

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



**"Climate refugees"**  
**Legal and policy responses to**  
**environmentally**  
**induced migration**

STUDY





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

## **“Climate Refugees”**

### **Legal and policy responses to environmentally induced migration**

**STUDY**

#### **Abstract**

This study sets out to examine the legal and policy aspects of climate and environmental related displacement. It assesses to what extent the current EU framework for immigration and asylum in general and the specific instruments in regard to asylum in particular already offer adequate response to climate induced displacement and how the legal framework could evolve in order to provide an improved response to the phenomenon of environmentally induced migration. The study also clarifies in which way such a modified legal framework can be rooted in the Lisbon Treaty including the Charter of Fundamental Rights of the European Union.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

## **AUTHORS**

Mr Albert KRALER, Acting Programme Manager, Research & Documentation, ICMPD  
Ms Tatiana CERNEI, Associate Research Officer, ICMPD  
Ms Marion NOACK, Research Assistant, ICMPD

## **Advice:**

Martin HOFMANN, Programme Manager, Legal Migration and Integration, ICMPD  
Martin WAGNER, Programme Manager, Asylum, ICMPD  
Ms Angelika POHNITZER, Project Manager, Quality Manager, ICMPD

## **RESPONSIBLE ADMINISTRATOR**

Mr Jean-Louis ANTOINE-GREGOIRE  
Policy Department C - Citizens' Rights and Constitutional Affairs  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

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## **ABOUT THE EDITOR**

To contact the Policy Department or to subscribe to its newsletter please write to:  
[poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

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## LIST OF ABBREVIATIONS

- AWG-LCA** Ad Hoc Working Group on long-term Cooperative Action
- CEAS** Common European Asylum System
- CJEU** Court of Justice of the European Union
- EC** European Commission
- ECHR** European Convention on Human Rights
- ECtHR** European Court of Human Rights
- EDP** Environmentally Displaced Persons
- EIPM** Environmentally Induced Population Movements
- ERF** European Refugee Fund
- IASC** Inter Agency Standing Committee
- ICISS** International Commission on Intervention and State Sovereignty
- IDPs** Internally Displaced Persons
- IOM** International Organisation for Migration
- ISS** Institute for Security Studies
- MS** Member State
- NAPAs** National Adaptation Programmes of Action
- TFEU** Treaty on the Functioning of the European Union
- TEU** Treaty on European Union
- THP** Temporary Humanitarian Protection
- TPS** Temporary Protection Status
- UDHR** Universal Declaration of Human Rights

**OCHA** Office for the Coordination of Humanitarian Affairs

**TCNs** Third Country Nationals

**UN** United Nations

**UNEP** United Nations Environment Programme

**UNFCCC** United Nations Framework Convention on Climate Change

**UNHCR** United Nations High Commissioner for Refugees

**UNU-EHS** United Nations University's Institute for Environment and Human Security

## **EU MEMBER STATES COUNTRY CODES**

<b>AT</b>	Republic of Austria
<b>BE</b>	Kingdom of Belgium
<b>BG</b>	Republic of Bulgaria
<b>CZ</b>	Czech Republic
<b>CY</b>	Republic of Cyprus
<b>DE</b>	Federal Republic of Germany
<b>DK</b>	Kingdom of Denmark
<b>EE</b>	Republic of Estonia
<b>EL</b>	EL Hellenic Republic
<b>ES</b>	ES Kingdom of Spain
<b>FI</b>	Republic of Finland
<b>FR</b>	French Republic
<b>HU</b>	Republic of Hungary
<b>IE</b>	Ireland
<b>IT</b>	Italian Republic
<b>LT</b>	Republic of Lithuania
<b>LU</b>	Grand Duchy of Luxembourg
<b>LV</b>	Republic of Latvia
<b>MT</b>	Republic of Malta
<b>NL</b>	Kingdom of the Netherlands
<b>PL</b>	Republic of Poland
<b>PT</b>	Portuguese Republic
<b>RO</b>	Romania
<b>SE</b>	Kingdom of Sweden
<b>SI</b>	Republic of Slovenia
<b>SK</b>	Slovak Republic
<b>UK</b>	United Kingdom of Great Britain and Northern Ireland

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## EXECUTIVE SUMMARY

### Background

Environmentally induced migration has gained enormous attention from researchers, activists and the media in recent years. Various analysts have proffered estimates as to the number of environmentally induced migrants. The most influential estimates put the number of 'environmental migrants' at 200 million by 2050. However, most of these estimates are based on a rather poor understanding of migration dynamics and are rather crudely derived from estimates of persons likely to be seriously affected by environmental events and adverse long-term changes. While there is consensus that environmental factors play an important role in relation to migration patterns, there has been no agreement on how environmental factors impact on migration, forced migration and displacement. There has also been no agreement on terminology, which is reflected in the contrasted terms used to describe the phenomenon, such as 'climate refugees' vs. 'environmental migrants'.

Although the policy debate lags considerably behind the academic discussions, environmentally induced migration has become a topical issue at a policy level. In the European context, the European Commission has recently initiated a targeted consultation to discuss the linkages between migration and climate change. The outcomes will feed into the communication package on the revision of the Global Approach on Migration which will be adopted in November 2011. The Stockholm Programme, adopted by the European Council in 2009, also underlined the need to address this issue.

It is therefore necessary to assess whether the current EU framework for immigration and asylum is adequate to respond to the phenomenon of environmentally induced migration and to determine how the legal framework could evolve to better respond to environmentally induced migration.

### Aim

The study aims to analyze and review both the status quo as well as the possible evolution of the policy framework currently in place in order to arrive at more comprehensive responses to environmentally induced migration, while establishing the possible legal bases of different types of responses within the Treaty of Lisbon.

The first part of the study aims to develop a typology of environmentally induced migration which serves as a basis for identifying adequate policy responses, as well as different forms and dimensions of this phenomenon.

The second part focuses on a revision of the global debates on policy responses to environmentally induced displacement, which embeds the analysis of the European policy context in wider global policy debates and provides the framework under which the European policy framework is analyzed.

The third and core part of the study looks at the policy framework in place at the level of the European Union to identify possible policy responses under the current EU policy

framework that would address environmentally induced displacement as well as gaps and possible directions for how this framework can evolve.

### KEY FINDINGS

- Climate change and environmental factors can **exacerbate migration pressure** and it is very likely that these weather events will contribute to an increased level of mobility and changing migration patterns.
- Climate change will be **experienced very differently** depending on the vulnerability and adaptation capacities of the affected populations and the rapidity and severity of events.
- A major distinction can be made between **rapid-onset climate events** describing extreme weather events, **slow-onset climate events** comprising drought, desertification and land degradation and **sea-level rise**.
- The **links between drought, desertification and migration are complex** and difficult to identify because changes are slow and it is difficult to assess to what extent these contribute to migration.
- Although migration resulting from environmental change can be perceived as a failure to adapt, migration can also be seen an effective **adaptation strategy** to worsening conditions.
- Because of the fact that the term environmental refugee has been challenged both in the academic and political debate, we suggest to use the more general term of **“environmentally induced migration”** to denote the broader phenomenon and **“environmentally induced displacement”** to denote forced forms of mobility primarily engendered by environmental change.
- We propose to further differentiate between **temporary forms** of environmentally induced displacement and **permanent forms** because both scenarios require different protections mechanisms.
- Several **protection gaps** exist regarding environmental induced displacement, in particular in the case of slow-onset migration and displacement across borders.
- Different policies and responses are needed at **each stage of environmentally induced migration**, ranging from actions to mitigate climate change, the offer of protection during the phase of displacement and (re)integration or resettlement measures in the last stage.
- Although the **extension of the scope of the Geneva Refugee Convention** is often cited as one possible option to address the protection gap, there is growing consensus that it is neither a realistic nor a desirable scenario.
- Although the option of **broadening the guiding principles on internally displacement** is discussed as the most promising approach in the literature it is

challenging considering the deficiencies in their implementation and their incorporation into national legal frameworks.

- The **creation of a specific legal framework** which applies to environmental induced migration is unlikely to materialize.
- Another discussed option at the global level is the **addition of a protocol** on climate-induced migration to the **United Nations Framework Convention on Climate Change**.
- At the EU level, there is currently no distinct **instrument applicable to 'environmentally displaced individuals'**.
- Although there are arguments that the **Temporary Protection Directive might be applicable** in the case of a mass influx of environmental displaced individuals it needs to be activated by way of a Council Decision and thus is subject to a high political threshold which makes it difficult to apply even in cases for which it was designed to respond.
- The **Lisbon Treaty provides for the necessary grounds** for a revision of asylum and immigration policy in order to regulate the status of the 'environmentally displaced individuals'.
- Despite the considerable number of the non harmonised protection statuses in EU MS that can be granted under the asylum framework, **only several countries' legislation explicitly consider environmentally displaced individuals**. Nevertheless, these cases can be considered as **'good practice'** for other MS or a model for EU legislation in amending the legislation in force.
- The **resettlement of individuals** from countries that have experienced environmental disasters is an important solution that should be considered by the EU. Nonetheless, a coherent and pragmatic coordination mechanism among MS is required.
- The **Global Approach framework** can be used to enhance the protection of environmental displaced individuals outside the European Union. Besides strengthening resilience capacities of third countries through development and humanitarian aid, the Global Approach can also be used to strengthen protection mechanisms existing in countries of origin.
- Based on a **human rights based approach** rooted, amongst others, in the European Charter of Fundamental Rights existing policies could be reviewed and additional mechanisms considered.

## RECOMMENDATIONS

As at the international level the legal debate is unlikely to be solved in the near term, the EU may decide to be one of the pioneers in this field, in particular because there are already attempts at the political level to consider environmentally displaced individuals under the Common European Asylum Policy. In light of the above, we put forward the following recommendations to the European Parliament with the aim of offering different possible mechanisms to be considered by the EU in dealing with environmentally displaced individuals:

1. The EU should consider further developing complementary forms of protection. This may initially be limited to an *ad hoc* mechanism and made dependent on the further evolution of the situation in the country of origin. Current national approaches regarding non-harmonised protection statuses can be used as a model for the European legislator in amending the content of the Qualification Directive. As long as the reasons listed in the Article 15 shall be applicable to qualify for subsidiary protection, an amendment to its paragraph (c) might include, in addition to armed conflict, also environmental disasters.
2. There are strong arguments that, in the case of a mass influx of environmentally displaced individuals, the financial and political mechanisms available under the Temporary Protection Directive might be applicable. However, a more flexible and at the same time more objective mechanism to activate the directive should be considered, as the directive currently can only be activated upon a commission proposal and a related decision by the Council.
3. A holistic approach covering all the aspects of environmentally induced migration is a more relevant approach, engaging a comprehensive instrument for environmentally displaced individuals that would regulate the procedure and method, including the rights and obligations, for granting protection to victims of environmental displacement.
4. The EU should consider ad hoc mechanisms informed by a rights-based approach and existing instruments regarding legal and irregular migration (for example prolongation of residence titles for third-country nationals whose countries have been affected by environmental disasters, postponement of removal, etc).
5. The EU should promote the resettlement of individuals from countries that have experienced environmental disasters and further develop the Joint EU Resettlement Programme.
6. Under the Global Approach third countries affected by climate change related phenomena should be assisted in order to support the national institutions in dealing with adverse environmental change. Measures may comprise strengthening the adaptation and resilience capacities of third countries to reduce the vulnerability of affected populations and enhancing the protection of environmental displaced individuals outside the European Union. The EU should consider providing support to local

governments to address migration as an adaptation strategy and to facilitate migration while ensuring that the rights of the migrants are protected during the whole migration cycle. The mobility partnerships would be, in principle, a relevant instrument to bilaterally cooperate on all sorts of measures regarding environmentally displaced.

## 1. INTRODUCTION

The past decade has seen an enormous growth of studies on environmentally induced migration. While there is agreement that environmental factors can, and in fact do play an important role in relation to patterns of mobility, migration and displacement, there has been no agreement on terminology, nor on how environmental factors precisely impact migration and specifically, how environmental events may engender forced migration and displacement. This is reflected in, amongst others, the contrasting terms used to denote the phenomenon, such as environmental *refugees* vs. environmental *migrants* or *climate refugees* vs. *environmental refugees*.

