

The concept of 'climate refugee'

Towards a possible definition

SUMMARY

According to statistics published by the Internal Displacement Monitoring Centre, every year since 2008, an average of 26.4 million persons around the world have been forcibly displaced by floods, windstorms, earthquakes or droughts. This is equivalent to one person being displaced every second. Depending on the frequency and scale of the major natural disasters occurring, there are significant fluctuations in the total number of displaced people from one year to the next, yet the trend over recent decades has been on the rise. Many find refuge within their own country, but some are forced to go abroad. With climate change, the number of 'climate refugees' will rise in the future.

So far, the national and international response to this challenge has been limited, and protection for the people affected remains inadequate. What adds further to the gap in the protection of such people – who are often described as 'climate refugees' – is that there is neither a clear definition for this category of people, nor are they covered by the 1951 Refugee Convention. The latter extends only to people who have a well-founded fear of being persecuted because of their race, religion, nationality, membership of a particular social group or political opinion, and are unable or unwilling to seek protection from their home countries. While the EU has so far not recognised climate refugees formally, it has expressed growing concern and has taken action to support and develop resilience in the countries potentially affected by climate-related stress.

This briefing is an update of an earlier one of May 2018.



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Issue

The number of international migrants worldwide [has continued to grow](#) rapidly in recent years, reaching 258 million in 2017, up from 220 million in 2010 and 173 million in 2000. Since the international conference on population and development in 1994, the issue of international migration and its relation to development has risen steadily on the agenda of the international community. The United Nations (UN) [2030 Agenda for Sustainable Development](#) includes several migration-related targets and calls for regular reviews of progress towards their achievement using data disaggregated by, inter alia, migratory status. The annual displacement of millions of persons worldwide due to environmental disasters needs to be addressed. Many find shelter within their own country, but some are forced to go abroad. In the context of climate change, such movements are likely to increase. So far, the response to this challenge has been limited, and protection for those affected remains inadequate.¹

To address the issue of such large movements of refugees and migrants, on 19 September 2016 the UN General Assembly adopted the New York Declaration for Refugees and Migrants, in which it called for the development of two global compacts, one [on refugees](#) and one [on 'other migrants'](#), endorsed on 17 December 2018 in New York and on 10 December 2018 in Marrakech respectively. While the reasons for the internal or international displacement of individual migrants or diasporas vary, the UN [Internal Displacement Monitoring Centre](#) (IDMC) and the [Norwegian Refugee Council](#) identify natural disasters as the [number one cause](#) for this phenomenon. With rising sea levels, desertification and extreme weather events, climate action must be a part of any meaningful agreement on refugees or migrants.

'Climate refugees', migrants who move due to natural disasters and climate change, are now recognised in the 2018 [global compact on safe, orderly and regular migration](#) under its Objective 2. This compact aims to protect the rights of those displaced and help address the root economic, environmental and social drivers that are compelling people to leave their communities and countries. However, the current text lacks actionable commitments to control the numerous man-made forces underlying global mass migration.

There is a clear [protection gap](#) with regard to 'climate refugees', who are [neither clearly defined](#) as a category nor covered by the 1951 Convention relating to the Status of Refugees (the 1951 Refugee Convention). The latter extends only to people who have a well-founded fear of being persecuted on grounds related to race, religion, nationality or membership of a particular social group or political opinion, and are unable or unwilling, owing to fear of persecution, to seek protection from their home countries. This definition is not applicable to people displaced for reasons related to the environment, as it would be difficult to consider environmental degradation as 'persecution' in the sense in which it is used in the Refugee Convention. It would also be necessary to link such persecution to one of the grounds set out in the convention. Therefore, environmentally induced displacement falls outside the scope of the 1951 Refugee Convention and its additional protocol. This means, for instance, that the estimated [200 000 Bangladeshis](#), who become homeless each year due to river-bank erosion, cannot easily appeal for resettlement in another country. It also means that the residents of the small islands of [Kiribati, Nauru and Tuvalu](#), where [one in ten](#) persons has migrated within the past decade, cannot be classified as refugees, even though those who remain are ['trapped' in worsening environmental conditions](#). Of the 186 countries assessed in a recent survey on climate vulnerability, [Chad was rated as facing the greatest peril](#). The fact that this country has one of the fastest-growing populations in the world only compounds the problem. In the future, environmental changes could have enormous effects on many populations, especially those in coastal and low-lying areas such as Vietnam, the Netherlands and certain parts of the US. 'Already, people are now [twice as likely to be displaced](#) than they were in the 1970s', according to Justin Ginnetti from the IDMC. This is due to the combined effect of rapid population growth, urbanisation and exposure to natural disasters.

