

[DRAFT]

Towards a Convention for Persons Displaced by Climate Change: A discussion note on the relationship between adaptation and displacement

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This discussion note builds on our previous note entitled 'Climate Change Migrants and Unicorns: a discussion note on conceptualising climate change displaced people.' It has been produced as part of a project that advocates an international convention for persons displaced by climate change ('the convention').¹

The matters raised in this note are tentative and directed mainly to an exploration of the consequence of the questions of: 'who would this convention be for?' and 'what is the problem it is designed to address?'. These questions are answered on the assumption that the proposed convention would be informed by the principles of 'equity, and common but differentiated responsibilities and respective capabilities'. We take this to mean that obligations under the convention would, in some form and to some extent, be determined by parties' responsibilities for greenhouse gas emissions.

This note begins by canvassing a number of problems and principles, some of which have been raised in our previous note, which are as follows: (i) defining persons displaced by climate change; (ii) identifying the normative basis of the convention; (iii) problematising the question of who the convention is for; (iv) raising questions about vulnerability and migration; conceptualising migration as a form of adaptation; and (v) suggesting some principles that might inform the research programme proposed as part of the convention.

The discussion note then offers a number of preliminary conclusions, including that the convention should conceptualise displacement as a form of adaptation, and that research efforts towards the aims of the convention should be geared towards determining the needs of the most vulnerable, not identifying those most likely to migrate.

These conclusions are tentative, and raise as many issues as they attempt to resolve, not least whether a convention that attempts to quantify responsibility for climate change in terms of persons displaced is (politically) achievable. Moreover, blurring the boundary between 'human rights' and 'development' brings with it the question of whether it would be acceptable for a party to 'buy its way out' of its asylum responsibilities by providing adaptation funding to vulnerable nations (and if this was acceptable, how it would fit in with existing arrangements).

¹ David Hodgkinson, Tess Burton, Simon Dawkins, Lucy Young and Alex Coram, 'Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses' *The New Critic* 8 (September 2008) <http://www.ias.uwa.edu.au/new-critic>.

Key concepts and principles

Defining persons displaced by climate change

In conformity with that project, this note refers to persons forced to migrate, temporarily or permanently, as a consequence of global warming as 'persons displaced by climate change'. A provisional definition, adapted by Dominic Kniveton, Kerstin Schmid-Verker, Christopher Smith and Richard Black (Kniveton et al) from the International Organisation for Migration's definition of 'environmental migrants, is as follows:

-- persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment as a result of climate change that adversely affect their lives or living conditions are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their own country or abroad.²

Following on from our previous discussion note, in this paper we will assume that climate change displaced people are not 'unicorns'.³ It is likely that people will be displaced by climate change and on a large scale. Global warming, argues Etienne Piguet, could lead to major forced displacement. Such displacement will principally result from rising sea levels and will progressively manifest itself over the coming centuries.⁴ Piguet estimates that around 146 million people, a figure that accounts for those persons living at an altitude of less than 1 metre above sea level, will be directly vulnerable to sea level rise.

While it is important to reach a consensus on the existence and 'identity' of climate change displaced people, precise semantic descriptions of the category may not be useful at this stage. Indeed, they may not even be possible for two reasons:

- (1) A direct, causal line cannot be drawn between migration decisions and ecological change.⁵
- (2) There is an implicit assumption in some discussions on 'climate change displaced persons' that such people are 'found, not made'. We do not agree that an accurate definition of 'climate change displaced people' exists 'out there' somewhere, waiting to be discovered. Instead, while the question of definitions is an important one and no doubt some definitions are better than others, the category will always be a constructed one, and arguably its ultimate 'validity' conferred through a political, rather than a research process. If we are predicating any policy action on the perfect definition of 'climate change displaced persons', we might be waiting for a very long time.

² Dominic Kniveton, Kerstin Schmid-Verker, Christopher Smith and Richard Black, *Climate Change and Migration: Improving Methodologies to Estimate Flows*, International Organisation for Migration Research Series, Geneva, Switzerland, 2008, p.31.

³ 'Climate Change Migrants and Unicorns: a discussion note on conceptualising climate change displaced people'

⁴ Etienne Piguet, *Climate Change and Forced Migration*, UNHCR New Issues in Refugee Research, Paper No.153, (January 2007), p.2.

⁵ See our previous discussion note, 'Climate Change Migrants and Unicorns: a discussion note on conceptualising climate change displaced people'.