While the academic debate on environmentally induced migration has considerably evolved over the past decade, the policy debate still lags behind. Nevertheless, environmentally induced migration has also become a more and more topical issue on the policy level, notably in the context of international efforts to counter climate change and its effects. Forced displacement as a result of environmental factors has been addressed in several contexts on the global level. The international community is also paying attention to the ways in which the rights of displaced people might be better protected.

It is against this background that the overall aim of the study is to provide a systematic review of the legal aspects of environmentally induced migration in general, and environmentally induced displacement in particular; to deduce to what extent the current EU framework for immigration and asylum in general and the specific instruments in regard to asylum in particular already offers instruments adequate to respond to environmentally induced migration; and to determine how the legal framework could evolve in order to provide an improved response to the phenomenon of environmentally induced migration. Finally, the study also aims at clarifying in which way such a modified legal framework can be rooted in the Lisbon Treaty also in relation to the Charter of Fundamental Rights of the European Union.

Any policy response, however, must be based on a clear understanding and a clear typology of the phenomenon of environmentally induced migration, which helps to disentangle and reflect different dimensions of the phenomenon as well as the varied impact of different types of environmental factors on patterns of movement in general and displacement in particular.

The **first part** of this briefing paper focuses on the **development of a typology of environmentally induced migration** which can serve as a basis for identifying adequate policy responses, and in particular to identify policy responses for different forms and dimensions of the phenomenon. This typology will then be used to assess to what extent the current EU policy framework already would be able to respond to environmentally induced migration. In this briefing paper, we use the more general term of environmentally induced migration to denote the broader phenomenon of mobility related to environmental change and environmentally induced displacement to denote forced forms of mobility primarily engendered by environmental change. In general, it is the aim of the proposed typology to identify to what extent such environmentally induced migration can reasonably be interpreted as a forced form of displacement in such a way that an expanded refugee protection framework would be able to accommodate such forms of migration.

The task of the **second part** of the briefing paper is to **review the global debates on policy responses** to environmentally induced displacement. This review will embed the analysis of the European policy context in wider global policy debates and will provide a framework under which the European policy framework can be analysed.

The **third and core part** of this paper looks at **the policy framework in place at the level of the European Union** to identify possible policy responses under the current EU policy framework that would address environmentally induced displacement as well as gaps and possible directions for how this framework can evolve. The analysis will review both the status quo as well as the possible evolution of the policy framework in place in order to arrive at more comprehensive responses to environmentally induced migration, while establishing the possible legal bases for different types of responses within the Treaty of Lisbon. In addition, we also review whether existing legal instruments in individual member states may respond to environmental induced displacement and whether 'good practices' at national level can be a model for the European legislator.

## 2. TOWARDS A TYPOLOGY OF ENVIRONMENTALLY INDUCED MIGRATION

### KEY FINDINGS

- Climate change and environmental factors can **exacerbate migration pressure** and it is very likely that these weather events will contribute to an increased level of mobility and changing migration patterns.
- Climate change will be **experienced very differently** depending on the vulnerability and adaptation capacities of the affected populations and the rapidity and severity of events.
- A major distinction can be made between **rapid-onset climate events** describing extreme weather events, **slow-onset climate events** comprising drought, desertification and land degradation and **sea-level rise**.
- The **links between drought, desertification and migration are complex** and difficult to identify because changes are slow and it is difficult to assess to what extent these contribute to migration.
- Although migration resulting from environmental change can be perceived as a failure to adapt, migration can also be seen an effective **adaptation strategy** to worsening conditions.
- Because of the fact that the term environmental refugee has been challenged both in the academic and political debate, we suggest to use the more general term of **"environmentally induced migration"** to denote the broader phenomenon and **"environmentally induced displacement"** to denote forced forms of mobility primarily engendered by environmental change.

- We propose to further differentiate between **temporary forms** of environmentally induced displacement and **permanent forms** because both scenarios require different protections mechanisms.

## 2.1 The relationship between migration and environmental change

Experts generally agree that a direct link between environmental factors and migration is not easy to identify. However, the scarcity of reliable information on this issue together with the divided opinion of experts contributed to highly politicized discussions around the potential existence of environmental refugees.<sup>1</sup> When the term “environmental refugees” was first introduced in the 1970s experts were divided in their characterization of the phenomenon and generally fell into two groups: the alarmists who see environment as the direct cause of population movements and predict that hundreds of millions will be affected and the skeptics who are questioning the simplified models used to generate these estimates.<sup>2</sup> The most quoted prediction estimate that 200 Mio people will be forced to migrate due to climate change by 2050.<sup>3</sup> Natural scientist<sup>4</sup> dealing with climate change have tended to join the alarmist group and have used the notion of ‘environmental refugees’ to lobby for increased efforts for environmental protection<sup>5</sup> while migration experts have tended to join the sceptics’ side, amongst others to avoid a potential backlash against migrants in general.<sup>6</sup> Despite the recently increasing interest of migration experts in environmental migration the the links between environmental conditions and migration is not completely new. However, while some of the early theories of migration considered environmental and climatic factors for explaining migration at least partially<sup>7</sup> these aspects progressively disappeared from the migration literature over the last century.<sup>8</sup> The limited attention paid to environmental conditions in contemporary migration research partly explains the dominance of the alarmist group – dominated by natural scientists – within the migration and climate change discourse.

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<sup>1</sup> See Cecilia Tacoli (2009): Crisis or Adaptation? Migration and climate change in a context of high mobility, p. 4 Available at: <http://www.unfpa.org/webdav/site/global/users/schensul/public/CCPD/papers/Tacoli%20Paper.pdf> (consulted on 27.07.2011).

<sup>2</sup> See Susan Martin (2010): Climate Change and International Migration. Background paper WMR 201, 5 Available at: [http://publications.iom.int/bookstore/free/WMR2010\\_climate\\_change\\_migration.pdf](http://publications.iom.int/bookstore/free/WMR2010_climate_change_migration.pdf) (consulted on 27.07.2011).

<sup>3</sup> See Stern Review Team (2006): The Economics of Climate Change. London: HM Treasury, available at: [http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/independent\\_reviews/stern\\_review\\_economics\\_climate\\_change/stern\\_review\\_report.cfm](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm), p. 56. (consulted on 27.07.2011).

<sup>4</sup> Although natural scientists play a more dominant role in the alarmist group, also social scientists can be found among the alarmists. See for example Rafael Reuveny (2008): Ecomigration and violent conflict: case studies and public policy implications. *Human Ecology*, Vol. 36, No. 1, pp. 1-13.

<sup>5</sup> See James Morissey (2009): Environmental Change and Forced Migration: A State of the Art Review. Oxford: Refugee Studies Centre, p. 8. Available at: <http://www.rsc.ox.ac.uk/events/environmental-change-and-migration/EnvChangeandFmReviewWS.pdf>. (consulted on 27.07.2011).

<sup>6</sup> See Martin 2010 op.cit.

<sup>7</sup> See for example Ravenstein's Laws of Migration. Ravenstein, however, mainly focused on the question on how similarity of climate between country of origin and destination impacted on the ‘success’ of migration projects, explicitly framed in an imperial context. See Ernest George Ravenstein (1889): The Laws of Migration. In: *Journal of the Royal Statistical Society*, Vol. 52, No. 2.

<sup>8</sup> See Etienne Pigué, Antoine Pécoud, Paul de Guchteneire (2011): Introduction: migration and climate change. In: Etienne Pigué, Antoine Pécoud, Paul de Guchteneire (ed.): *Migration and Climate change*. UNESCO, pp. 1-34. The consideration of environmental factors in explaining migration, however, continued to play an important role in disciplines such as ecology, evolutionary biology, and certain subfields of geography, which however rarely connected to the social sciences and often saw themselves as natural sciences.

Although the expert opinion on environmental migration is still fragmented and alarmist predictions remain a way to catch the interest of the public, views of migration specialists, on the one hand, and environmental scientists, on the other, have come. Thus, environmental scientists are now more cautious to estimate the numbers of potentially affected people and migration experts increasingly include the role of environmental conditions in their research on migration dynamics.<sup>9</sup> There is growing consensus on the multiple and overlapping causes and motivations in migration flows which is increasingly supported by empirical evidence.<sup>10</sup> The different types of 'environmental migration' hardly ever have only one single cause. Environmental degradation normally forms only one of the causes, closely linked to other factors such as social and economic exclusion, poverty and inequitable distribution of resources, land issues, demographic developments, institutional constraints, inter-group tensions and conflict in countries of origin as well as several factors in countries of destination. To identify the 'primary cause' of those movements might be impossible as several causes reinforce each other.<sup>11</sup> Therefore, 'Environmental migration' includes all movements, which are mainly driven by an environmental factor, irrespective of whether these movements cross international borders or remain inside the country, whether they are of a voluntary or forced nature, or a combination of both categories.<sup>12</sup>

The degree to which environmental change will lead to mass displacement is debated also because of the level of uncertainty about the effects of environmental change in general.<sup>13</sup> The understanding of the complex relationship between environmental change and migration also requires taking human agency into consideration. Therefore, a prediction of the impact of climate change on migration is difficult to make because changes will have a different impact on regions "because of the variable coping capacities of the local social, political and economic structures".<sup>14</sup> This points to the fact that people have not the same access to resources which are necessary to adapt to environmental change and can be described in terms of vulnerability or adaptive capacity.<sup>15</sup> "Vulnerability to climate change is the degree to which geophysical, biological and socio-economic systems are susceptible to, and unable to cope with, adverse impacts of climate change."<sup>16</sup> The occurrence of migration therefore depends on the ways in which population affected by adverse environmental changes are able to respond and adapt. The identification of so called 'hot-spots' - regions likely to be affected by climate change - does thus not imply that migration will necessarily occur in these geographical zones.<sup>17</sup>

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<sup>9</sup> See Piguet et al 2011 op. cit.

<sup>10</sup> See e.g. the outcomes of the EC-financed project "Environmental Change and Forced Migration Scenarios (EACH-FOR)", available at: [www.each-for.eu](http://www.each-for.eu).

<sup>11</sup> See Piguet et al 2011 op. cit.

<sup>12</sup> Council of Europe, Environmentally induced migration and displacement: a 21st century challenge, Report Committee on Migration, refugees and Population, Rapporteur: Tina Acketoft, Council of Europe Parliamentary Assembly, Doc 11785, 23 December 2008, p. 3.

<sup>13</sup> See Anthony Oliver-Smith (2009): Nature, Society, and Population Displacement. Toward an Understanding of Environmental Migration and Social Vulnerability. InterSecTions, Publication Series of UNU-EHS.

<sup>14</sup> Camillo Boano, Roger Zetter & Tim Morris (2008): Environmentally displaced people. Understanding the linkages between environmental change, livelihoods and forced migration. Oxford: Refugee Studies Centre

<sup>15</sup> See Boano, Zetter & Morris 2008 op. cit., p. 18, Tacoli 2009 op. cit., p. 4 and Robert McLeman (2011): Climate change, migration and critical international security consideration. Geneva: IOM.

<sup>16</sup> Martin Parry et al. (2007): Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge University Press, Cambridge, p. 783.

<sup>17</sup> See Piguet et al 2011 op. cit., p. 13.

However, climate change is also likely to impact differently on different social groups. In particular, as a result of the fact that migration is a social process which is inherently gendered, climate and environmental change will generate different migratory experiences and impacts for women and men. First of all, women in their social location as care-givers may have different attitudes in respect to dealing with environmental degradation and environmental disasters which may influence the household's decision for instance for earlier evacuation.<sup>18</sup>

Women are also increasingly migrating on their own due to shifts in the global labour demands and the cultural expectation that women are particular suitable for domestic employment opportunities. Therefore, women are increasingly carrying the burden of their households. The migration of women can also have emancipating effects due to increased wage-earning potential and personal autonomy. But depending on the household characteristic, the out-migration of women does not necessarily translate into more egalitarian household divisions of labour and can even reinforce patriarchal gender relations.

