

# Protecting Environmental Migrants: Recent Findings from the UNU-EHS Summer Academy

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## 1. Introduction

The United Nations University – Institute for Environment and Human Security (UNU-EHS) organizes every year a Summer Academy on Social Vulnerability.<sup>1</sup> This year's Academy, which took place from 25 to 31 July in Hohenkammer (Munich), focused on the protection of environmental migrants from a policy perspective. Twenty PhD researchers from thirteen countries and experts from academia, UNHCR, IOM, the European Commission and the Council of Europe gathered and discussed the issue through a range of working groups and roundtables. The outcomes of the Summer Academy will be integrated into the ongoing climate negotiations through UNU-EHS side events at the UN climate change talks. This paper presents the outcomes of the Academy.

The problem of environmental migration has become a hot topic to discuss and write about. Geographers, anthropologists, political scientists and lawyers are meeting on the issue to debate their existence, their number, the causes of their flight and the existing or needed institutional, policy and legal frameworks. While people have always used migration as a strategy for responding to environmental changes, it is the worldwide increasing attention for

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<sup>1</sup> See <http://www.ehs.unu.edu/article/read/summer-academy>.

the phenomenon of climate change that has made academics, policy makers and the NGO community turn their heads towards those who are forced to leave their home due to environmental changes.

Global environmental changes increasingly force people to leave their home and search for a better place to live. The estimates of the current and future number of environmental migrants differ greatly, but they all refer to millions of people. Certain is that their number is increasing. A comprehensive solution to the problem of environmental migration covers both elements of *prevention* and elements of *remedy*. Translated into strategies, the prevention of forced migration is pursued through the strategy of “adaptation” while remedying the plight of those who have fled is dealt with through the strategy of “protection”.

The following chart gives an overview of the recommended policy options for the protection (in the broad sense) of environmental migrants that were developed during the Summer Academy. Importantly, these policy options should be seen as complementary.

<b><u>ADAPTATION</u></b>	<b><u>PROTECTION</u></b>
<p data-bbox="269 1115 727 1140"><b>(SUB)REGIONAL ADAPTATION FRAMEWORK</b></p> <p data-bbox="354 1167 656 1192">Relieving migratory pressures</p>	<p data-bbox="1005 1115 1243 1140"><b>STAY OF DEPORTATION</b></p> <p data-bbox="954 1167 1294 1192">Non-return based on existing law</p>
<p data-bbox="615 1283 1032 1308"><b>TEMPORARY RELOCATION STATUS (TRS)</b></p> <p data-bbox="701 1335 946 1360">New migration category</p> <p data-bbox="597 1388 1050 1413">Decriminalizing migration as coping strategy</p>	
<p data-bbox="337 1486 683 1512"><b>(CIRCULAR) LABOUR MIGRATION</b></p> <p data-bbox="358 1539 659 1564">Migrants as agents of change</p> <p data-bbox="261 1591 756 1654">Supporting voluntary migration to reduce forced migration</p>	<p data-bbox="954 1486 1317 1512"><b>NEW RIGHTS-BASED FRAMEWORK</b></p> <p data-bbox="984 1539 1287 1564">New entitlement to residence</p>

## 2. Adaptation

### a. (Sub)regional adaptation framework

The primary responsibility to protect (potential) environmental migrants lies with the state on whose territory the environmental problems occur.<sup>2</sup> This state is responsible for the protection of people on its territory and is therefore under the obligation to prevent, as much as possible, unbearable environmental circumstances through the development of projects for adaptation to global environmental change. When a state is unwilling or unable to assume this responsibility, the responsibility to protect people should be borne, on a subsidiary basis, by the wider international community.<sup>3</sup> In this context, the United Nations is involved in a battle against climate change. Efforts as regards climate change mitigation and adaptation are being made.

In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted, five years later the Kyoto Protocol came into existence. Adaptation to climate change, as it aims at the reduction of the impacts of climate change that are happening now as well as seeks to increase resilience of people to future impacts, contributes to the protection of people's livelihood and therefore to the prevention of environmental migration.<sup>4</sup> In the recent Copenhagen Accord, which is not legally binding upon the parties to the UNFCCC, 100 billion dollars are promised for poor countries to adapt to climate change. However, a concrete financing plan specifying where this money would come from has not been developed.