This paper proceeds on the presumption that instead of basing our analysis around the individual decision to move, we should focus on identifying the populations that are likely to be affected by global warming, as well as measures that can be taken to ameliorate the likely impacts of climate change.⁶

The normative basis of the convention

In 'Towards a convention for persons displaced by climate change', we state that our proposed convention, parties would provide for resettlement and assistance on the basis of:

- (1) 'equity and in accordance with their common but differentiated responsibilities and respective capacities...'; and
- (2) 'the parties historical greenhouse gas emissions by volume...'⁷

These principles encapsulate our sense that an urgent issue is as follows: 'if environmental deteriorations due to human influence on the climate generate forced migration flows, the question of the rights of victims to a form of protection will become unavoidable.'⁸ Our solution is to base the convention on the normative claim that high-emitting nations should take responsibility for the lives affected by their over-use of the climate commons.⁹

The convention thus does at least two things:

- (a) it helps us to make 'the moral link between local causes and distant effects';¹⁰ and
- (b) it also allows us to make links between ethics and action because, '[h]uman rights thinking habitually resituates ethical imperatives within a legal framework.'¹¹

The discourse of 'climate refugees': who is this convention for?

It is important to recognise that the discourse around 'climate refugees' has largely occurred within the context of the border and security concerns of rich nations. The concept of 'climate refugees', Piguet argues, 'evokes fantasies of uncontrollable waves of migration that run the risk of stoking xenophobic reactions or serving as a justification for generating policies of restriction for people seeking asylum.'¹² The

⁶ For a similar argument, see Fabrice Renaud, Janos J. Boardi, Olivia Dun and Koko Warner, *Control Adapt or Flee: How to Face Environmental Migration?* Intersections 5/2007, United Nations University Institute for Environment and Human Security. p.10, 16.

⁷ See also Sujatah Byravan & Sudhir Chella Rajam, 'Providing New Homes for Climate Change Exiles' *Climate Policy* 6 (2006, 247 – 252.

⁸ Piguet, *Climate Change and Forced Migration*, p.2.

⁹ Note, however, that this isn't the only principle underlying our proposed convention. For instance, we also point to the interest of the international community in resolving human displacement in an orderly and coordinated fashion.

¹⁰ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, Versoix, Switzerland, (2008), p.79.

¹¹ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.7.

¹² Piguet, *Climate Change and Forced Migration*, p.8.

reality is, migration experts assert, that most persons displaced by climate change will be relatively unlikely to cross an international border.¹³ We are increasingly convinced that perpetuating a narrow focus on 'displacement', particularly transborder displacement, is to act implicitly within the preoccupations of the 'developed' world, with the security concerns – and perhaps even the xenophobic reactions – that such a stance entails.

A question about vulnerability

There is some consensus among experts that those most affected by, or vulnerable to, climate change, will not have the resources or capacity to migrate. Piguet describes the research on natural disasters as follows:

Living mainly in poor countries, the victims have little mobility and the majority of the displaced return as soon as possible to reconstruct their homes in the disaster zone. The results from numerous research projects conducted worldwide on the subject tend to confirm this point with remarkable regularity. Thus, a synthesis of results on migration choices of victims of natural disasters displaced in eighteen sites confirms, with rare exceptions, the strong propensity to return.¹⁴

The implication is that some of the populations that will be most vulnerable to climate change may not be protected by the proposed convention. Given that the convention is based upon the claim that nations with high carbon emissions have an ethical obligation to assist those most affected as a result of their over-use of the 'climate commons', this is an issue that must be addressed for the sake of the coherence of the principles that underpin the convention.¹⁵

Conceptualising migration as a form of adaptation

This discussion note takes migration experts seriously when they assert that: migration should be understood as a form of, rather than a failure of, adaptation.¹⁶ Effective management of migration caused by climate change' should not assume that climate-change induced migration is part of the problem', argue Dominic Kniveton, Kerstin Schmidt-Verker, Christopher Smith and Richard Black.¹⁷ It may, they assert, be part of the solution.

¹³ Kniveton et al, *Climate Change and Migration: Improving Methodologies*, p.29.