The migration decision of women is also influenced by cultural norms and/or the life- and family cycle. The obligations women may have towards parents and children can be a barrier of migration. The impact of women's out migration on other women in the household or the extended family is also an area which is not yet well explored.

But women are also affected by environmentally induced migration when they are not migrating themselves. Male out-migration often results in increased workloads for the women left behind. The increased reliance on male-dominated migrant incomes can also have detrimental effects on female empowerment.

In general, the impacts of migration on gendered roles vary by household characteristics, cultural setting and the migrant experience and therefore have to be assessed on a case to case basis. The gender differentiated impact of climate and environmental change on the migration propensity is not specific for environmental factor and should therefore be seen in relation to other 'reasons' for migration.

The access to financial resources is also a core variable in the construction of vulnerability as this determines the ability to migrate. In many cases climate change affects disproportionately poor agrarian communities which have not the financial means to leave their home<sup>19</sup> or resources may further decline due to climate and environmental change which may result in a decreasing number of people having the ability to migrate.<sup>20</sup> As these remarks show, the impacts of climate change on migration vary widely according to the context which illustrates the importance of embedding studies in the social and cultural context.<sup>21</sup>

However, climate change and environmental factors can exacerbate migration pressure and it is very likely that extreme weather events, slow-onset environmental degradation and

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<sup>18</sup> See Hunter, David 2011, op. cit., p. 324.

<sup>19</sup> See Pratikshya Bohra-Mishra, Ulisses E.C. Confalonieri (2011): Environmental degradation and out-migration: evidence from Nepal. In: Etienne Pigué, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change. UNESCO, pp. 74-101.

<sup>20</sup> See Tacoli 2009 op. cit.

<sup>21</sup> See Hunter and David 2011, op. cit., p. 324.

sea-level rise will contribute to an increased level of mobility and to changing migration patterns.<sup>22</sup> The following section reviews the three main environmental factors that will gain significance due to climate change within the coming years and are predicted to have an impact on human mobility.<sup>23</sup> A major distinction can be made between rapid-onset climate events describing extreme weather events, slow-onset climate events comprising drought, desertification and land degradation and sea-level rise.

**Table 1: Natural disaster occurrence and impacts**

<b>NO. OF VICTIMS (MILLIONS)<sup>24</sup></b>	<b>AFRICA</b>	<b>AMERICAS</b>	<b>ASIA</b>	<b>EUROPE</b>	<b>OCEANIA</b>	<b>GLOBAL</b>
<b>Climatological<sup>25</sup> 2009</b>	4.48	3.08	0.78	0.01	0.01	<b>8.37</b>
<i>Avg. 2000-08</i>	<i>11.19</i>	<i>1.02</i>	<i>71.38</i>	<i>0.29</i>	<i>0.00</i>	<b><i>83.89</i></b>
<b>Geophysical 2009</b>	0.02	0.18	3.00	0.06	0.01	<b>3.27</b>
<i>Avg. 2000-2008</i>	<i>0.09</i>	<i>0.39</i>	<i>8.54</i>	<i>0.01</i>	<i>0.01</i>	<b><i>9.03</i></b>
<b>Hydrological 2009</b>	2.50	2.26	52.47	0.04	0.03	<b>57.29</b>
<i>Avg. 2000-2008</i>	<i>2.31</i>	<i>2.94</i>	<i>93.51</i>	<i>0.37</i>	<i>0.02</i>	<b><i>99.15</i></b>
<b>Meterological 2009</b>	0.16	0.23	50.18	0.00	0.02	<b>50.59</b>
<i>Avg. 2000-2008</i>	<i>0.48</i>	<i>2.88</i>	<i>35.03</i>	<i>0.36</i>	<i>0.04</i>	<b><i>38.79</i></b>
<b>Total 2009</b>	<b>7.16</b>	<b>5.75</b>	<b>106.44</b>	<b>0.11</b>	<b>0.07</b>	<b>119.52</b>
<i>Avg. 2000-2008</i>	<b><i>14.07</i></b>	<b><i>7.24</i></b>	<b><i>208.46</i></b>	<b><i>1.03</i></b>	<b><i>0.06</i></b>	<b><i>230.86</i></b>

**Source:** Vos et al. 2010<sup>26</sup>

<sup>22</sup> See Tacoli 2009 op. cit. and Boano, Zetter, Morris 2008 op.cit.

<sup>23</sup> See Tacoli 2009 op. cit., p. 4 and Piguet et al 2011 op. cit., p. 6.

<sup>24</sup> The term victims relates to the sum of killed and total affected number of people.

<sup>25</sup> Climatological disasters include extreme temperatures, droughts or wildfires; geophysical disasters comprise earthquakes, volcano and dry mass movements; hydrological events are mainly floods and wet mass movements (landslides, avalanches etc.); different types of floods are classified under meterological disasters.

<sup>26</sup> Femke Vos et al. (2010): Annual Disasters Statistical Review 2009. The numbers and Trends. Brussels: Centre for Research on the Epidemiology of Disasters CRED, Available at: [http://cred.be/sites/default/files/ADSR\\_2009.pdf](http://cred.be/sites/default/files/ADSR_2009.pdf).

### 2.1.1 Rapid-onset climate events and migration

As described above, extreme weather events such as storms, floods, tropical cyclones are examples of rapid-onset climate events having an impact on population displacement. As stated by the Intergovernmental Panel on Climate Change (IPCC) extreme weather events are predicted to increase due to climate change.<sup>27</sup> Although the number of people who would be affected by a climate-change induced increase of those events can hardly be estimated, the actual numbers of affected people already give an idea of the threat. Between 2000 and 2008 an annual average of 38.8 million people were affected by cyclones and storms annually, while 99.2 million people were affected by flooding.<sup>28</sup>

Such events affect the movement of people in a number of ways. In many cases, floods and hurricanes force people to leave their homes and move to other areas to avoid physical harm or loss of life.<sup>29</sup> During and after rapid-onset events livelihoods like crops and productive assets as well as homes are destroyed in some cases, making temporary shelter necessary.<sup>30</sup> These movements are overwhelmingly short-term internal displacements as a high proportion of the affected population returns home as soon as possible to reconstruct their homes. The ability to migrate over long distances is frequently also limited because of the lack of necessary resources.<sup>31</sup>

The impact of the extreme weather events depends on the level of vulnerability of the affected population and the way that disasters are managed. A high frequency of disasters increases the vulnerability and encourages people to move away permanently.<sup>32</sup> The same applies to the access to support systems such as humanitarian responses and effective coping strategies by governments and communities as many examples shows. The low incidence of out-migration after the Indian Ocean Tsunami in 2004, for instance, can be explained by the rapid humanitarian response and the mobilisation of diaspora groups to support their affected family at home.<sup>33</sup> In a similar vein, some 83% or 250,000 out of 300,000 persons displaced as a result the 1995 Kobe earthquake in Japan had returned within three months after the disaster, made possible by the rapid onset of reconstruction. By contrast, several years after the 1991 Mount Pinatubu eruption in the Philippines many affected people were still living in temporary camps or squatter settlements.<sup>34</sup>

Paradoxically, several studies find that extreme weather events - besides acting as a push factor - act as a pull factor at the same time. A study on the flood induced migration flows in the Ghaghara Zone of India showed that flooding created both movements to the affected zones because of the increased attractiveness for settlement and forced people from settled

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<sup>27</sup> See IPCC (2007): Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Geneva: IPCC, Available at: [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf) (consulted on 08.08.2011).

<sup>28</sup> Vos et al. 2010 op.cit., It is likely that the frequency of heavy rain falls has increased during the last fifty years. However, it appears that there is no clear trend in the number of tropical cyclones, according to IPCC, see IPCC 2007, op. cit., p. 33.

<sup>29</sup> See Tacoli 2009 op. cit., p. 6.

<sup>30</sup> See Koko Warner (2010): Assessing Institutional and Governance Needs Related to Environmental Change and Human Migration. Washington: The German Marshall Fund of the United States.

<sup>31</sup> See Morrissey 2009 op.cit., p. 28.

<sup>32</sup> Wim Naudé (2008): Conflict, Disasters and No Jobs. Reasons for International Migration from Sub-Saharan Africa. Helsinki: UNU-WIDER.

<sup>33</sup> See Tacoli 2009, op. cit., p. 6.

<sup>34</sup> See Stephen Castles (2002): Environmental change and forced migration: making sense of the debate. Geneva: UNHCR.

land at the same time. On the one hand, land was made more attractive through the fertilisation of farmland while flooding forced migration through the destruction of household assets on the other<sup>35</sup>. In the case of the Indian Ocean tsunami, reconstruction projects increased the demand for labour because the aid-providing institutions provided new economic opportunities and relatives moved to the area to support affected family members.<sup>36</sup>

Overall, rapid-onset events will very unlikely lead to long-term and long-distance mass migration in the near future. Permanent and significant migration will only take place if social factors exacerbate the impact of the disaster, if the affected society is highly dependent on the natural environment for its livelihood. Finally, it depends on the frequency and the extent of damage as well as on the management of the disaster response. Most persons fleeing natural disasters remain within their country or region of origin, while international migration only accounts for a small proportion of all disaster-related movements.<sup>37</sup> These mostly internal forced movements will probably increase due to climate change and calls for targeted policy responses.

### 2.1.2 Slow-onset climate events and migration

Drought, desertification and land degradation are the main slow-onset events which are exacerbated by climate change and have an impact on the mobility of people. As has been extensively documented degradation is progressively increasing.<sup>38</sup> Globally, 10-20 per cent of drylands<sup>39</sup> are already degraded. The more than 2 billion people living in those areas classified as dry subhumid and arid are extremely vulnerable to the loss of crucial resources such as water supply.<sup>40</sup> Water scarcity is expected to intensify due to climate change which will further exacerbate desertification. In Africa and Asia between 75 and 250 million people will be affected by the decrease of freshwater availability.<sup>41</sup> However, this numbers does not say that these people are directly affected by water shortages as it is also a matter of adequate water distribution systems and access to water for domestic purposes. Nevertheless, water scarcity likely has a negative impact in economic terms such as a decline in agricultural productivity. In general, slow-onset environmental change can negatively affect livelihood systems because the ability to diversify the household income may decline if yields of farming, herding or fishing fall.<sup>42</sup>

Although reports find that a much larger number of people is expected to migrate as a result of gradual deterioration rather than as a result of natural disasters<sup>43</sup>, the links

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<sup>35</sup> See Morrissey 2009 op.cit., p. 27.

<sup>36</sup> See Piguet et al 2011 op. cit., p. 7.

<sup>37</sup> See Tacoli 2009 op. cit., p. 3.

<sup>38</sup> See Michelle Leighton (2011): Drought, desertification and migration: past experiences, predicted impacts and human rights issues. In: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change. UNESCO, pp. 331-358.

<sup>39</sup> "Drylands include all terrestrial regions where water scarcity limits the production of crops, forage, wood, and other ecosystem provisioning services." Fabrice G. Renaud et al. (2011): A Decision Framework for Environmentally Induced Migration. In: International Migration Vol. 49, pp. 5-29.

<sup>40</sup> See Fabrice G. Renaud et al. (2011): A Decision Framework for Environmentally Induced Migration. In: International Migration Vol. 49, p. 1.

<sup>41</sup> See Tacoli 2009 op. cit., p. 5.

<sup>42</sup> See Warner 2010 op. cit., p. 4.