The complex task of defining 'climate refugee'

The phenomenon of 'climate refugees' has been in the [public discourse](#) since 1985, when [UN Environment Programme](#) (UNEP) expert [Essam El-Hinnawi](#) defined 'environmental refugees' as: '... those people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardied their existence and/or seriously affected the quality of their life'. This definition is also used for the term 'climate refugees'; whether there is a practical difference between 'environmental' and 'climate' remains unclear.

One of the key challenges in securing protection for those affected by displacement as a result of climate change lies in the complexities involved in defining the term 'climate refugee', while also taking the pre-existing discourse surrounding the Refugee Convention and previous attempts to define 'environmental refugees' into account. Despite the likelihood of a growing number of climate refugees, there is no international legal recognition for such a group, even if the term 'environmental refugees' has been in use since the 1970s; the International Organization for Migration ([IOM](#)) estimates that there could be as many as [200 million such refugees by 2050](#). The meaning of the term 'climate refugee' is [most uncertain in the context of law](#) and practice. The core issue here has to do with the effectiveness of rights and the legal certainty. Where there is no legal provision for an individual right because the subject matter is not covered by law, then the individual cannot be guaranteed international protection as a matter of law. The notion of human displacement occurring as a result of climate change is a [relatively recent conceptualisation](#) compared to the more traditional ideas associated with refugees, such as persecution based on race, religion, nationality, membership in a particular social group or political opinion.

The UN Refugee Agency ([UNHCR](#)) hopes that the Nansen initiative, launched in 2012 by the governments of Norway and Switzerland, [will set an agenda](#) for future action. Part of the difficulty of planned resettlement is that there is no best practice to guide the process. According to the UNHCR, previous examples of ['development-forced displacement and resettlement \(DFDR\)'](#), where large-scale infrastructure

projects aimed at strengthening the economies of displaced people, have usually resulted in the relocated population being worse off than they were before. All too often the resettlement programmes have been so poorly planned, financed, implemented and administered, that they have left local people permanently displaced, disempowered and destitute. Ensuring that climate-induced planned resettlement is dealt with humanely and effectively will require careful policy planning so as to avoid the mistakes of the past. The term 'environmental refugee' has been advocated as a means of defining 'climate refugee'; however, it is too broad to encompass the realities of 'climate refugees'. According to academic researchers Docherty et al. (2009),² a 'climate refugee' definition should include the following parts: 'forced migration, temporary or permanent

Some commonly used definitions:

The term '**environmental refugee**' has been used in position papers presented by various NGOs, but also in the media and the academic literature. The term is especially associated with the early stages of reflection on the topic, before a distinction started being drawn between the different types of environmental change and forms of mobility. It was used to raise awareness and to focus on the forced nature of displacement. However, the use of the term and the status of 'refugee' assigned to people in this situation have subsequently been criticised, primarily because the term has a specific legal meaning in the context of the 1951 Refugee Convention and international refugee law.

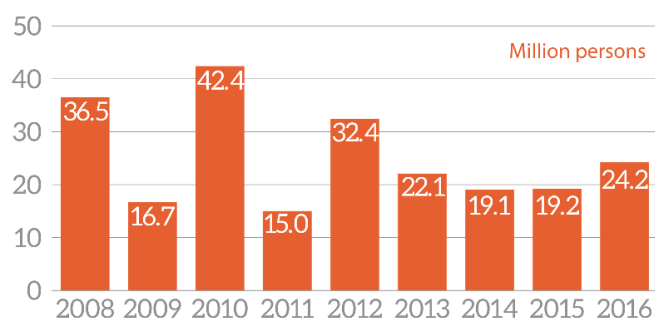
Relevant UN agencies and the IOM considered that the use of the term 'refugee' would be inappropriate in that context, and that it would not be opportune or feasible to widen the definition of refugees provided in the 1951 Refugee Convention to include additional categories of persons.

The term '**environmental migrant**' is widely used, including by the IOM. Nevertheless, the term 'migrant' might not always be considered appropriate, as it suggests a degree of volition in the decision to move.

