

Protection of persons affected by the effects of climate change, including the displaced

Observations and Recommendations

Paper submitted by the Representative of the Secretary General
on the Human Rights of Internally Displaced Persons to the OHCHR Study on the
relationship between climate change and human rights

I. Introduction

Climate change is usually referred to as “global warming” and as such does not impede the enjoyment of human rights. Rather climate change produces environmental effects which may, inter alia, cause displacement and, more generally, exacerbate existing vulnerabilities as well as endanger the protection of the human rights of affected populations, including the displaced. Most of these environmental effects, such as flooding, hurricanes, desertification or even the “sinking” of stretches of land, are not new. However, according to the key findings of the Intergovernmental Panel on Climate Change (IPCC), their frequency and magnitude are likely to increase due to global warming.

The latest report of the IPCC contains several key findings relevant for the issue of displacement and population movements in general. For instance, it describes the impact of climate change on the reduced availability of water in parts of the tropics, the Mediterranean and Middle Eastern regions and the southern tips of Africa and Latin America and projects a decrease in crop yields, mostly expected in Africa, which puts tens of millions of people at risk of hunger. As a consequence of global warming, sea-levels are likely to rise and densely populated “mega-deltas”, especially in Asia and Africa and small islands are most at risk from floods, storms and coastal flooding, increased salination of the ground water and eventual submerging, with a potential impact on tens of millions of people.¹ On several occasions the Emergency Relief Coordinator, Sir John Holmes, also highlighted that climate change already today has serious humanitarian implications: National and international humanitarian actors are increasingly responding to humanitarian situations arising from climate related hazard events.

In exercising my mandate², I found that while an increasing number of persons are affected by and/or displaced as a consequence of a natural disaster, all too often

¹ This summary is based on Martin Parry, Humanitarian Implications of Climate Change, ppt-presentation to the IASC Principals Meeting (30 April 2008)

² The mandate of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons is contained in HRC Res. 6/32; adopted at 34th meeting, 14 December 2007, and requests the Representative in para. 7 (g) to “continue, through continuous dialogue with Governments and intergovernmental and non-governmental organizations concerned, his efforts to promote the protection of human rights of internally displaced persons in the context of natural disasters”.

insufficient attention is paid to the multiple human rights challenges they may face in these situations.

Faced with mega-disasters caused by the 2004 Tsunami, the 2005 Kashmir Earthquake, Hurricane Katrina and given that more and more persons will be affected by the effects of climate change in the future, I paid increased attention to the human rights protection of displaced persons in situations of natural disasters already shortly after assuming this mandate. In recent years, I have focused on reviewing existing normative frameworks as well as operational response mechanisms to address the human rights challenges arising from this new context. I have also carried out a series of working visits to countries particularly affected by hydro-meteorological disasters to review the human rights aspects of disaster management, responses and prevention.

II. Normative Framework

Victims of the effects of climate change, including displaced persons, are entitled to enjoy the full range of human rights guarantees. The question arises as to the precise meaning and relevance of these rights for this vulnerable group of persons. Insofar as the affected persons are displaced within their own country, the Guiding Principles on Internal Displacement³ which reflect and are based upon existing human rights conventions and which remain fully applicable in such situations provide detailed guidance. Further guidance is provided by the IASC Operational Guidelines on Protecting Persons Affected by Natural Disasters, which were annexed to my 2006 report to the Human Rights Council and endorsed by the Inter-Agency Standing Committee (IASC) in June 2006 (see attachment).⁴ I also developed a pilot Field Manual to the IASC Operational Guidelines which was released in March 2008 and which is in the process of being revised. The Manual's main goal is to introduce the human rights dimension into the operational response in a disaster context by providing the human rights framework, practical examples and operational steps.⁵

Upon request of the Inter-Agency Standing Committee for Humanitarian Response earlier this year, I submitted the enclosed background paper (see attachment)⁶ which examines the nexus between climate change and displacement and highlights normative gaps in the protection framework for those displaced by the effects of climate change. Based on the projections contained in the latest report of the

³ Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998

⁴ Available at: http://www.brookings.edu/projects/idp/2006_naturaldisasters.aspx. See also Report of the Representative of the Secretary General on the human rights of internally displaced persons, Walter Kaelin, Operational Guidelines on Human Rights and Natural Disasters, UN Doc. A/HRC/4/38/Add.1, 23 January 2006.

(<http://daccessdds.un.org/doc/UNDOC/GEN/G07/105/12/PDF/G0710512.pdf?OpenElement>)

⁵ Available at: http://www.brookings.edu/reports/2008/spring_natural_disasters.aspx

⁶ The paper "Displacement Caused by the Effects of Climate Change: Who will be affected and what are the gaps in the normative frameworks for their protection?" has been submitted by the RSG on the Human Rights of Internally Displaced Persons to the 71st meeting of the IASC Working Group of 18 until 20 June 2008 and has been developed further by the RSG in the context of subsequent meetings of the IASC informal sub-working group on displacement/migration and climate change.