<sup>43</sup> See ACCES (2010): Climate Change and Security in Africa. Vulnerability Discussion Paper. Available at: [http://www.africa-eu-partnership.org/sites/default/files/doc\\_climate\\_vulnerability\\_discussion\\_paper.pdf](http://www.africa-eu-partnership.org/sites/default/files/doc_climate_vulnerability_discussion_paper.pdf) (consulted on 05.09.2011).

between drought, desertification and migration are complex and difficult to identify. Because changes are slow and hard to observe it is difficult to account to what extent these contribute to migration.<sup>44</sup> Furthermore, the relatively slow impacts lead to more pro-active forms of migration, in contrast to the forced migration during or after sudden-onset events. In the literature there is no consensus on the impact of slow-onset events on migration could be identified and also empirical evidence is mixed.<sup>45</sup>

On the one hand, there are many well reported cases of mass population movements as a result of droughts. On the other, many researchers question that there is a direct link between drought and emigration highlighting the variety of causes determining migration. It is clear, however, that migration always constituted a core element of responses to changes in livelihoods.<sup>46</sup> Yet migration as a response to slow-onset events will take greatly different forms depending on the context and the severity of such events. From the perspective of households affected by environmental degradation, migration can be seen an effective adaptation strategy, which challenges the perspective of migration resulting from environmental change as a failure to adapt.<sup>47</sup> Migration, in particular seasonal migration, is one of the ways by which people adapt to climate change.<sup>48</sup> In many countries rural livelihoods include mobility as a way to diversify income activities instead of relying solely on farming. Especially in the context of environmental change a diversified income allows farmers to take more risks and remittances can contribute to farming innovation and intensification.<sup>49</sup>

Some research suggests that decreasing rainfall increases rural-rural temporary migration while it does not affect or even decreases long-term and long-distance migration. Rural-urban and international migration is more likely to take place after normal rainfall periods. The patterns of migration also depend on the level of education, the existence of social networks and access to transport.<sup>50</sup>

There is growing consensus within the literature that slow-onset climate change has an impact on migration patterns, but that environmental changes mainly generate short-distance movement and that the impact highly depends on the ways these changes are mediated and the context in which these changes take place.<sup>51</sup> Marginalised groups are more likely affected by climate change, in particular if local institutions are unable to mediate growing competition for resources.<sup>52</sup>

#### 2.1.2.1 Is there a causal link between environmental degradation and conflict?

The potential effects of environmental change on conflicts and geopolitical security are an increasing concern of both researchers and policymakers. The European Commission (EC)

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<sup>44</sup> See Warner 2010 op. cit., p. 4.

<sup>45</sup> See Piguat et al 2011 op. cit., p. 9.

<sup>46</sup> See Tacoli 2009 op. cit., p. 5 and Piguat et al. 2009 op. cit., 8.

<sup>47</sup> Susan Martin (2010): Climate Change, Migration and Adaptation. Available at: [http://www.gmfus.org/galleries/default-file/SMartinAdaptation\\_V3.pdf](http://www.gmfus.org/galleries/default-file/SMartinAdaptation_V3.pdf) (consulted on 05.09.2011).

<sup>48</sup> See McLeman (2011) op. cit., p. 21.

<sup>49</sup> See Cecilia Tacoli (2011): Climate Change and Migration. Study of the climate adaptation-migration nexus and the role for development cooperation. Eschborn: GIZ, Available at: <https://www.gtz.de/en/dokumente/giz2011-en-climate-change-and-migration.pdf> (consulted on 06.09.2011).

<sup>50</sup> See Tacoli 2009 op. cit., p. 5.

<sup>51</sup> See Piguat et al 2011 op. cit., p. 10.

<sup>52</sup> See See Tacoli 2009 op. cit., p. 5.

states that "[t]he impact of climate change on international security is not a problem of the future but already of today and one which will stay with us."<sup>53</sup> The assumption is that climate change reduces resources for livelihood which will lead to conflict over remaining resources and, as a result, to intensified migration flows. This may further be exacerbated if migrants enter the territory of other people who may also be resource constrained.<sup>54</sup> John Ashton, the Foreign Secretary's Special Representative for Climate Change in the UK, formulates the causal chain between climate change and armed conflict as follows: "Massive migrations, particularly in the arid or semi-arid areas in which more than a third of the world's people live, will turn fragile states into failed states and increase the pressures on regional neighbours – a dynamic that is already apparent in Africa"<sup>55</sup>.

However, most experts and scholars are reluctant to confirm a direct link between environmental issues and armed conflict in the sense that the latter would have been solely based on environmental factors. Environmental factors come into play as both causes and consequences of destabilisation and violence, but a review of major conflicts reveals that there is little evidence that environmental factors have been the only or even the main driving forces behind them.<sup>56</sup> Nevertheless, the interaction of ecological developments and social and political conflict cannot be denied. In particular, environmental stress is likely to exacerbate existing tensions, notably in already disadvantaged areas with high levels of inequality in access to natural resources and contested property and usufruct rights.

The empirical evidence for a causal relationship between migration, environment and conflict is not solid, with some studies having found a significant link while others have not.<sup>57</sup> This can be explained by the multi-causality of conflicts as migration and environmental factors do not work in isolation from other factors like income inequality or poverty. "A sensitive understanding of the way climate change and environmental change more generally increases a propensity for conflict that may induce more migration in any particular location, requires understanding the way it will interact with other factors, and the ways these factors may change because climate change will have uneven impacts on even proximate social and ecological systems."<sup>58</sup> The case of the Darfur conflict – which is often cited as a clear-cut case of an environmental conflict -, however, shows the complexity of the links between environment, climate change and conflict and related population movements. A major report on the Darfur conflict – the so-called Tearfund report - thus stresses the importance of environmental factors for the conflict situation. Nevertheless, it refrains from calling the conflict an environmental conflict.<sup>59</sup> Researchers from the Refugee Studies Centre from the University of Oxford agree that singling out environmental factors

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<sup>53</sup> See European Commission (2008): Climate Change and International Security. Paper from the High Representative and the European Commission to the European Council. S113/08, Brussels, 14 March 2008, p. 8 Available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/reports/99387.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/99387.pdf).

<sup>54</sup> See Ragnhild Nordås and Nils Petter Gleditsch (2007): Climate Change and Conflict. Available at: [http://graduateinstitute.ch/webdav/site/political\\_science/shared/political\\_science/1701/Environmental-Security-Article-Nordas-Gleditsch.pdf](http://graduateinstitute.ch/webdav/site/political_science/shared/political_science/1701/Environmental-Security-Article-Nordas-Gleditsch.pdf) (consulted on 06.09.2011).

<sup>55</sup> See Tom Burke and John Ashton (2005): Climate change and global security. Available at: [http://www.opendemocracy.net/globalization-climate\\_change\\_debate/article\\_2509.jsp](http://www.opendemocracy.net/globalization-climate_change_debate/article_2509.jsp) (consulted on 07.09.2011).

<sup>56</sup> Fiona Flintan (2001): Environment Refugees – A Misnomer or A Reality? A contribution to the Wilton Park Conference Report on Environmental Security and Conflict Prevention, March 1st – 3rd, p. 3, available at: <http://www.ucc.ie/famine/GCD/Paper%20for%20Wilton%20Park.doc> (consulted on 08.09.2011).

<sup>57</sup> See ACCES 2010 op. cit., 29.

<sup>58</sup> See Boano, Zetter & Morris 2008 op. cit., p. 22.

<sup>59</sup> See Tearfund (2007): Darfur: Relief in a vulnerable environment. London: Tearfund.

as the only root cause of the conflict hampers the search for solutions and obscures other important factors. Furthermore, it absolves the Sudanese government of responsibility for instigating conflict.<sup>60</sup>

#### 2.1.2.2 Environmental impacts of large refugee populations

Apart from the impact of environmental factors have on migration flows, the reverse - the environmental impact of refugee inflows on refugee receiving areas and in particular areas already affected by environmental degradation – potentially also has a serious impact on refugee protection, the wellbeing of refugee and host populations and conflict over resources resulting or exacerbated by environmental degradation. Because environmental impacts of large refugee populations raise protection issues, they do have implications for the global dimension of European Union asylum and migration policies and related policies, notably humanitarian aid policy.

The environmental impact of the arrival of refugees on rural areas can be described as increasing environmental degradation caused by a high demand for natural resources such as arable land, water and forest wood. The shortening of fallow periods is a global problem of refugee-hosting areas in rural societies and contributes to soil depletion, erosion and deforestation.<sup>61</sup> The practice of converting swamps into agricultural areas is used by UNHCR and other organisations to increase productivity but also to reduce encroachment of uplands. The advantage of swamp cultivation is that it does not require a fallow period but the clearing of existing trees and the building of drainage systems in swamp areas for their conversion into rice production may potentially lead to disruptions of water systems and water levels. One example is the clearing of trees in Kaliah camp in the South-West of Guinea which resulted in the drying up of the water source of a nearby village.<sup>62</sup> Regarding the forest the increasing rapidity of its degradation due to the high demand of firewood does not allow the ecosystem to recover. Another problem which may result from a large refugee population in rural areas is the loss in the biodiversity of indigenous plants and animal species caused by the practice of grassland and bushes burning to clear the land for cultivation.

The overexploitation of natural resources may to some extent also be related to the often precarious legal status of displaced persons and that refugees themselves do not expect to reside in the host country for a longer period. The specific time horizon of newly arrived refugees implies a certain reluctance to engage in more than temporary economic activities and integration on their side which also implies a related resource use.<sup>63</sup> Especially if local integration is not a perspective and they are expecting their immediate return, refugees might not initially feel the need to engage in sustainable resource use which may contribute to environmental degradation as a consequence.<sup>64</sup> Although these arguments are plausible,

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<sup>60</sup> See Boano, Zetter & Morris 2008 op. cit., p. 23.

<sup>61</sup> See UNEP (2000): Environmental Impact of Refugees in Guinea. Report to the Secretary General on the findings and recommendations of the pre-assessment on the environmental impact of refugees in Guinea. Available at: <http://www.grid.unep.ch/guinea/reports/reportfinal3b.pdf> (consulted on 10.09.2011).

<sup>62</sup> See UNEP 2000 op. cit., p. 11.

<sup>63</sup> See Albert Kraler (2004): The state and population mobility in the great lakes. Sussex Migration Working Paper no. 24, available at: <http://www.sussex.ac.uk/migration/documents/mwp24.pdf> (consulted on 13.09.2011).

<sup>64</sup> For a discussion of the legal status of refugees and the rights offered to them in African countries, see Gaim Kibreab (1989): Local Settlement in Africa - A Misconceived Option? *Journal of Refugee Studies*, 2, 4, pp.468-490.

it is questionable whether it is possible to generalize about the human behavior of such a large group.<sup>65</sup> An empirical study on land-use practices among Eritrean refugees and Sudanese peasants in the Gedaref region in Sudan shows that nothing particular to refugee status which engenders more unsustainable land-use practices among the refugees has become apparent.<sup>66</sup>

While several studies seem to support the view that environmental impacts are serious, others conclude that these impacts are minimal or even positive.<sup>67</sup> This controversy shows that the evaluation of the impacts needs to take the size of the refugee population as well as the conditions of their accommodation - rural or urban, integrated in host villages or large camps - into account.

#### *2.1.2.2.1 Environmental Impacts of Dadaab Refugee Camps*

The Dadaab refugee complex comprises the three camps of Dagahaley, Hagadera and Ifo and is currently the world's biggest refugee complex, hosting around 382,000 refugees, the majority of which originate from Somalia. In the context of the deterioration of the situation in Somali as well as the impact of the ongoing drought in East Africa, the number of refugees is currently rapidly increasing with around 1,400 people arriving every day.<sup>68</sup> The complex is located in the Garissa district in the North-Eastern Province of Kenya which is characterised by a hot and dry climate with occasional flooding. The UN Office for the Coordination of Humanitarian Affairs (OCHA) currently classifies the area as being in an emergency or phase 4 according to the 5 scale "Integrated Food Security Phase Classification" (IPC).<sup>69</sup> The camps were established in 1991.<sup>70</sup>

The livelihood of the host community is largely pastoral but has also access to local food relief or refugee rations to avoid dependency on one livestock. However, host communities tend to settle which has a negative impact on mobility and grazing patterns because of the increasing practice of greenbelt fencing<sup>71</sup>. The demand for firewood and building materials from both the host community population and the camp contributed to the general

<sup>65</sup> See Richard Black (1998): *Refugees, Environment and Development*. New York: Longman.

<sup>66</sup> See Gaim Kibreab (1997): *Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate*. In: *Disasters*, 21,1, pp. 20-38.