One of the most recent terms to have gained popularity is '**environmentally/climate displaced person**'. This term is descriptive – at least of one part of the mobility spectrum (displacement) – and does not necessarily imply responsibility as regards governance. Although there is no internationally accepted legal definition of 'displaced person', the concept of 'internally displaced persons' (IDPs) is relevant when displacements occur internally.

relocation, movement across the borders, disruption consistent with climate change, sudden or gradual environmental disruption, and a more than likely standard for human contribution to the disruption'. This definition is inclusive, as it defines the circumstances of 'climate refugees'.

Figure 1 – Internal displacement of persons due to natural disasters

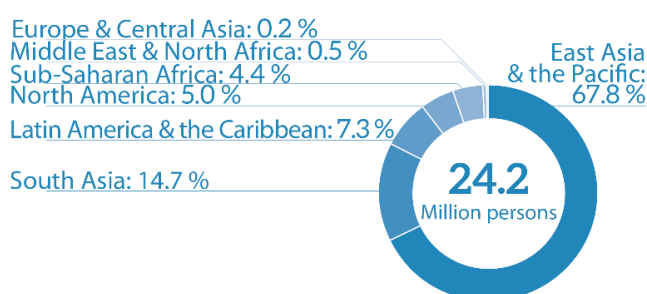


24.2 MILLION
DISPLACEMENTS ASSOCIATED
WITH DISASTERS IN 2016

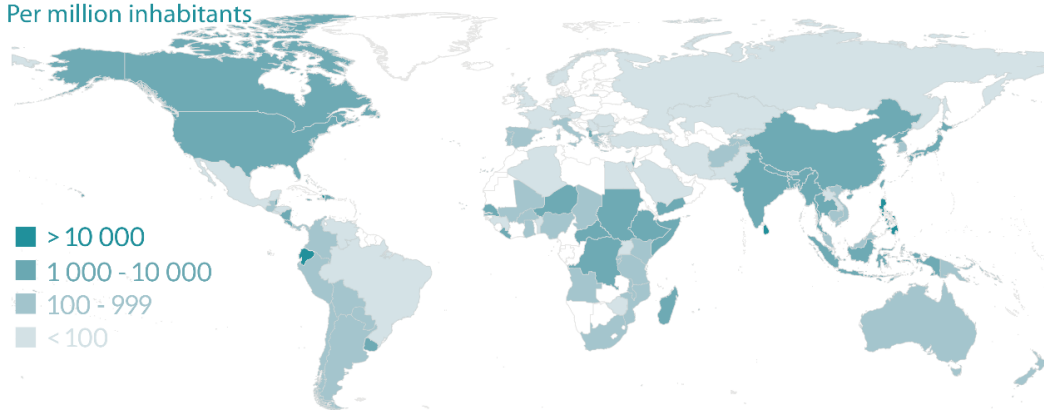
117
COUNTRIES IN THE WORLD
WITH DISASTERS IN 2016

3 254
DISPLACEMENTS IN 2016
PER MILLION INHABITANT

46
DISPLACEMENTS
EVERY HOUR IN 2016

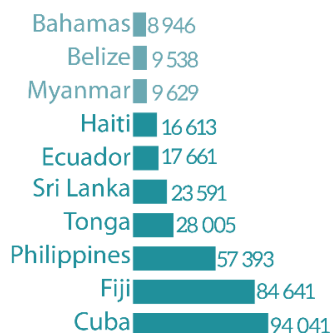


Per million inhabitants

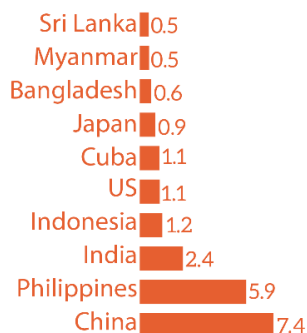


Countries with the highest number of new displacements

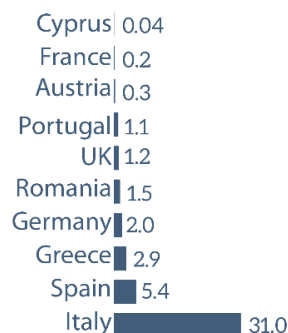
Per million inhabitants



Million persons



EU countries 1 000 persons



Internally displaced persons (IDPs): persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, as a result of or in order to avoid the effects of natural disasters, and who have not crossed an internationally recognized state border. Natural disasters refers for instance to earthquake, hurricane, typhoon, flood, volcanic eruption, tsunami, tornado, landslide, extreme temperature, etc.

Data source: [Global Report on Internal Displacement](#), IMDC, 2017. Graphic by Giulio Sabbati, EPRS.

