations – some for lifetimes, having been born into displacement in refugee camps – with no prospects for a solution. V. Turk and M. Garlick, ‘From Burdens and Responsibilities to Opportunities: The Comprehensive; Refugee Response Framework and a Global Compact on Refugees’, 28 International Journal of Refugee Law (2016) 4, at 656.


72 GA Res. 71/1, 19 September 2016, at para 3.

73 Ibid.

74 Ibid., at para 1.

75 The New York Declaration defines “large movements of refugees and migrants” as follows: “Large movements” may be understood to reflect a number of considerations, including the number of people arriving, the economic, social and geographical context, the capacity of a receiving state to respond and the impact of a movement that is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. “Large movements” may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes. GA Draft Res. A/71/L.1 (13 September 2016), at para 6.

76 Ibid., at Annex II, para 2.


79 Ibid., at para 43.

80 Ibid., at para 50.

81 Ibid., at paras 5, 6.

82 Ibid., at para 41.

83 Ibid., at Annex II, para 8(i).

84 GA Res, supra note 72, at para 61; Annex II, para 15.

85 UN Human Rights Council, supra, note 3, at para 68.

86 Ibid., at para 37.


90 IDMC collects annual global estimates of people displaced by disasters.