<sup>67</sup> See UNEP 2000, *op. cit.*, p. 8 and Richard Black (1998): *Refugees, Environment and Development*. New York: Longman, pp. 23 – 51, Black criticises that the notion of refugees as 'exceptional resource degraders' and the perception shaped by various UNHCR reports that refugees lack incentives to conserve the environment because the land is not theirs and they are traumatized by war and displacement remain unquestioned. Black states that a lack of empirical evidence on this simple causality exists. The cited UNEP report underlines the fact that also positive impacts of refugees populations for the local populations exists. One example is the development of potable water programmes for refugees which have also benefited nearby villages with no access to drinking water.

<sup>68</sup> As of 1 August, 2011, UNHCR Emergency Response Team, Australia. Available at: <http://www.unrefugees.org.au/emergencies/current-emergencies/kenya-%28dadaab%29> (consulted on 14.09.2011).

<sup>69</sup> See OCHA (2011): *Horn of Africa Crisis. Integrated Food Security Phase Classification (IPC) Jul - Aug 2011*. Available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/dr-2011-000029-ken\\_0812.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/dr-2011-000029-ken_0812.pdf) (consulted on 14.09.2011).

<sup>70</sup> See Kenya's Commissioner for Refugee Affairs et al. (2011): *Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities*. Available at: <http://www.ambnairobi.um.dk/NR/rdonlyres/8E1CC5EB-6B25-4531-A7E0-CDC32A0961B7/0/FinalReport30092010.pdf> (consulted on 14.09.2011).

<sup>71</sup> Thorn fencing around greenbelts aims to allow the source tree to continue growing to set land aside as seed banks for regeneration if the camps should close. The only beneficiaries are the appointed care takers, who exploit the resources for their own benefit. This causes conflicts with the local, mainly pastoral, population.

trend of environmental degradation in the host areas that has been ongoing since the early 1990s.<sup>72</sup> There is an increasing shortage and commercialisation of the supply chain of firewood. Individual collection of firewood by refugees has nearly come to an end as it became a major commercial enterprise involving around 5000 donkey carts. The harvesters tend to travel up to 50 kilometres in search for firewood, forming convoys for their own security. Apart from the demand for firewood, the need for pole-wood<sup>73</sup> is even higher. The local shortage is expressed in the widespread sale of poles from central Kenya and Somalia. In environmental terms, the high demand for wooden poles has a negative impact because the demand is very species-specific which leads to significant degradation of these species.<sup>74</sup>

Regarding water resources the camps are a contributing factor to the slightly higher discharge rate of water than the estimated recharge rate. However, it is believed that the underground stored water is sufficient.<sup>75</sup>

The specific example of the Dadaab refugee complex in Kenya shows the environmental impact of a large refugee population in an environmentally vulnerable area. The degradation of wood resources continues to affect more distant areas while within 0-20 kilometres distance deprivation of woody biomass is highly significant. The case also shows the change of livelihood patterns of the host communities who tend to become more settled whereas they lived as pastoralists before. Mobility is decreasing as an effect of fast growing populations around water points, the extension of the camps and the privatisation of land through fencing grazing areas.

The current situation with massive refugee influx mainly from Somalia set the host communities in the Garissa district, which are vulnerable to the intensifying drought and the high level of food insecurity, under increasing pressure.<sup>76</sup> Therefore, the UNHCR called on the international community to find long lasting solutions to the Somali refugee crisis. The head of the UNHCR sub-office in Dadaab, Fafa Olivier Attidzah, stated that the Kenyan government will not reintegrate Somalis in the Kenyan society. A small number of refugees could already been resettled in the United States of America and Canada and few interviews with Somali refugees were set up by embassies of third countries.<sup>77</sup> However, given the severity of the situation and the large size of the refugee population in the Dadaab area, current resettlement efforts are clearly insufficient.

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<sup>72</sup> See Kenya's Commissioner for Refugee Affairs 2011 op. cit., p. 9.

<sup>73</sup> Wooden poles are used for building and compound fencing as new arrivals seek to replace temporary shelters with more long-lasting structures and refugee families who live for a longer time in the camps extend their living facilities.

<sup>74</sup> See Commissioner for Refugee Affairs 2011 op. cit., p. 51.

<sup>75</sup> See Kenya's Commissioner for Refugee Affairs 2011 op. cit., p. 10.

<sup>76</sup> See USAID and Famine Early Warning System Network (2011): Rapid Assessment: Garissa District/Dadaab refugee camps, August 15, 2011, available at: [http://www.fews.net/docs/Publications/Dadaab\\_Garissa%20Assessment\\_2011\\_08\\_15.pdf](http://www.fews.net/docs/Publications/Dadaab_Garissa%20Assessment_2011_08_15.pdf) (consulted on 03.10.2011).

<sup>77</sup> See Ben Ochieng and Wang Yanan (2011): UNHCR calls for lasting solution to Somali refugee crisis. Available at: [http://news.xinhuanet.com/english2010/world/2011-08/08/c\\_131036286.htm](http://news.xinhuanet.com/english2010/world/2011-08/08/c_131036286.htm), Amnesty International (2010): From Life without Peace to Peace without Life. Available at: <http://www.amnesty.org/en/library/asset/AFR32/015/2010/en/1eb8bd34-2a5c-4aa4-8814-83e0e8df8ebf/af320152010en.pdf>, Claire Provost and Hamza Mohamed (2011): Dadaab refugee camps: 20 years of living in crisis Somalis in Kenya's refugee camps find themselves far from the international spotlight, with no perceived solution to their plight. Available at: <http://www.guardian.co.uk/global-development/2011/mar/24/dadaab-refugee-camps-living-in-crisis> (all consulted on 03.10.2011).

### 2.1.3 Sea-level rise and migration

Sea-level rise is discussed in a special section because it can be characterized both as a slow-onset gradual environmental change and as a contributor to the impact of flooding and storms. Furthermore, sea-level rise appears to pose one of the clearest cases for the generation of environmentally forced migrants and the case of small island states threatened by sea-level rise is extensively discussed in the literature on 'environmental or climate refugees'.<sup>78</sup> Given the possible disappearance of island states, such as Kiribati or Tuvalu<sup>79</sup>, sea-level rise seems to be the most dramatic manifestation of climate change and out-migration remains the only possible option.<sup>80</sup>

However, apart from the case of small island states, sea-level rise may generate migration in a far more complex way than the abandonment of land. Migration may occur before an area becomes uninhabitable for instance because of reduced access to water as a result of salination of aquifers or the increased regularity of coastal flooding and the occurrence of tropical storms.<sup>81</sup> Furthermore, "[w]hether migration will be the main response to sea level rise will depend on the capacity of communities and governments to respond through a range of options such as increased protection infrastructure, the modification of land use and construction technologies and managed retreat from highly vulnerable areas."<sup>82</sup>

Compared to other climatic events, which were discussed earlier in this chapter, the consequences of sea-level rise can be determined with some accuracy and reliability. The configuration of coastlines, their altitude and their population can be integrated in geographic information systems that allow the projections and simulations for different carbon emission scenarios and ice cover melting.<sup>83</sup> It is therefore possible to get some idea of the number of people who will be directly affected by rising water levels, salination or coastal erosion.

Especially vulnerable to the effects of sea-level rise are low elevation coastal zones which are defined as having an altitude of less than 10 meter. Over 600 million people are estimated to live in those areas, i.e. around 8.6 percent of the world's population. Of these people, 360 million live in urban areas.<sup>84</sup> However, the number of people at risk over the next decades is much smaller than these, taking into account that a 7 meter sea-level rise would occur over several centuries. According to the IPCC, the most likely scenario of climate change related predicts a sea level rise of 0.3 m to 0.8 m by 2300. The scenario predicts that populations living at an altitude of less than 1 meter above sea-level will be directly vulnerable within a few decades.<sup>85</sup> This would directly affect 146 million people,

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<sup>78</sup> See Morrissey 2009 op. cit., p. 32.

<sup>79</sup> See Jane McAdam (2011): Refusing 'refuge' in the Pacific: (de)constructing climate-induced displacement in international law. In: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change. UNESCO, pp. 102-137.

<sup>80</sup> See Piguet et al 2011 op. cit., p. 10.

<sup>81</sup> See Morrissey 2009: 32.

<sup>82</sup> See Tacoli 2009 op. cit., p. 7.

<sup>83</sup> See Piguet et al 2011 op. cit., p. 11 and Morrissey 2009: 32.

<sup>84</sup> See Gordon McGranahan et al. (2007): The rising tide: assessing the risks of climate change and human settlements in low elevation coastal zones. In: Environment and Urbanization, Vol. 19, No 1, pp. 17-37.

<sup>85</sup> IPCC (2007): A report of Working Group I of the Intergovernmental Panel on Climate Change. Summary for Policymakers. Available at: <http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-spm.pdf> (consulted on 04.10.2011).

most of them living in river deltas and estuaries in South and East Asia. Certain islands, for example, Tuvalu, Kiribati or the Maldives are the most threatened in the short term.<sup>86</sup>

To sum up, the previous sections highlighted the complex link between migration and environmental change and showed that climate change has consequences in terms of human migration. Climate change is likely to exacerbate other causes for migration. However, environmental change will be experienced very differently by different population groups. The impact will depend on the vulnerability and adaptation capacities of the affected populations and the rapidity and severity of events. Against this background, a typology of environmentally induced migration and displacement will be developed in the following sections.

## 2.2 Terminological and conceptual issues

The purpose of this section is to develop a typology of environmentally induced migration with a special focus on protection needs arising for different categories of environmental migrants.

Similar to the difficulty in making clear distinctions between environmentally induced and other types of migration, it is equally difficult to come up with a clear definition, which categories of migrants should fall under the definition of environmental refugees, and a universally applicable terminology is still lacking.

### 2.2.1 Definitions linked to environmental migration

Several definitions of those who move due to environmental factors can be found in academic literature and the media. The term 'environmental refugee' is the most popular one in the public debate.<sup>87</sup> Campaigners argue that another term would downplay the seriousness of the situation of affected people and higher proportion of the general public can sympathise with the implied sense of duress.

The most-quoted definition goes back to UN Environment Programme (UNEP) researcher Essam el-Hinnawi. El-Hinnawi defined environmental refugees as "*...those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life*".<sup>88</sup>

However, many organisations such as UNHCR, IOM or OCHA as well as several migration researchers expressed their concern that the 'term' is problematic due to different reasons. UNHCR thus argues that "these terms [environmental refugees or climate refugees] have no basis in international refugee law"<sup>89</sup>, while also arguing that using the term 'refugee' in for situations characterised by structural push factors of migration risks undermining the refugee framework under the Geneva convention (see also below).

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<sup>86</sup> See Piguet et al 2011 op. cit., p. 12.

<sup>87</sup> See Oli Brown (2008): Migration and Climate Change. Geneva: IOM, p. 13.

<sup>88</sup> Quoted in Boano, Zetter & Morris 2008 op. cit., p. 7.

<sup>89</sup> See UNHCR (2008): Climate change, natural disasters and human displacement: a UNCHR perspective. Available at: <http://www.unhcr.org/refworld/type.RESEARCH,UNHCR,,492bb6b92,0.html> (consulted on 04.10.2011).

IOM defines environmental migrants as *'persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment 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 country or abroad.'*<sup>90</sup> This definition suffers from the assumed monocausality of environmental reasons. Nevertheless, the definition is widely accepted because it tries to encompass all voluntary migrations and displacements due to environmental change.<sup>91</sup>

The terms 'environmentally induced population movements' (EIPM) and 'environmentally displaced persons' (EDP) provide an alternative because it describes "a general category of migration movements where the environmental factor is decisive, but not necessarily unique."<sup>92</sup> Critics, however, argue that the notion of EIPM is very vague and not appealing to the general public. The concept of EDP was used by the EACH-FOR project, a major research study funded under the European Community's 6<sup>th</sup> Framework Programme for Research.<sup>93</sup> The term encompasses three categories environmental migrants, environmental displacees and development displacees. These are:

- a) *Environmental migrants are people who chose to move voluntarily from their usual place of residence primarily due to environmental concerns or reasons.*
- b) *Environmental displacees are people who are forced to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental processes and events (natural and/or triggered by people).*
- c) *Development displacees are people who are intentionally relocated or resettled due to a planned land use change.*<sup>94</sup>

The United Nations University's Institute for Environment and Human Security (UNU-EHS) defines a *"forced environmental migrant"* as *"a person who "has" to leave his/her place of normal residence because of an environmental stressor ... as opposed to an environmentally motivated migrant who is a person who "may" decide to move because of an environmental stressor."*<sup>95</sup>

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<sup>90</sup> IOM (2008): Climate Change and Migration: Improving Methodologies to Estimate Flows, p. 31.