The process of allocation of adaptation funding should take into account the particular features of geographical regions. A regional or subregional adaptation framework is therefore recommended. Because adaptation projects in one country may negatively affect neighbouring countries – e.g. in the case of dam constructions – regional projects rather than national projects should be aimed at. To effectively prevent forced migration linked to environmental

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<sup>2</sup> See *A More Secured World: Our Shared Responsibility* – Report of the Secretary-General's High-level Panel on Threats, Challenges and Change (A/59/565), 21-22: the State has the primary obligation to protect the welfare of its own peoples.

<sup>3</sup> See *A More Secured World: Our Shared Responsibility*, above note 2, 22.

<sup>4</sup> The Adaptation Fund, financed with a share of proceeds from the clean development mechanism and supervised by the Adaptation Fund Board, finances concrete adaptation projects in developing countries that are parties to the Kyoto Protocol and particularly vulnerable to the negative effects of climate change. See <http://unfccc.int/adaptation/items/4159.php>.

change, both environmental and other projects are required: environmental problems are often related to socio-economic problems to a considerable extent.

Because adaptation projects relieve migratory pressures on states, states are generally encouraged to cooperate. Adaptation indeed enables people to stay rather than migrate. For most people, staying is the preferred option, at least if the circumstances are tolerable. Furthermore, while environmental change is increasingly believed to contribute (to armed) conflict, adaptation projects have the potential to mitigate conflict.

Adaptation to global environmental change is not restricted to the projects described above. Adaptation can also take the form of migration. Indeed, some types of migration can and should be understood as a positive strategy to cope with environmental change rather than as a last resort to survive. Especially circular labour migration may constitute an effective strategy to adapt to environmental change.

#### b. (Circular) labour migration

Labour migration programmes, especially those on a circular basis, may play a significant role in the environmental adaptation of local developing communities through the remittances of the labour migrants. In addition, these labour migration schemes can contribute substantially to the reconstruction of disaster-hit areas and recovery of disaster-hit communities, whereby the disaster is either rapid onset (e.g. floods) or slow onset (e.g. drought). For developed countries that are confronted with an ageing population and unfilled jobs, foreign (particularly temporary) labour forces are welcome. The win-win-win situation (for the sending country, the receiving country and the labour migrant) makes this adaptation-focused strategy politically highly feasible. One of the necessary conditions for this strategy to work, is that the host country is in need of labour forces.

The (circular) labour migration programmes would be developed through bilateral or regional agreements, either between countries of the same region or between developed and developing countries. The selection of the particular home country or area as party to the labour migration agreement would be based, amongst other things, on national vulnerability assessments (based on social, cultural and environmental indicators).

The International Organization for Migration (IOM) is carrying out different operational activities in the context of migration, climate change and environmental degradation. One of its

activities is related to circular labour migration: 'The Colombian Temporary and Circular Labour Migration (TCLM) programme'.

*The Colombian Temporary and Circular Labour Migration (TCLM) programme offers a livelihood alternative through temporary work abroad to families confronted with natural disasters such as floods or volcanic eruptions, until the affected zone recuperates. The circular migration model supports migrants and their families in maximizing the impact of the remittances on the area's recovery through public and private co-funding and international cooperation. The focus of channelling these savings from Colombians from environmentally vulnerable areas encountering work abroad lies in particular on production, housing and educational projects. To make these investments sustainable, monitoring and technical assistance is being provided. As of November 2007, about 8000 persons have benefited from this programme.<sup>5</sup>*

The development of (circular) labour migration schemes like the TCLM, through bilateral or regional agreements, should be strongly encouraged. This valuable approach is about supporting voluntary migration to reduce forced migration (Tacoli, 2009; Newland, 2009; Barnett and Webber, 2009), whereby the labour migrants should be considered as agents of change.