¹⁴ Piguet, *Climate Change and Forced Migration*, pp. 5 – 6. This research, however, relates to natural disasters, not rising sea levels where it would be impossible to return. It appears to be contradicted by Fabrice Renaud, Janos J. Boardi, Olivia Dun and Koko Warner, who assert that 'More recent research on poverty and migration finds that while the option of migrating is not available to all poor people, it is the poorest groups of people who are typically disproportionately represented in circumstances of distress migration...' 'Control Adapt or Flee: How to Face Environmental Migration?', p.28.

¹⁵ However, as discussed at footnote (9) above, our convention is also based a principle of orderly international population movements that may correlate more closely with the concerns of rich nations. Most international instruments must, however, embody a variety of norms, which will sometimes be in tension, as a consequence of their creation through negotiation between different state actors.

¹⁶ See Oli Brown, *Climate Change and Forced Migration*, Background Paper for the 2007 Development Report, (2007), p.25.

¹⁷ Kniveton et al, *Climate Change and Migration: Improving Methodologies*, p.58.

Displacement is not only a function of a population's exposure to climate change impacts, but also of the vulnerability and resilience of the population itself.¹⁸ Population, poverty and governance are key variables, argues Oli Brown. Indeed, 'non-climatic drivers can be as important a determinant of the problem as the strength of the climate itself.'¹⁹

In other words, it appears that improving the capacity of a population to adapt to climate change would reduce the necessity of relying on migration as a solution to climatic change. Piguet explains that:

Existing research shows that due to the number of factors involved, no climatic or environmental hazards inevitable result in migrations. Many authors note that even if disasters become more frequent in the future, political efforts and measures of protection will be able to lessen the need to emigrate provided that the necessary financial means are made available... The Stern report is clear in this respect and states that "the exact number who will actually be displaced or forced to migrate will depend on the level of investment, planning and resources" (112).²⁰

Rather than drawing a line between 'adaptation' and 'migration, we should situate migration within a spectrum of adaptive possibilities.

What sort of research programme?

The convention proposed by our project requires that each country participate in a study to determine which elements of their population are at risk, the extent of the threat and the capacity of each party to resettle climate change displaced populations internally. The requirement of a study is consistent with the arguments of many experts that further research is necessary in order to understand the human impacts of climate change in general and the causes, consequences and numbers of climate migration in particular.²¹

In the previous discussion note, we concluded that the coordinated international research effort that would be undertaken under our convention should not be primarily directed towards determining whether people are likely to migrate as a consequence of climate change. While studies of migration decisions are important and useful, that given the subjectivity and contingency of migration decisions, and the intensive research necessary to predict them with any confidence, it may be preferable to conduct research at a more general level.²² Determining the identity and numbers of climate change displaced persons seems to be a second order concern, while ascertaining the likely human *impacts* and the best possible measures of adapting to avoid them should be the primary focus of our attention. The work of

¹⁸ Vikram Kolmannskog, *Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration*, Norwegian Refugee Council, Oslo, Norway (April 2008), p.4 & p.11.

¹⁹ Brown, *Climate Change and Forced Displacement*, p.11.

²⁰ Piguet, *Climate Change and Forced Migration*, p.8.

²¹ See, for instance, Brown, *Climate Change and Forced Migration*; International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*; Kniveton, et al, *Climate Change and Migration: Improving Methodologies*; Renaud et al, *Control Adapt or Flee: How to Face Environmental Migration?*, p.16, p.33.

²² For an overview of research methodologies in this area, see: Kniveton et al *Climate Change and Migration: Improving Methodologies*.

migration researchers is not irrelevant here; in some circumstances, the decision to move may be the best form of adaptation.

Conclusions

There are, we think, a number of conclusions or policy directions that follow from the matters identified above.