IPCC⁷, the paper analyses the nature of population movements in the context of climate change and identifies several normative gaps in the existing international legal framework:

- Persons who have been forcibly displaced by the effects of natural hazards and other effects of climate change and who have crossed an international border: As environmental factors causing movements across international borders are not grounds, in and of themselves, for granting refugee status under the 1951 Refugee Convention, these persons are not eligible to be protected by existing refugee law. In consequence, the terms “environmental refugee” and “climate refugee” have no legal basis in international refugee law. A legal protection gap exists with regard to these persons wrongly designated as “refugees”.
- In specific cases, including where people are obliged to leave small island States owing to sea-level rises, extreme losses of land or of the entire territory, such populations could potentially become ‘stateless persons’. The existing legal framework does not fully address this situation. The two existing UN treaties on Statelessness do not contain provisions addressing statelessness occurring due to the disappearance of the land and territory of a State. Furthermore, even if they did, their low ratification rate does not offer a comprehensive protection framework for the people affected by this situation.
- In the context of slow onset disasters and gradual environmental degradation, the international protection framework for involuntary displacement does not provide criteria to distinguish between voluntary and forced movement. For persons moving within their country such criteria would determine whether the affected persons need to be considered as IDPs. In the context of cross-boarder movements, such criteria would support the identification of the protection needs of the persons concerned.

III. Operational and institutional response mechanisms

In practice, all insufficient attention is paid too often to the multiple human rights challenges that persons affected by and/or displaced as a consequence of a natural hazard may face. During working visits to South East Asia, the Americas and Southern Africa, I observed the most vulnerable groups of societies suffer the most from the negative impacts of climate change because their mitigation and adaptation capacities are already limited. Moreover, these affected groups tend to be at risk of human rights abuses and to suffer from lack of protection against life-threatening natural hazards; unequal access to humanitarian assistance; discrimination in aid provision; sexual and gender-based violence; non-replacement of lost documentation; unsafe or involuntary return or settlement elsewhere in the country; forced relocation; or difficulties regarding property restitution.

⁷ The IPCC Fourth Assessment Report “Climate Change 2007” can be downloaded on the following website: <http://www.ipcc.ch/ipccreports/assessments-reports.htm>

Human rights violations in this context are not necessarily intended, but often result from inappropriate policies, inadequate capacities or simple neglect or oversight. Taking a rights-based approach in designing policies and in implementing them would help prevent such violations from occurring and address existing vulnerabilities appropriately so that the concerned authorities and the communities exposed to the risk of a natural hazard are better prepared for the future and unnecessary casualties can be prevented.

In order to provide some guidance to governments, civil society and international organizations on integrating a human rights-based approach in disaster relief activities; I developed the above mentioned Operational Guidelines on Human Rights and Natural Disasters and the accompanying field manual. My mandate also participates in the disaster related activities of the IASC Protection Cluster Working Group (PCWG) and provides an Interim Focal Point for protection in natural disasters to the PCWG.

In addition, I welcome and support the efforts of the International Law Commission (ILC) which at its fifty-ninth session (2007) decided to include the topic "Protection of persons in the event of disasters" in its programme of work and the appointment of Mr. Eduardo Valencia-Ospina as the Special Rapporteur on the subject. Without prejudice to the outcome of his work, the efforts of the ILC to restate and progressively develop rules applicable to a variety of aspects of disaster prevention and relief assistances, as well as of the protection of persons in the event of disasters is very timely to meet the challenges faced by persons affected by the impacts of climate change.

It goes without saying that these human rights challenges will increase to the extent that the effects of climate change are likely to affect and/or to displace an ever increasing number of people. More needs to be done to mainstream the protection of the human rights of in the context of natural disasters and the effects of climate change, in terms of prevention, response and reconstruction after:

IV. Recommendations to the Human Rights Council

The Representative recommend to the Human Rights Council:

- To encourage OHCHR or the Special Rapporteur on the Human Rights of Migrants and the Special Rapporteurs on the rights to food, water, housing and health to study current state practice with regard to cross-boarder movements caused by natural hazards and climate related weather events;
- To invite the Special Rapporteur on human rights and fundamental freedoms of indigenous people and the Representative of the Secretary General on the Human Rights of Internally Displaced Persons to study situations where due to changes in the environment life is no longer sustainable on the land of indigenous peoples requiring them to leave their ancestral lands⁸;

⁸ See also E/CN.4/Sub.2/2005/28, p. 3

- To invite the Human Rights Council Advisory Committee to reflect on the protection of persons and communities threatened to become “stateless” as a consequence of extreme deteriorations or losses of land and durable solutions for such persons.
- To advocate for the mainstreaming of a human rights approach in national strategies for mitigation of and adaptation to negative effects of natural hazards caused by the effects of climate change with a view to better protect the rights of affected persons including those displaced;
- To advocate that protection concerns are taken into account when negotiating revisions of the UN Framework Convention on Climate Change or new instruments on climate change;
- To recommend that national reporting mechanisms in the revised UN Framework Convention on Climate Change include human rights aspects;
- To support the establishment of a new or the amplification of the existing adaptation funds, as well as the establishment of an appropriate monitoring mechanisms, to guarantee that these funds benefit those who are most vulnerable to the negative impacts of climate change with a view to prevent infringements of their rights and to effectively address the violations that may occur;
- To hold national governments accountable where they fail (i) to adequately protect their citizens from avoidable risks due to exposure to natural hazards by preventing and mitigating their effects; and (ii) to respect, protect and fulfil the rights of persons affected by the effects of climate change;
- To empower national human rights institutions to monitor and protect the rights of persons affected by the effects of climate change.
- To continue the support to the United Nations lead-process of the humanitarian reform and existing institutional response mechanism to protect the rights of persons affected by the effects of climate change, including those displaced by natural hazards and environmental degradation;
- To support humanitarian response mechanisms with the necessary means to meet the needs of the additional case-load;
- To ensure that durable solutions for those displaced by natural disasters and the effects of climate change are found, taking into consideration prevention and disaster risk mitigation measures that are based on human rights.