Initially, the term 'climate refugees' [posed a threat](#) to the UNHCR, as it blurred the boundaries between the definition of refugees according to the 1951 Refugee Convention – 'Convention refugees' – and popular concepts regarding refugees. One argument frequently put forward by the UNHCR is that those displaced as a result of environmental change could, in theory, still rely on the protection of their national governments, while traditional refugees could not, as states are often the source of persecution, thus making an individual 'unwilling to avail himself of the protection of that country' as required by Article 1A(2) of the 1951 Refugee Convention. Moreover, the distinction between refugees and internally displaced persons is a fundamental and integral characteristic of traditional refugee law defining the extent to which assistance will be made available to displaced persons. Alternatively, a system that instead recognises the idea of climate change displacement at international level, while leaving the details regarding the form of agreement and degree of engagement to regional groupings, appears as possibly more responsive and appropriate to the problem. A regional system may better employ notions of subsidiarity that more accurately reflect the reality of state behaviour rather than installing a top-down legal framework.

Professor Walter Kälin, former UN representative on the human rights of internally displaced persons, together with Nina Schrepfer from the UNHCR, has produced [one of the most comprehensive works](#) on the subject to date. The work lays out the definition of climate change adopted by the UN Framework Convention on Climate Change (UNFCCC), as augmented by the four key findings of the Intergovernmental Panel on Climate Change relevant to population movement: a) reduction of available water; b) decreases in crop yields; c) risk of floods, storms and coastal flooding; and d) negative overall impacts on health (especially for the poor, elderly, young and marginalised). Kälin and Schrepfer highlight that one of the important issues regarding forced migration in the face of these risks is that of causality. Climate change may not of itself trigger a movement of people. There is rarely a direct causal link between climate change and movement; while climate-specific events, such as a particular storm, may cause movement, the link between that storm and climate change is not necessarily easy to establish. Even in circumstances where there is a direct causal link, such as rising sea levels causing small islands to become submerged, the movement of people is often the result of multiple causes. Thus, the relationship between climate-induced change and the movement of people can be seen from two very different perspectives: first, the slow onset of climate-change effects, and second, immediate disasters such as storms. There is an important temporal element inherent in climate-induced migration – if the event is one of a fairly short duration (such as the consequences of a storm) – to what extent should people who flee from the resulting devastation be obliged to return once the danger has passed? Kälin and Schrepfer identify three kinds of impediments to the forced return of people in such circumstances:

- **legal impediments** to return after the end of an environmental crisis under human rights law: whether in forcing return, the host state would expose the individual to a substantial risk of torture, inhuman or degrading treatment or punishment;
- **factual impediments:** there is no means of sending people back to the country (for instance, no airports, roads or other essential infrastructure);
- **humanitarian impediments:** where even though it is possible to return people and there is no human-rights obstacle, there are compassionate and humanitarian grounds for not sending people back.

According to the authors, so long as any one of the three situations exists, the persons affected should be classified as forcibly displaced and in need of protection and assistance from another state. They identify a number of obstacles before the engagement of migration experts in discussions on climate change, as this arguably results in inadequate responses in situations where the two issues intersect. They see the development of a new framework for the movement of people in the face of climate change as an unlikely prospect.

When considering a climate-change continuum, IDP law expert Angela Williams presents the following scenarios in her study on [Turning the tide](#): at one end of the scale is the acute form of refugee status, whereby a severe or critical problem arises as a result of environmental change, such

as the rising sea levels [submerging Tuvalu](#). At the opposite end of the continuum is located a more chronic form of displacement, where climate-induced environmental change creates refugees by way of gradually degrading resources and thereby making life increasingly difficult. This occurs where communities relocate due to, for example, an increase in flooding or problems associated with food security, but could in theory remain within that same environment, albeit under increasingly onerous and challenging conditions. In such situations, perhaps a lower level of protection (along the notion of a sliding scale) should be afforded to 'climate refugees', compared with people in acute circumstances that offer them no option of relocation. Accordingly, any definition for the conceptualisation of 'climate refugees' must incorporate individuals at both ends of the theoretical sliding scale, along with all of the scenarios that occur in between. What is [imperative when adopting a definition](#) is to address both the displacement and the causes of displacement.

Gaps in the international legal framework

Principle 1 of the 1972 Declaration of the [United Nations Conference on the Human Environment](#) (the Stockholm Declaration) states that there is 'a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being'. The Stockholm Declaration reflects a general recognition of the interdependence and interrelatedness of human rights and the environment.