### 3. Protection

When people have no other choice but to leave their home because of severe environmental problems, an adequate protection mechanism should be in place to mitigate their plight. Individuals who are displaced within their own country (internally displaced persons, IDPs) fall under the legal system of that country in the same manner as they did before being displaced. The national government is responsible to protect IDPs according to its obligations under international human rights law. To guide states in their protection activities, the former United Nations Secretary-General Representative on internally displaced persons, Francis M. Deng, developed the Guiding Principles on Internal Displacement in 1998.<sup>6</sup> These Guiding Principles, which were adopted by the United Nations, are a set a principles explaining how states should protect IDPs against, during and after displacement. The Principles are mainly based on existing international human rights law and international humanitarian law. Since they apply to all

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<sup>5</sup> Zie <http://www.iom.int/jahia/Jahia/pid/2080#colombia>.

<sup>6</sup> The Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2.

persons who are forced to move within the national borders, irrespective of the cause of the flight (Principle 2), they also apply to internal environmental migrants.

Environmental migrants who have crossed a border no longer fall under the legal system of their country of origin or habitual residence. The question arises to what extent these environmental migrants are entitled to enter and stay in a foreign country on the basis of international human rights law and international refugee law. The two following subdivisions discuss the situation of protection under both areas of law and subsequently offer policy recommendations in this context.

a. Stay of deportation

The human right to be protected against forcible return, known as the principle of *non-refoulement*, prohibits a state to return, expel or extradite a person in any manner whatsoever to another state where that person risks being subjected to serious human rights violations.<sup>7</sup> The question arises whether this principle protects environmental migrants who have crossed an international border. While this question has been analyzed in detail elsewhere,<sup>8</sup> it suffices here to point out that, based on the interpretation of relevant provisions of international and regional conventions<sup>9</sup> as well as case law of the European Court of Human Rights, environmental migrants who have crossed an international border are, at this moment in time, generally not protected by the *non-refoulement* principle. As a result, any country can legally send them back to their country of origin or habitual residence, provided they are not protected in the context of any other legal framework.

However, it is not excluded that future case law of international or regional human rights bodies decides that the return of a person to an area where the person faces extremely severe (life

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<sup>7</sup> K. Wouters (2009), *International legal standards for the protection from refoulement*, Mortsel, Belgium: Intersentia.

<sup>8</sup> M. Morel and F. Maes (2010), 'The curious phenomenon of "environmental migration/displacement" & the role of international law in cross-border protection', in D. French (ed), *Global Justice and Sustainable Development*, Leiden, The Netherlands: Brill, pp. 273–288.

<sup>9</sup> The Convention relating to the Status of Refugees, 28 July 1951, 189 UNTS 137, amended by the Protocol relating to the Status of Refugees, 31 January 1967, 606 UNTS 267 (1951 Refugee Convention); the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), 10 December 1984, 1465 UNTS 85; the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 213 UNTS 221; and the ICCPR, see note 3.

threatening) environmental problems, constitutes a violation of human rights law (based, for example, on the right to life or the freedom from inhumane treatment).

In this respect, national policy makers are recommended to interpret the relevant human rights provisions in a progressive way and to grant a stay of deportation/removal to those environmental migrants who crossed a border and face life threatening environmental conditions upon return, following either a rapid onset or slow onset natural disaster, provided no internal flight alternative exists. In order to effectuate this, clear “survival criteria” should be developed on the national level. Stay of deportation should be linked to a legal status and in-country rights.

#### b. New rights-based framework

Under the framework of international refugee law,<sup>10</sup> granting residence and in-country rights to certain categories of forced migrants, environmental migrants are not adequately protected. Victims of sudden disasters, requiring mainly temporary protection, find themselves in a slightly better position legally seen than victims of slow-onset disasters who often need permanent protection. Additionally, the former category of victims can often rely on the (temporary) goodwill of neighbouring and other states.