<sup>91</sup> See Frank Laczko (2010): Migration, the Environment and Climate Change: Assessing the Evidence. Available at: [http://www.gmfus.org/galleries/default-file/Laczko\\_MAH\\_EditsV2.pdf](http://www.gmfus.org/galleries/default-file/Laczko_MAH_EditsV2.pdf) (consulted on 05.10.2011).

<sup>92</sup> See Etienne Pigué (2008): Climate change and forced migration. Geneva: UNHCR. Available at: [http://reliefweb.int/sites/reliefweb.int/files/reliefweb\\_pdf/briefingkit-cfbd76b98153ca5e6f403ab149ea7a0c.pdf](http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/briefingkit-cfbd76b98153ca5e6f403ab149ea7a0c.pdf) (consulted on 05.10.2011).

<sup>93</sup> See Pigué et al. (2011) op. cit., p. 18.

<sup>94</sup> See Olivia Dun, François Gemenne, Robert Stojanov (2007): Environmentally displaced persons: working definitions for the EACH-FOR project. Available at: [http://www.each-for.eu/documents/Environmentally\\_Displaced\\_Persons\\_-\\_Working\\_Definitions.pdf](http://www.each-for.eu/documents/Environmentally_Displaced_Persons_-_Working_Definitions.pdf) (consulted on 07.10.2011) examples of projects leading to displacement include infrastructure projects such as the construction of roads, dams, ports and airports; urban clearance initiatives; the introduction of reserves or conservation parks; mining and deforestation. The big difference to other environmental induced changes is that the timing of displacement is fixed and planned. However, many studies show that the planning process is often not consultative and compensations do frequently not compensate actual losses. Although there are guidelines compensation, for example from the World Bank, inadequate access to compensation continues to exist without recognition from outside the country as this practice tends to be seen as the responsibility of the national government.

<sup>95</sup> See Fabrice Renaud et al. (2007): Control, Adapt or Flee. How to Face Environmental Migration? Bonn: UNU-EHS, available at: <http://www.ehs.unu.edu/file/get/3973> (consulted on 10.10.2011).

In a recent article on “a decision framework for environmentally induced migration”<sup>96</sup> UNU-EHS researchers develop a comprehensive approach for categorising environmentally induced migrants, which the present study adopts as the basis for the proposed typology of environmentally induced migration. In line with an earlier proposed typology by Renaud et al. (2007)<sup>97</sup>, the authors differ between three categories of environmental migrants:

- a) Environmental emergency migrants<sup>98</sup>,
- b) Environmentally forced migrants and
- c) Environmentally motivated migrants.

‘Environmental emergency migrants’ are people who have to flee because of the rapidity of an environmental event in order to save their lives. Environmental factors are therefore the underlying reason for displacement while other factors only have a secondary influence. Examples of those rapid disasters comprise hurricanes, tsunamis or earthquakes. In most of the cases affected people remain within their country but the category of ‘environmental emergency migrants’ should also apply to people who move across borders.<sup>99</sup>

The second category which is proposed by Francois Renaud is called ‘environmentally forced migrants’. People falling in this category have to leave their place of original residence but the pace is slower than in the case of ‘environmental emergency migrants’. In some cases the affected people may not have a choice to return to their former place of residence due to the loss of their land through extreme degradation of soil or sea-level rise. Since socio-economic factors also play a role it might be difficult to distinguish between environmental and socio-economic factors.<sup>100</sup>

‘Environmentally motivated migrants’ is the third category comprising people who leave a constantly deteriorating environment to pre-empt the worst effects. Migration is in this case not the last option or a response to an emergency. Socio-economic factors may play a dominant role and migration appears as a strategy to avoid further deterioration of livelihood.<sup>101</sup>

The characteristics of the mentioned categories are elaborated further in the figure below.

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<sup>96</sup> See Renaud et al. 2011.

<sup>97</sup> See Renaud et al. 2007, op. cit., p. 29-30; according to Boano, Zetter and Morris 2008, op. cit., this typology provides the most useful typology among the currently available because it allows tailored policy responses and takes pressure from the assumption that all environmentally displaced migrants are refugees.

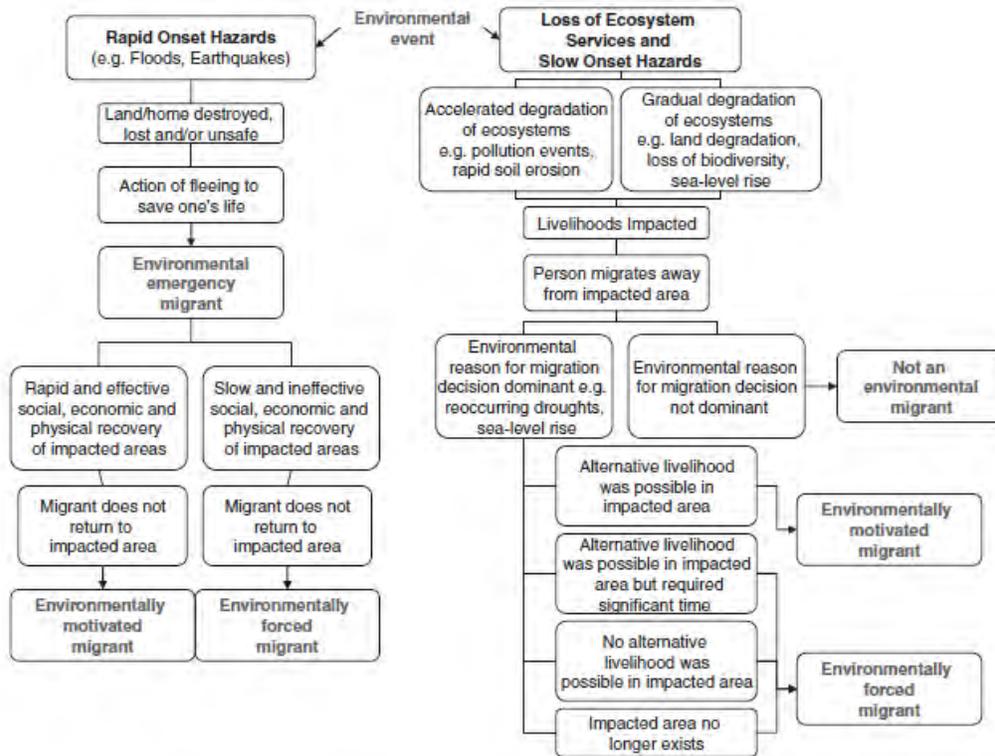
<sup>98</sup> In the publication of 2007, Renaud et al. used the term ‘environmental refugees’ instead of ‘environmental emergency migrants’.

<sup>99</sup> See Renaud et al. 2011, op.cit. p. 14.

<sup>100</sup> See Renaud et al. 2011, op. Cit., p. 15.

<sup>101</sup> See Renaud et al. 2011, op. Cit., p. 15.

**Figure 1: A decision framework for environmentally induced migration**



Source: Renaud et al. 2011, <sup>102</sup>

### 2.2.2 Proposed typology of environmentally induced migration

As already described beforehand, the first part of this briefing paper concludes with the development of a typology of environmentally induced migration which can serve as a basis for identifying adequate policy responses, and in particular to identify policy responses for different forms and dimensions of the phenomenon, including the forced character of environmental migration. The typology will also be used to assess to what extent the current EU policy framework already would be able to respond to environmentally induced migration.

Because of the fact that the term environmental refugee has been challenged both in the academic and political debate, we suggest to use the more general term of “environmentally induced migration” to denote the broader phenomenon and “environmentally induced displacement” to denote forced forms of mobility primarily engendered by environmental change. However, the terminology of environmental induced migration should not be seen as definitive<sup>103</sup>: “Drawing a line between forced and voluntary environmental migration is highly challenging and environmentally induced migration is therefore best understood as a

<sup>102</sup> See Renaud et al. 2011, op. cit., p. 16.

<sup>103</sup> This also applies at least partially to the definition of a refugee as defined in the Geneva Convention as different and subtle forms of persecution exist. For a detailed discussion of the term ‘refugee’ see Roger Zetter (2007): More Labels, fewer Refugees: Making and Remaking the Refugee Label in an Era of Globalisation. In: Journal of Refugee Studies (2007) 20 (2): 172-192.

continuum, ranging from clear cases of forced to clear cases of voluntary movement, with a large grey zone in between.”<sup>104</sup>

We propose to further differentiate between temporary forms of environmentally induced displacement and permanent forms because both scenarios require different protections mechanisms and have different implications for defining the legal status of displaced populations. However, the proposed typology does not distinguish the geographical scope of the movements as all three proposed categories apply to internal and international migration flows.

#### 2.2.2.1 Environmentally induced displacement

Environmentally displaced people can be defined as people who had to leave their place of residence to save their lives. The movement can be characterised as forced migration because the environmental event which has an impact on livelihoods of affected populations can be clearly identified as the trigger of the movement with no alternative livelihood being possible.

The trigger of these movements can be slow-onset events, rapid-onset events as well as sea-level rise. According to the typology deployed by Renaud this category includes the ‘environmental emergency migrant’ and ‘environmental forced migrant’. The timeframe of displacement can be both temporary and permanent depending on the severity of events and the state’s response to the disaster.<sup>105</sup>

##### 2.2.2.1.1 Temporary displacement

Migration flows as a result of natural disasters are in most of the cases internal and temporary because a large proportion of displaced populations return home, if possible.<sup>106</sup> Temporary displacement often occurs after rapid-onset natural disasters such as flooding, windstorms, landslides or earthquakes and volcanic eruptions. People flee from the affected area to avoid physical harm and because of the loss or disruption of livelihoods.<sup>107</sup>

If displacement remains temporary depends on both states as well as on affected populations capacity and resources to rebuild livelihoods in the affected areas. If recovery of the social, economic and physical aspects of the affected areas is rapid and effective, people can choose from a wide range of choices about their mobility, i.e. either return to their origins or stay in the new area of residence.

For slow-onset events the situation is more complex because it lacks the element of urgency and lack of alternatives. However, in some cases alternative livelihoods are not possible or the impacted areas cease to fulfil its function, e.g. in the case of severe desertification or

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<sup>104</sup> Matthew Walsham (2010): *Assessing the Evidence: Environment, Climate Change and Migration in Bangladesh*. Geneva: IOM, Available at: <http://www.iom.org.bd/publications/Assessing%20the%20Evidence:%20Environment,%20Climate%20Change%20and%20Migration%20in%20Bangladesh.pdf> (consulted on 10.10.2011).

<sup>105</sup> See Clionadh Raleigh, Lisa Jordan and Idean Salehyan: *Assessing the Impact of Climate Change on Migration and Conflict*. Washington: World Bank, p. 22, available at: [http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/SDCCWorkingPaper\\_MigrationandConflict.pdf](http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/SDCCWorkingPaper_MigrationandConflict.pdf) (consulted on 11.10.2011).

<sup>106</sup> See Raleigh, Jordan, Salehyan op. cit., p. 22.

<sup>107</sup> See Warner 2010, op. cit., p. 2.

sinking below sea-level.<sup>108</sup> In such cases migration can be characterised as forced movement.

#### *2.2.2.1.2 Permanent displacement*

If disaster response after rapid-onset climate events is slow and ineffective, this limits the range of choices about people's mobility and people cannot return to the affected area. These people become permanent environmental displaced. However, not-resettling displaced persons to their original homes may also be a conscious policy decision by governments.