While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the UN human rights treaty bodies all recognise the intrinsic link between the environment and the realisation of a range of human rights, such as the right to life, health, food, water and housing.³ The [1989 Convention on the Rights of the Child](#) provides that states parties shall take appropriate measures to combat disease and malnutrition 'through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution'.

Human rights law may be applied to climate change; however, there are challenges when utilising a human rights framework to address climate-change issues. Although human-rights treaties have been successful in many instances, these instruments do not adequately protect 'climate refugees'. Notwithstanding all of these human rights achievements, there is still no explicit right to a healthy environment under international law.⁴ The [1998 UN Guiding Principles on Internal Displacement](#) provide a framework for protecting victims of natural disasters who do not cross an international border. They offer a valuable set of legal standards for protection and have the advantage of leaving governments a wide margin of discretion regarding their implementation. Despite their focus on internal displacement, it has also been suggested by the Council of Europe that these principles could be taken as a model to develop a global guiding framework for the protection of displaced persons crossing international borders as a result of climate change and natural disasters.⁵

There are nonetheless a number of gaps and grey areas in this framework. The 1998 guiding principles are not legally binding and are [far from being correctly implemented](#), even if governments have incorporated them in domestic law and policy as well as in international agreements. These principles were used for drafting the [Kampala Convention](#) for the protection and assistance of internally displaced persons in Africa. This convention, which was adopted by the African Union in October 2009 and entered into force on 6 December 2012, is the first legally binding regional instrument in the world to impose an obligation on states to protect and assist IDPs, including persons displaced by natural or man-made disasters and development projects.

Complementary forms of protection allow states to provide protection to persons facing the prospect of being returned on human rights grounds, in cases not addressed by the 1951 Refugee Convention and its 1967 protocol. These types of protection are subsidiary to the refugee status granted under the 1951 Refugee Convention and may vary widely from one jurisdiction to another. Also, it has been argued that complementary forms of protection may be relevant for some of the

persons forced to move on a long-term basis or permanently, i.e. when there is no prospect of return in the long-term. So far, a piecemeal approach has prevailed with regard to regulating the legal status of environmental migrants/refugees, which clearly highlights the problems involved in defining what kind of migrants they are and to what extent their movement can be attributed to climate change and environmental degradation. Potentially useful frameworks exist at national, regional and international level; however, it remains to be seen whether a new specific legal framework is both necessary and feasible, or whether persons moving in the context of environmental change can be adequately assisted and protected under existing frameworks. In 2008, the [Office of the UN High Commissioner for Human Rights](#) (OHCHR) studied the effects of climate change on human rights and found three obstacles that need to be overcome before climate change could be treated as a human rights violation:

- proving that one country's emissions cause a specific effect on another country;
- showing that human rights issues are caused solely by global warming; and,
- considering the fact that the human rights framework is usually utilised in response to violations, whereas climate change regulation is concerned with potential future harm.

The [Nansen Conference on climate change and displacement](#), held in June 2011 in Norway, was an important step forward as the participants devised [10 principles on climate change and cross-border displacement](#), primarily in the context of sudden onset events. Building upon the [Kyoto Agreement](#),⁶ the principles envisaged facilitating the development of regional law and policy in response to climate change displacement. These principles set the ground for providing responses based on humanity, human dignity, human rights and international cooperation, and on the primary necessity for states to ensure a proper level of protection for their own nationals. The aim of these principles was to reinforce prevention, resilience and disaster preparedness. Building on the Nansen conference, in October 2012 Norway and Switzerland launched the [Nansen initiative](#) with the aim of addressing potential legal and protection gaps for people displaced across borders owing to environmental change and extreme weather conditions.

The main instruments that can be of reference for 'climate refugees' at present:

At international level:

- ▶ Human rights conventions;
- ▶ UN principles related to internally displaced persons;

At regional level:

- ▶ The Kampala Convention (2009);
- ▶ The Nansen Initiative (2012);

At national level:

- ▶ Subsidiary protection ([Norway](#), [Sweden](#), [Finland and Denmark](#));
- ▶ Policies facilitating economic migration ([New Zealand](#), [Spain](#)).

How climate change contributes to the refugee problem

Climate change can create refugees in a number of ways. The [consensus](#) among scientific organisations, including those represented at the [Intergovernmental Panel on Climate Change](#) (IPCC), is that the current impact of human-induced greenhouse gas emissions is of unprecedented proportions.