1. One rationale for constructing a new treaty for the recognition, processing and treatment of persons displaced by climate change (as opposed to using a combination of existing instruments) is because it translates into law the ethical principle that rich nations should take responsibility for the 'human toll' that results from their overuse of the climate commons.
2. If the obligation of over-emitters to vulnerable populations is an underlying normative principle of the convention, then the framework of the convention should be directed towards ameliorating the impacts of climate change on vulnerable populations.
3. The poorest (and therefore often the most vulnerable to climate change) may not be encapsulated within a convention that is only focused on the displaced. Those most vulnerable to climate change may not have the resources to migrate. Moreover, their vulnerability may be a function of their inability to adapt to climate change impacts.²³
4. A convention that narrowly deals with issues of displacement is a convention that may well be directed more towards the security and border concerns of rich nations, than the needs of vulnerable populations. Our convention, sitting somewhere in a nexus between environmental, human rights, humanitarian and international refugee law affords the opportunity to link displacement to adaptation.
5. A mechanism should exist within the convention that explicitly recognises and acts upon the link between adaptation and displacement. Perhaps it could even include the recognition that targeted assistance with adaptation would reduce a party's obligations to resettle climate displaced persons in the future (although there are a number of argument against taking such a step).
6. The convention would thus be concerned simultaneously with issues of adaptation and displacement. Such an approach brings it into line with many policy discussions on the issue, which emphasise the importance of adaptation to the effects of climate change. A similar stance may be found in Fabrice Renaud, Janos J. Boardi, Olivia Dun and Koko Warner's attempt to categorise environmental migrants on the basis of the environmental trigger event *and* the type of assistance available to exposed communities.²⁴ It would simultaneously address the two possibilities for action on climate change displacement identified by Piguet:

on one hand, an increased international cooperation with a view to collective burden sharing of assistance and prevention in countries confronted with disasters, and on the other, the opening of emigration

²³ See Renaud et al, *Control Adapt or Flee: How to Face Environmental Migration?* p.28.

²⁴ Renaud et al, *Control Adapt or Flee: How to Face Environmental Migration?*, p.30.

channels with the recognition of environmental push factors in subsidiary international instruments of protection...²⁵

7. The study or research programme that would be undertaken as part of our convention should therefore not be directed to solely or even mainly to determining the quantity and distributions of persons who are likely to migrate. Rather, it should adopt the recommendation of the International Council on Human Rights Policy, that research be directed to determining the impact of climate change on human rights, with the results to be categorised in terms of thresholds, which is explained as follows:

Factoring future human rights threats explicitly into climate change scenarios would provide an analytical tool for refocusing climate change impacts more narrowly on their likely human costs. This would in turn help not only to determine whether human rights risk being breached, but also to identify future duty-bearers and the adequacy of response institutions and redress mechanisms.

One way to organise data collection and modelling of this kind might be to think in terms of human rights thresholds: levels of protection for individual rights which can be regarded as the minimum acceptable outcome under a given policy scenario. A policy requirement that basic threshold levels should not be breached – either as an effect of climate change itself or as a by-product of a given mitigation or adaptation policy – ought not to be controversial, especially as such a goal is also a legal requirement for policy-actors. Basic human rights standards are broadly accepted. In addition such a goal is modest. It does not require large-scale social engineering ... Nor does it involve epic calculations across vast datasets. Rather essential needs are identified for attention on the basis of their likely breach and further resources can be concentrated on assessing and mitigating risk by finding appropriate technological and institutional fixed.²⁶

While we have no expertise in researching these areas, it seems to us that such an effort would be less resource-intensive and perhaps more accurate than studies that attempt to predict migration, given the complex matrix of factors which attend such decisions.²⁷

8. Research on the issue of adaptation is just as, if not more, urgent than research on likely displacement:

It is widely recognised that adaptation funding cannot be delivered effectively until it is known where assistance will bring the most benefit. Unfortunately, it is just this information that is generally lacking. The reason, as with so much in the climate change debate, is resource related.²⁸

²⁵ Piguet, *Climate Change and Forced Migration*, p.8.

²⁶ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.18.

²⁷ See our previous discussion note, 'Climate Change Migrants and Unicorns: a discussion note on conceptualising climate change displaced people'.

²⁸ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.23.

Linking adaptation funding to resettlement obligations provides rich nations with an incentive to honour their commitment to providing funding for adaptation in poorer and more vulnerable regions. Adaptation is thus 'reframed as a compensatory or corrective response to potential or actual climate change- related human rights violations'.²⁹

9. The institution we propose to create may not need to be a body such as the UNHCR, but rather could be an inter-governmental panel on the human impacts on climate change. It could also oversee a variation of the 'International Mechanism on Environmental Displacement' proposed by King, which would address the chain of prevention-mitigation-rehabilitation-resettlement' through inter-agency coordination.³⁰ The role of such an institution would be to coordinate research, as well as inter-institutional cooperation on the human rights issues, humanitarian responses and displacement 'solutions' associated with climate change.

²⁹ International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, p.2.

³⁰ T. King, 'Environmental Displacement: Coordinating Efforts to Find Solutions' *Georgetown International Environmental Law Review* 18 (2006), 543 – 565.