Another scenario which was described above relates to displacement as a result of slow-onset events and sea-level rise. In some cases people may not have the choice to return, e.g. due to the physical loss of their land as a result of sea-level rise and coastal erosion. Apart from the scenario of sea-level rise and permanent loss of habitable land, degraded ecosystems generally need a long time to recover from disruption, thus requiring affected populations to adapt and find new livelihoods. If affected populations fail to do so find alternative livelihoods they are likely to become permanently displaced.

#### 2.2.2.2 Environmentally induced migration

The category 'environmental displacee', discussed in the preceding section, is characterised by the forced character of movement. By contrast, the category 'environmental migrant' - the focus of the present section - is characterised by a 'voluntary' decision, i.e. a situation where at least some alternative quality options are available. The decision to leave an area affected by environmental degradation may thus be taken in anticipation of worsening conditions in the future or because migration is seen as offering more attractive opportunities in a context of declining quality of life in the region of origin.<sup>109</sup> However, a precondition for using the category environmental migrants is that environmental change can indeed be identified as a root cause for migration movements: "The category of environmental migration identified when a person who faces loss of ecosystem services/slow onset hazards moves, will depend on how strongly the environmental signature emerges in the decision to move."<sup>110</sup> If environmental factors cannot be significantly separated from social, economic or other factors, migrants should not be considered as environmental migrants.<sup>111</sup> However, to identify the root cause of migration is not always an easy task as many case studies show.<sup>112</sup>

People can also be characterised as environmental migrants if they, following a rapid-onset hazard, do not choose to return to the affected areas, even though they technically could return. This highlights the significance of timing of government interventions.<sup>113</sup> People may not choose to return if the recovery process takes long and if affected people have already

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<sup>108</sup> See Warner 2010, op. cit., p. 4.

<sup>109</sup> See Warner 2010, op. cit., p. 4.

<sup>110</sup> Renaud et al. 2011, op. cit., p. 21.

<sup>111</sup> See Renaud et al. 2011, op. Cit., p. 4.

<sup>112</sup> Renaud et al. 2011 refer to research of Doevenspeck made in Benin who found that despite the presence of environmental problems in the affected communities in Benin internal migration is mainly linked to socio-cultural factors.

<sup>113</sup> See Warner 2010, op. cit., p. 3.

found employment and school services for their children and return does not fit their current situation.

The fact that environmentally induced migration cannot be characterised as a forced form of migration should not conceal the necessity of adequate policy responses to reduce the vulnerability of affected populations and to further establish normative frameworks to protect this category of migrants.

In conclusion, the proposed typology of '*environmentally induced migration*' and '*environmentally induced displacement*' does not present a final scheme of categorising populations who primarily migrate due to environmental changes as further discussion on this topic is urgently needed. Our aim was to provide a typology which serves as a basis for the assessment of the capacity of the current EU policy framework to accommodate environmental displaced and to develop targeted policy responses. Within the following section the main gaps in protection to environmentally displaced people will be discussed as well as the global debates on policy responses to embed the analysis of the EU policy framework.

**Table 2: Typology of environmentally induced migration**

CATEGORY	CAUSE OF MOVEMENT	NATURE OF MOVEMENT	PROTECTION GAPS
<b>Environmentally induced temporary displacement</b>	Rapid-onset natural disasters;  Slow-onset natural disasters	Temporary forced displacement within national borders;  Temporary forced displacement across international borders	Displacement across borders:  Temporary, humanitarian protection  Displacement within countries:  Limited internal protection
<b>Environmentally induced permanent displacement</b>	Rapid-onset natural disasters (if recovery of the impacted area is slow and ineffective);  Slow-onset events (no alternative livelihood possible);  Sea-level rise (affected area no longer exists)	Permanent forced displacement within national borders;  Permanent forced displacement across international borders	Displacement across borders:  Permanent Protection  Durable solutions (resettlement, local integration)  Displacement within countries:  Limited internal protection
<b>Environmentally induced migration</b>	Slow-onset natural disasters;  Rapid-onset natural disasters (if people do not choose to return home)	Temporary or permanent voluntary migration (anticipating worsening conditions, search for more attractive opportunities to worsening life quality) within or across national borders	Weak protection framework for migrants both at international and internal levels

### 3. REVIEW OF THE POLICY DEBATE ON ENVIRONMENTALLY INDUCED DISPLACEMENT AND POSSIBLE POLICY RESPONSES

#### KEY FINDINGS

- Several **protection gaps** exist regarding environmental induced displacement, in particular in the case of slow-onset migration and displacement across borders.
- Different policies and responses are needed at **each stage of environmentally induced migration**, ranging from actions to mitigate climate change, the offer of protection during the phase of displacement and (re)integration or resettlement measures in the last stage.
- Although the **extension of the scope of the Geneva Refugee Convention** is often cited as one possible option to address the protection gap, there is growing consensus that it is neither a realistic nor a desirable scenario.
- Although the option of **broadening the guiding principles on internally displacement** is discussed as the most promising approach in the literature it is challenging considering the deficiencies in their implementation and their incorporation into national legal frameworks.
- The **creation of a specific legal framework** which applies to environmental induced migration is unlikely to materialize.
- Another discussed option at the global level is the **addition of a protocol** on climate-induced migration to the **United Nations Framework Convention on Climate Change**.

Generally, five main options are considered in this debate at global level: the expansion of the 1951 Geneva Convention, the extension of the Guiding Principles on Internal Displacement,<sup>114</sup> the addition of a protocol to the UNFCCC on climate induced migration, the creation of a new tailored international convention and using temporary protection mechanisms to accommodate environmentally induced displacement. Besides the debated options on how to accommodate climate in a legal framework, two other main approaches are considered at international level: planned resettlement and reducing the vulnerability of affected populations through tailored development cooperation measures.

These options will be discussed in the following sections, after a brief description of the 'protection gaps' for people displaced by environmental and climate change impacts which triggered the international debate on possible policy responses.

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<sup>114</sup> See Angela Williams (2008): "Turning the Tide: Recognizing Climate Change Refugees in International Law," Law and Policy 30/4: 502-529.

### 3.1 Protection gaps

The increasing concern about 'protection gaps' for persons displaced by environmental and climate change seems surprising given the extensive scope of protection available for different groups of forcibly displaced and vulnerable populations encompassing refugees, internally displaced persons (IDPs) and stateless persons. At the same time, the humanitarian capacity to respond to displacement caused by both natural and man-made disasters is also relatively high and has considerably increased over the past decades.<sup>115</sup> Although some legal instruments and norms potentially provide some protection for environmentally displaced people, it remains unclear whether these instruments are appropriate and how they might be adapted.

Several intergovernmental actors promote initiatives to develop a concept based on existing instruments under international law<sup>116</sup> while others promote a new convention for environmentally displaced.<sup>117</sup> The challenges in addressing the protection gaps lie in "determining whether displacement is forced or voluntary; whether it is temporary or permanent; and how protection needs differ between internal or international displacement".<sup>118</sup> As discussed in the first part of the study, the distinction between voluntary and forced is the most complex, especially in the case of slow-onset climate change.

The Inter Agency Standing Committee (IASC)<sup>119</sup> Working Group describes how existing international legal frameworks may apply to populations affected by climate and environmental change and outlines possible operational and legal gaps.<sup>120</sup> The IASC distinguishes between four main causes for climate-related movements: Hydro-meteorological extreme hazard events, environmental degradation and/or slow onset extreme hazard events, significant permanent losses in state territory as a result of sea level rise etc. and armed conflict/ violence over shrinking natural resources.

The nature of movement may differ as a result of the first two scenarios between voluntary and forced, as well as between internal and cross-border migration. Potential protection gaps arise in particular in the case of cross-border movements because affected populations are - although protected by international human rights law - not entitled to admission and stay in another country. Those people are not automatically protected by the 1951 refugee

<sup>115</sup> See Roger Zetter (2011): Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks. Oxford: Refugee Studies Centre.

<sup>116</sup> See UNHCR (2009): Forced Displacement in the Context of Climate Change: Challenges for States under International Law. Available at: <http://unfccc.int/resource/docs/2009/smsn/igo/049.pdf> (consulted on 13.10.2011).

Council of Europe, Environmentally induced migration and displacement: a 21st century challenge, Report Committee on Migration, refugees and Population, Rapporteur: Tina Acketoft, Council of Europe Parliamentary Assembly, Doc 11785, 23 December 2008, Inter Agency Standing Committee Working Group (2008): Climate Change, Migration and Displacement: Who will be affected?, Working paper submitted by the Informal Group on Migration/Displacement and Climate Change to the IASC Working Group, 31 October, available at: <http://unfccc.int/resource/docs/2008/smsn/igo/022.pdf> (consulted on 13.10.2011).

<sup>117</sup> See Harry Wijnberg and Stuart M. Leiderman (2004): The Toledo Initiative on Environmental Refugees and Ecological Restoration. The Netherlands: Living Space for Environmental Refugees (LiSER), available at: [http://www.reseau-terra.eu/IMG/doc/Toledo\\_Initiative.doc](http://www.reseau-terra.eu/IMG/doc/Toledo_Initiative.doc) (consulted on 13.10.2011)

<sup>118</sup> Zetter 2011, op. cit., p. 4.

<sup>119</sup> The Inter-Agency Standing Committee (IASC) is an inter-agency forum for coordination, policy development and decision-making involving the key UN and non-UN humanitarian partners established in June 1992. See <http://www.humanitarianinfo.org/iasc/> (consulted on 17.10.2011).

<sup>120</sup> See IASC Working Group 2008, op. cit.

convention, although they might be in need for temporary or permanent protection and return assistance. Forcibly internally displaced are in both cases protected by the Guiding Principles on Internally Displaced People (IDP)<sup>121</sup> but the lack of environmental stressors as one of the protected reasons for displacement may limit effective protection and assistance.<sup>122</sup> Regarding slow-onset climate events, a gap arises also because it is difficult to distinguish between voluntary and forced movements, in particular due to the gradual process beginning with voluntary movements and potentially ending in forced displacement. If an alternative livelihood is not possible after a degradation process, planned resettlement of affected populations might be an option, but very few examples of legal provisions for internal resettlement due to environmental degradation exist and dialogue about resettlement between countries is “in a nascent stage”.<sup>123</sup>

Significant permanent losses in state territory as a result of sea level rise etc. may also result in movements which begin with voluntary migration and end with forced displacement. These movements can take place both within and across borders, raising different protection needs. A major protection gap exists in the case a state loses its entire territory. Due to the fact that territory is a constituent element of statehood, it remains unclear whether its statehood would continue to be recognised by the international community and, if not, if citizens of the affected state would be effectively rendered stateless.<sup>124</sup> While stateless persons enjoy considerable protection under international law, an equally, if not more important issue what protections citizens of states facing extinction or a significant loss of territory as a result of sea-level rise enjoy before the state has physically ceased to exist. The emerging doctrine of the ‘Responsibility to Protect’ (“R2P”) goes some way in providing an answer to this question, but does not address all issues that might arise as a result of extinction of states (see also below).

In the case of armed conflict/violence over shrinking natural resources affected populations are protected by the Guiding Principles on Internally Displaced Persons and in the case of movement across borders subsidiary and temporary protection regimes for persons could apply. In the particular situation where the homeland government has withheld or hindered assistance in order to punish or marginalize affected populations on one of the five grounds set out in the refugee definition the Geneva Refugee Convention could apply.<sup>125</sup>

In general, internally displaced persons displaced by environmental events enjoy a broader scope of protection than persons displaced across international borders. Nonetheless, a clear protection gap exists also for internally displaced people due to poor implementation of legal standards and the weak status of the Guiding Principles on Internal Displacement as non-binding principles.<sup>126</sup> To address this gap several options are discussed at global level, which will be further outlined in the following sections. It has to be underlined that different policies and responses are needed at each stage of environmentally induced migration. The stages comprise the pre-migration phases, when actions to mitigate climate change and to strengthen the adaptation capacities of communities take place, the phase of displacement, which can be temporary or permanently, internal and across borders, the stage of return or

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<sup>121</sup> See UNHCR (1998): Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

<sup>122</sup> See Warner 2010, op. cit., p. 2.

<sup>123</sup> See Warner 2010, op. cit., p. 5.