[The Paris COP21 Agreement](#), though it did not explicitly mention the term 'climate refugees', called for a task force to 'develop recommendations for integrated approaches to avert, minimise and address displacement related to the adverse impacts of climate change' (Article 50).⁷ [Such recommendations](#), made by the [Ad hoc working group on the Durban platform for enhanced action](#), did touch upon previous calls by various organisations, including the UN in its 1992 [Framework Convention on Climate Change \(UNFCCC\)](#), for the establishment of a climate change displacement coordination facility solely devoted to climate-induced displacement, to help coordinate the provision of emergency relief and provide relocation support.⁸ The Paris COP21 Agreement defined the overarching goals and framework for international climate action. Setting out the details,

however, is a longer process, which the countries participating in [COP22](#) have decided should be completed by the end of 2018, following the progress review that took place in 2017.

The [Marrakech Action Proclamation](#), issued by heads of state and government gathered at the COP, was widely seen as a reaffirmation of the global commitment to the Paris Agreement, despite the withdrawal of US President, Donald Trump, from the agreement. At the [UN Climate change conference 2017 \(COP23\)](#), which took place on 6-17 November 2017 in Bonn, Germany, and was presided over by the Government of Fiji, decision-makers from around the world discussed how to realise the Paris Agreement's goals. Apart from climate change mitigation, the protection of climate refugees was one of the hotly discussed topics at the summit. The [2018 UN Climate Change Conference \(COP24\)](#), held in December in Katowice, Poland, ensured the implementation of the Paris Agreement, in order to fight climate change. The EU and scores of developing countries [have pledged](#) to toughen their existing commitments to reduce greenhouse gas emissions, to enable the world to stay within a 1.5°C rise in global warming.

Towards a European framework

In his 2015 State of the Union [speech](#), European Commission President, Jean-Claude Juncker, said: 'Climate change is one of the root causes of a new migration phenomenon. Climate refugees will become a new challenge – if we do not act swiftly'. To a certain extent, EU leaders had already acknowledged that climate migration may well become a problem: in the [Stockholm programme](#), agreed upon in 2009 as the EU's main strategy for internal security, they called for greater focus on climate change as a driver of security-relevant migratory flows. A [strategy paper](#) for a European Commission project with a €179 million budget over the 2011–2013 period, which included funds for 'cooperation with third countries in the areas of migration and asylum', explicitly committed to working more on the nexus between climate change and migration. In April 2013, the Commission published [a staff working document on climate change and migration](#), in which it downplayed the likelihood of mass migration flows into Europe resulting directly from climate stress in developing countries. Instead, it focused on population movements within developing countries themselves and the related problem of internal displacement. Accordingly, it advocated building development-related resilience.

Many developing countries have urged the EU to afford climate migrants the status of refugees. However, individual EU Member States have not supported the idea of creating a new category, that of 'climate refugee'. The Commission's Directorate-General for Migration and Home Affairs had suggested a status of 'permanently forced migration' as a new category to get around the refugee problem, and the above-mentioned April 2013 document argued that there was no need for 'refugee-type protection' specifically on climate-related grounds. Later, this view evolved, as evidenced by Jean-Claude Juncker's 2015 State of the Union speech.

The Paris Agreement includes [three important elements](#) for human mobility issues.

1. The agreement's preamble recognises that climate change is a common concern of humankind and includes a reference to migrants, asking parties to respect, promote and consider their respective obligations towards migrants, among others, when taking actions to address climate change.
2. The agreement contains many references to the protection of people, the resilience of communities and the importance of livelihoods. These are essential entry points for addressing environmentally-linked root causes of forced displacement, such as the lack of access to water, food, energy or livelihood opportunities enabling people to remain where they live.
3. Finally, the agreement requests the Executive Committee of the Warsaw International Mechanism (WIM) to establish a task force on displacement. Paragraph 50 of the decision text requests 'the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.' This is also an acknowledgment of the dangers of displacement and a welcome recognition of climate change as a factor of displacement.