However, for national authorities willing to grant protection to environmental migrants there is, to a certain extent, legal space through the instruments whose applicability is unsure though not strictly non-applicable. The problem is thus as much related to a lack of political will to protect environmental migrants as it is related to a lack of a legal framework. In this context, policy makers are recommended to interpret and apply the existing refugee instruments in such

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<sup>10</sup> The international legal framework for forced migrants who have crossed an international border consists of one international instrument, the 1951 Refugee Convention (see note 9), and four regional instruments, namely the Convention governing the Specific Aspects of Refugee Problems in Africa of the African Union (1969 AU Convention), Organization of African Unity, 10 September 1969, 1001 UNTS 45; the Cartagena Declaration on Refugees of the Organization of American States (1984 OAS Declaration), Colloquium on the International Protection of Refugees in Central America, Organization of American States, Mexico and Panama, 22 November 1984; the EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (EU Qualification Directive), Official Journal L 304, 30/09/2004 P. 12–23; and the EU Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (EU Temporary Protection Directive), Official Journal L 212, 07/08/2001 P. 12–23.

a manner that (some categories of) environmental migrants are covered and therefore can benefit from the protection offered by the instruments.

Alternatively, the international community could adopt a new asylum-like international convention, or different regional conventions, granting environmental migrants the right to enter and stay in a foreign country as well as other in-country rights. This right would be granted if the individual can prove that he/she fled his/her home because of a severe environmental disaster (either slow onset or rapid onset), that no internal flight alternative exists, and that his/her home government is unwilling or unable to protect him/her. Individuals would be able to apply for this asylum-like protection either in the home country or at the border of the host country.

While the adoption of a new legal instrument would be the ideal option for environmental migrants in need of international protection, it might be utopian, at least in the near future. The political will for this type of initiative is currently non-existent.

#### 4. Adaptation/Protection: Temporary Relocation Status (TRS)

A final policy recommendation for national governments is situated in both the adaptation and protection area. Governments should consider establishing a new migration category at national level for individuals who face an impending environmental crisis (e.g. widespread floods or severe drought) and therefore are in need of temporary relocation, as a way of coping with environmental change. Today, many people who would fall under this mechanism cross international borders in an irregular way and become undocumented migrants in a foreign country, living a fearful and highly insecure life. Seeking to reduce irregular migration flows, the temporary relocation status would be granted to individuals who have no opportunity to relocate in their home country. Based on national vulnerability assessments, the most critically affected individuals or communities can be identified and be granted the relocation status.

The temporary relocation status would ideally be applied for in the home country in the way people apply for other visa (e.g. tourists or migrant workers). Importantly, the status would not be linked to employment in the host country. While the beneficiaries of the status would have the right to search for work, having a labour contract would not be a prerequisite for eligibility. In terms of their socio-economic rights in the host country (requiring positive action from the state), policy makers are recommended to guarantee these rights (e.g. right to social benefits,

housing, work etc.) where reasonably possible. However, in the case of developing countries, this might be unfeasible.

The temporary relocation mechanism allows people to migrate before a (slow or rapid onset) disaster takes place. This anticipative migration prevents worse forms of forced migration. Hence the mechanism can be considered to constitute an adaptation strategy. On the other hand, the relocation scheme obviously aims at the protection of people who wish to avoid the worst consequences of environmental change. In this sense, the mechanism has a remedying function. Different from other protection strategies, however, temporary relocation would not be a right for those fulfilling the criteria, but a favour granted by national governments. The scheme would be quota-based.

As mentioned above, relocation of people to another country is only desired when no internal relocation alternative exists. In respect of the latter, national governments should explicitly draw resettlement policies in consultation with the people affected. For resettlement policies to be effective, resettlement personnel should be adequately trained and sufficient attention should be paid to cultural aspects.

## 5. Conclusion

Prevention and remedy, or adaptation and protection, form the two parts of a comprehensive approach to the problem of environmental migration. While the mechanism of adaptation to global environmental change aims to prevent people from being forced to migrate, the protection part seeks to offer relief to those people who have no other choice but to flee. Both adaptation and protection can take different forms, and these are fully complementary to each other. This paper discussed five recommended policy options: the development of regional environmental adaptation projects; the conclusion of bilateral or regional agreements on (circular) labour migration programmes; the establishment at national level of a temporary cross-border relocation scheme; the strategy of granting stay of deportation based on human rights law; and the adoption of a new international or regional asylum-like instrument.

What is the way forward? On the one hand, further research into these policy options is required as to better understand the opportunities they offer and potential problems they pose. On the other hand, policy makers should be adequately informed about the recommendations and encouraged to apply them in practice. In this respect, the UNFCCC climate negotiations are the proper forum.