In its publication series on [Migration in Response to Environmental Change](#), the Commission's Directorate-General for Environment argued that migration patterns to the EU are already being affected by climate change, and that 'climate refugees' may not only be individuals coming to the EU, but also EU citizens moving within Member States. The point that 'climate refugees' can also be EU citizens is an interesting one from a legal perspective; such situations are mainly regulated by the provisions on the free movement of persons built into EU law, and to some extent by those set out in the EU Charter of Fundamental Rights. The main challenge remains for those arriving to the EU from outside. A 2016 Commission staff working document on the [Next steps for a sustainable European future](#), which reports on the implementation of the [UN Sustainable Development Goals](#), makes references to migration in relation to Goal 10: reducing the inequality within and among countries as a need to reduce the irregular migration to the Union and to 'build dialogue and partnerships with countries of origin and transit, based on solidarity and shared responsibility'. Migration is viewed in the context of human development, one of the five priority areas in the 2014- 2017 [Roadmap for the Joint Africa-EU strategy](#). Furthermore, the roadmap states that the EU will cooperate with the African nations in 'the field of international protection and asylum' and work on promoting respect for migrants' human rights. Africa is one of the regions that will be the most negatively affected by climate change, which poses a threat to lives, livelihoods and access to food and water.

In a 2011 study on [climate refugees](#), the European Parliament noted that the term is not legally recognised by the EU and that it is not possible to interpret existing legislation as incorporating 'climate refugees' within the protection regime. The study further held that the EU would need to introduce provisions to the asylum legislation that cover persons displaced as a result of both rapid- and slow-onset climate events. Such a move would provide 'climate refugees' with the legal status they are currently lacking. The [Temporary Protection Directive](#) (TPD) could be applied in case of a massive influx of migrants to the EU. The TPD was created as a response to people fleeing armed conflict, as well as to people who are at serious risk of, or are victims of, systematic or generalised violations of human rights. The above-mentioned 2013 Commission staff working document noted that the open definition of 'mass influx' means that the TPD could also apply to 'climate refugees'. However, a 2016 Commission [study on the TPD](#) did not mention climate change, disaster or the environment. On the other hand, the TPD was not mentioned in the 2015 Commission communication on [A European Agenda on Migration](#), which identified climate change as a root cause of irregular and forced displacement in third countries and called for the prevention and mitigation of this 'threat'. Overall, the issue of climate change was missing from the 2011 Commission communication on [The Global Approach to Migration and Mobility](#) (GAMM); however, the document pointed out that 'addressing environmentally induced migration, also by means of adaptation to the adverse effects of climate change, should be considered part of the Global Approach'. It is therefore difficult to draw any solid conclusions regarding the legal status of 'climate refugees' on the basis of the main EU instruments on migration.

A 2017 Parliament resolution on [Addressing refugee and migrant movements: the role of EU external action](#) stressed that EU development cooperation should continue to address and effectively tackle the root causes of forced displacement and migration, including lack of economic opportunities and climate change, in line with Goal 16 in the 2030 Agenda for Sustainable Development and the principles laid down in the UN Charter and international law. It also called on the EU and its Member States to take their responsibilities seriously concerning the challenge of climate change, to swiftly implement the Paris Agreement and to take a leading role in recognising the impact of climate change on mass displacement, given that the scale and frequency of displacements are likely to increase. It took the view that persons displaced by the effects of climate change should be given a special international protection status that takes account of the specific nature of their situation. In its resolution on [Progress on UN Global compacts for safe, orderly and regular migration and on refugees](#) of 18 April 2018, the European Parliament emphasises that focus should be retained on addressing the diverse drivers of irregular migration and forced displacement

(conflict, persecution, ethnic cleansing, generalised violence or other factors such as extreme poverty, including climate change or natural disasters).

Outlook

In the long term, it is possible that the conclusion and acceptance of various regional agreements concluded within the remit of the global compact on migration and the international climate change framework would lead to the creation of customary international law. While this clearly remains a far-reaching proposition at present, it is worth recognising that the climate change-related body of law in individual states has developed significantly over a comparatively short time, and that ultimately it is through such state practice that customary law evolves.

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ENDNOTES

¹ Throughout this briefing, unless otherwise indicated, the term 'refugee' is used in its most general sense to refer to persons experiencing displacement, whether internal or trans-border. Where the term is intended to have the meaning of the definition included in the 1951 Refugee Convention, (i.e. among other things, excluding internally displaced persons), this is duly indicated. Initially, the 1951 Refugee Convention only applied to 'events occurring before 1 January 1951,' but this scope was later extended by the 1967 Protocol Relating to the Status of Refugees. The 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa includes in its definition of 'refugee', people displaced as a result of 'events seriously disturbing public order in either part or the whole of his country of origin or nationality' (Article 1(2)). South Africa's 1998 Refugees Act adopts the wider definition set out by the OAU, rather than the narrower definition identified by the 1951 Refugee Convention (see Section 3 of the Act, which defines 'refugee status'). The 1984 Cartagena Declaration on Refugees (Central America) concludes that it is necessary to consider enlarging the concept of a refugee so as to include 'persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order' (Paragraph III(3)).

'Internally displaced persons' (IDPs) are defined in accordance with the 1998 UN Guiding Principles on Internal Displacement as: 'Persons or groups of persons who have been 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.'

'New displacement' represents the estimated number of persons newly displaced by the threat or impact of a disaster.

² See, Bonnie Docherty & Tyler Giannini, Symposium: Confronting a Rising Tide: A Proposal for a Climate Refugee Treaty, 33 *Harvard EVTL L. Rev.* 349, 372, 385 (2009).

³ ILO Convention No 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries provides for special protection of the environment of the areas which indigenous peoples occupy or otherwise use. At the regional level, the African Charter on Human and Peoples' Rights and the San Salvador Protocol to the American Convention on Human Rights recognise the right to live in a healthy or satisfactory environment. Moreover, many national constitutions refer to a right to an environment of a certain quality.

⁴ The International Covenant on Civil and Political Rights (ICCPR) adopted in 1966, includes a provision for the right to life (Article 6(1)). The [OHCHR found](#) that though climate change is not explicitly mentioned in either the ICCPR or the International Covenant on Economic, Social and Cultural Rights (ICESCR), also adopted in 1966, climate change does have an impact on the right to life, water and health.

⁵ See [Resolution 1862 \(2009\)](#) of the Parliamentary Assembly of the Council of Europe, point 6.5, which states 'encourage the United Nations and its other relevant partners to seek avenues for extending the Guiding Principles to include

people displaced by gradual environmental degradation, and to consider developing similar guiding principles or guidelines to cover the rights of those moving across international borders for compelling environmental reasons ("external displacement").

⁶ The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change, which commits its parties by setting internationally binding emission reduction targets. Recognising that developed countries are principally responsible for the current high levels of GHG emissions in the atmosphere as a result of more than 150 years of industrial activity, the protocol places a heavier burden on developed nations under the principle of 'common but differentiated responsibilities'. The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997 and entered into force on 16 February 2005. The detailed rules for the implementation of the protocol were adopted at COP7 in Marrakesh, Morocco, in 2001, and are referred to as the 'Marrakesh Accords'. Its first commitment period started in 2008 and ended in 2012. On 8 December 2012 in Doha, Qatar, the 'Doha Amendment to the Kyoto Protocol' was adopted. The amendment includes:

- new commitments for Annex I parties to the Kyoto Protocol which agreed to take on commitments in a second commitment period from 1 January 2013 to 31 December 2020;
- a revised list of greenhouse gases (GHG) to be reported on by parties in the second commitment period; and
- amendments to several articles of the Kyoto Protocol that specifically referenced issues pertaining to the first commitment period and that needed to be updated for the second commitment period.

On 21 December 2012, the amendment was circulated by the Secretary-General of the United Nations, acting in his capacity as depositary, to all parties to the Kyoto Protocol in accordance with Articles 20 and 21 of the protocol. During the first commitment period, 37 industrialised countries and the European Community committed to reducing GHG emissions to an average of 5 % against 1990 levels. During the second commitment period, the parties committed to reducing GHG emissions by at least 18 % below 1990 levels between 2013 and 2020; however, the composition of parties in the second commitment period is different from the first. The Kyoto Protocol is seen as an important first step towards a truly global emission-reduction regime that will stabilise GHG emissions, and can provide the architecture for the future international agreement on climate change.

In Durban, [the Ad hoc working group on the Durban platform for enhanced action \(ADP\)](#) was established to develop a protocol, another legal instrument or an agreed outcome with legal force under the 1951 Refugee Convention, applicable to all parties. The ADP completed its work in 2015, in order to adopt this protocol, legal instrument or agreed outcome with legal force at the 21st session of the Conference of the Parties and for it to come into effect and be implemented from 2020.

⁷ Article 50. 'Also requests the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.'

⁸ The UNFCCC is a 'Rio convention', one of three adopted at the 1992 [Rio Earth Summit](#). Its sister Rio conventions are the UN Convention on Biological Diversity and the Convention to Combat Desertification. The three are intrinsically linked. It is in this context that the Joint Liaison Group was set up to boost cooperation among the three conventions, with the ultimate aim of developing synergies in their activities on issues of mutual concern. It now also incorporates the [Ramsar Convention](#) on Wetlands. Preventing 'dangerous' human interference with the climate system is the ultimate aim of the UNFCCC.

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