<sup>124</sup> See IASC Working Group 2008, op. cit., p. 3.

<sup>125</sup> See UNHCR 2009, op. cit., p. 7.

<sup>126</sup> See Zetter 2011, op. cit., p. 15.

resettlement to another location and the final stage of (re)integration either into the home or new location and society.<sup>127</sup>

**Figure 2: Life cycle of climate-induced migration**



Source: Martin 2010, p. 2<sup>128</sup>

## 3.2 Possible policy responses

### 3.2.1 Extension of the scope of the 1951 Geneva Convention

As discussed before, the Geneva Convention only applies in very specific cases linked to environmental events. One scenario is, where the government fails to protect against the effects of environmental change which affect a particular social group. This could provide a basis for making a refugee claim if members of that group fled to another state as a result of the failure or deliberate policy of the state of origin to protect a particular social group. Another potentially basis of a refugee claim could be found in the scenario of international flight resulting from a conflict affecting a particular social group over access to environmental resources.<sup>129</sup>

The '1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa'<sup>130</sup> extends the term 'refugee' as used in the Geneva Convention to those who are compelled to leave their country of residence due to "events seriously disturbing public order". Some commentators stress that this could apply to environmentally displaced people but most think not.<sup>131</sup>

Key stakeholders such as the UNHCR have voiced major reservations regarding the notion of 'environmental' or 'climate refugees'. According to the UNHCR, 'refugee' should be seen as essentially a legal term directly linked to the Geneva Convention. Yet it is widely

<sup>127</sup> See Martin 2010, op. cit., p. 1-2.

<sup>128</sup> See Martin 2010, op. cit., p. 2.

<sup>129</sup> See Zetter 2011, op. cit., p. 19.

<sup>130</sup> Available at:

[http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Refugee\\_Convention.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf) (consulted on 17.10.2011)

<sup>131</sup> See Zetter 2011, op. cit., p. 19.

accepted that people who are forced to leave their country of origin because of climate change related effects will not ordinarily fulfil the legal definition of “refugee” in the Geneva Convention. The convention offers protection to individuals who are persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.<sup>132</sup> Unlike in those grounds protected by the Geneva Convention, where a clear responsibility of a state can be established – either as agent of persecution or insofar the state is unable or unwilling to prevent and sanction persecution, no such clear-cut responsibility can be established in the case of environmentally or climate induced forced displacement.<sup>133</sup>

Nevertheless, the expansion of the 1951 Geneva Convention relating to the status of Refugees and its 1967 Protocol is often cited as a possible option in the context of environmental displacement.<sup>134</sup> The inclusion of a protocol in the Geneva Convention or its expansion was raised during a meeting with representatives of governments, environmental and humanitarian organizations, and United Nations agencies organised by the government of the Maldives in 2006.<sup>135</sup> Jessie Cooper, an American lawyer, proposed the extension of the definition of a refugee and an amendment of Art. 1A of the Geneva Convention by adding degraded environmental conditions that endanger life, health, livelihoods and the use of resources.<sup>136</sup> She justifies her analysis with reference to Art. 25(1) of the Universal Declaration of Human Rights (UDHR).<sup>137</sup> On the Climate Change Copenhagen Conference in 2009, the Bangladeshi Finance Minister called on the UN to redefine international law while stating: “The convention on refugees could be revised to protect people [environmental refugees]. It’s been through other revisions, so this should be possible.”<sup>138</sup>

One main advantage of an expansion of the Geneva Convention lies in its relatively unproblematic implementation due to the fact that all States Parties to the Geneva Convention already have an operational system of recognition in place.<sup>139</sup>

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<sup>132</sup> See UNHCR (2006): Convention and protocol relating to the status of refugees. Text of the 1951 Convention Relating to the Status of Refugees, Text of the 1967 Protocol Relating to the Status of Refugees, Resolution 2198 (XXI) adopted by the United Nations General Assembly, United Nations General Assembly. Geneva: UNHCR, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> (consulted on 17.10.2011)

<sup>133</sup> See Renaud et al. 2011, op. cit., p. 12.

<sup>134</sup> See Roger Zetter (2011): Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks. Oxford: Refugee Studies Centre and UNHCR (2008): Climate change, natural disasters and human displacement: a UNHR perspective. Available at: <http://www.unhcr.org/4901e81a4.html> (consulted on 17.10.2011).

<sup>135</sup> See Republic of the Maldives Ministry of Environment, Energy and Water, ‘Report on the First Meeting on Protocol on Environmental Refugees: Recognition of Environmental Refugees in the 1951 Convention and 1967 Protocol Relating to the Status of Refugees’, Male, Maldives, 14-15 Aug. 2006, cited in F. Biermann and I. Boas, ‘Protecting Climate Refugees: The Case for a Global Protocol’, (Nov.-Dec. 2008) Environment.

<sup>136</sup> Jessica B. Cooper (2009): Environmental refugees: meeting the requirements of the refugee definition. New York University Environmental Law Journal, Vol. 6, cited in Christel Cournil (2011): The protection of ‘environmental refugees’ in international law. In: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change. UNESCO, pp. 359-387.

<sup>137</sup> Art. 25 (1): “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”, UDHR, available at: <http://www.un.org/en/documents/udhr/> (consulted on 17.10.2011).

<sup>138</sup> See, H. Grant, J. Randerson and J. Vidal, ‘UK Should Open Borders to Climate Refugees, Says Bangladeshi Minister’, The Guardian, 4 Dec. 2009, available at: <http://www.guardian.co.uk/environment/2009/nov/30/rich-west-climate-change/print> (consulted on 18.10.2011).

<sup>139</sup> See Christel Cournil (2011): The protection of ‘environmental refugees’ in international law. In: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change. UNESCO, pp. 359-387.

However, there is much concern that any expansion or amendment of the refugee definition would lead to a devaluation of the current protection for 'convention refugees' because it may "encourage receiving states to treat (refugees) in the same way as 'economic migrants' to reduce their responsibility to protect and assist"<sup>140</sup>. Furthermore, the UNHCR considers that initiatives to amend the refugee definition would risk the renegotiation of the Refugee Convention which could result in lowering protection standards for refugees and undermine the international refugee protection systems due to the current political environment.<sup>141</sup> "The reality is that there is no consensus for extending the refugee regime. Most receiving states want to restrict it further than improve it."<sup>142</sup> Another argument against the extension of the Refugee Convention is that it would rule out for example internally displaced persons for environmental reasons which constitute the largest group.<sup>143</sup>

### 3.2.2 Broadening the concept of "internally displaced persons"

Given the reservations about the expansion of the Geneva Convention and the fact that only a minority of environmentally induced migrants crosses international borders the concept of "internally displaced persons (IDPs)" offers a possible alternative.<sup>144</sup> The 1998 Guiding Principles on Internal Displacement could apply to environmentally induced movements because the definition of IDPs includes "persons or groups of persons who have been forced or obliged to flee or leave their homes or habitual places of residence, in particular as a result of or in order to avoid the effects of ... natural or human-made disasters".<sup>145</sup>

Therefore, several actors have placed considerable emphasis on the promotion of the Guiding Principles as the most appropriate framework to protect persons displaced by environmental factors.<sup>146</sup> However, the protection of internally displaced by environmental factors has gained less attraction than the protection of those crossing borders. The assumed reasons for the comparatively little interest are manifold: one of the reasons is that international migration is viewed as posing more challenges on the international community than internal migrants; the second reason is that the majority of internal displacements take place within developing countries and the persons moving to the developed world cause more concerns; the third reasons which is mentioned in the literature is the assumption that a stronger legal and normative framework is already in place for those displaced internally by the effects of environmental change.<sup>147</sup>

For these reasons it is often overlooked that also gaps exists in the current legal and normative framework for protecting internally displaced by environmental factors. The

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<sup>140</sup> JoAnn McGregor (1993): Refugees and the Environment. In: Richard Black and Vaughan Robinson (eds.): Geography and Refugees: Patterns and Process of Change. London: Belhaven Press, pp. 159-170, cited in Boano, Zetter, Morris 2008, op. cit., p. 10.

<sup>141</sup> See UNHCR 2009, op. cit., p. 9.

<sup>142</sup> See Castles 2002, op. cit., p. 10.

<sup>143</sup> See Cournil 2011, op. cit., p. 366.

<sup>144</sup> See Williams 2008 op.cit.

<sup>145</sup> UNHCR (1998): Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

<sup>146</sup> See Zetter 2011, op. cit., p. 21 and UNHCR (2009b): Forced Displacement in the context of climate change: challenges for states under International Law. Paper submitted by the Office of the United Nations High Commissioner for Refugees in cooperation with the Norwegian Refugee Council, the Representative of the Secretary General on the Human Rights of Internally Displaced Persons and the United Nations University. Available at: <http://www.unhcr.org/4a1e4d8c2.html> (consulted on 19.10.2011).

<sup>147</sup> See Khalid Koser (2011): Climate Change and internal displacement: challenges to the normative framework. In: In: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change. UNESCO, pp. 289-305 .

definition of IDPs is broad, including a non-exhaustive list of examples of causes of displacement. However, the definition is descriptive rather than legal and states are under no obligation to accept the definition provided in the Guiding Principles. Another aspect of the definition, which limits the potential application of the Guiding Principles, is that economic motivations - e.g. to escape poverty – are excluded from the definition. This is problematic in the sense that a proportion of displacement resulting from environmental factors will be primarily economic in motivation because affected populations escape from deteriorating living conditions as a result of environmental degradation such as gradual desertification or salinisation of agricultural land.<sup>148</sup> It is not clear whether those fleeing a gradual deterioration of living conditions are covered by the principles.<sup>149</sup> Furthermore, it is also open to interpretation to which extent the Guiding Principles apply to citizens of a country different from the country of residence who become displaced there.<sup>150</sup>

In addition, the Guiding Principles only provide guidelines and lack legal force. In order to be legally binding the Guiding Principles have to be domestically incorporated, which only very few governments actually have done.<sup>151</sup> And even within the small group of affected countries that have adopted national laws on internal displacement these laws and policies are incomplete.<sup>152</sup> In October 2009, the African Union (AU) adopted the legally binding Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>153</sup> The Convention has to be ratified by 15 countries to come into force but up to now only eleven AU member states did so.<sup>154</sup>

A challenge which also confronts countries that have already adopted national laws and policies on internal displacement is implementation. It is difficult to evaluate the impact of the Guiding Principles and a lack of coordination between short-term humanitarian activities and longer-term development and reconstruction activities and between international agencies has been reported in a number of cases. In line with the challenge of implementation institutional shortcomings contribute to the protection gap as well. No

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<sup>148</sup> See Koser 2011, op. cit., p. 293 Vikram Odedra Kolmannskog (2008): Future floods of refugees. A comment on climate change, conflict and forced migration. Norwegian Refugee Council, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/70912A52F9B3C530C125754500520BBD-nrc\\_April08.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/70912A52F9B3C530C125754500520BBD-nrc_April08.pdf) (consulted on 17.10.2011).

<sup>149</sup> Vikram Odedra Kolmannskog (2008): Future floods of refugees. A comment on climate change, conflict and forced migration. Norwegian Refugee Council, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/70912A52F9B3C530C125754500520BBD-nrc\\_April08.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/70912A52F9B3C530C125754500520BBD-nrc_April08.pdf) (consulted on 20.10.2011).

<sup>150</sup> Khalid Koser (2011) underlines that migrant workers tend to be in the most vulnerable position in the labour force which leads to the assumption that climate change may affect migrant workers disproportionately.

<sup>151</sup> Zetter (2011) selected four environmentally-stressed countries (Vietnam, Bangladesh, Kenya, Ghana) as case studies to analyse their legal and normative rights protection status. He found out that none of the four countries incorporated the Guiding Principles into their domestic legal framework although Kenya is in the process of doing so.

<sup>152</sup> See Koser 2011, op. cit., p. 295.

<sup>153</sup> Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/0541BB5F1E5A133BC12576B900547976/\\$file/Convention\(En\).pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/0541BB5F1E5A133BC12576B900547976/$file/Convention(En).pdf) (consulted on 20.10.2011).

<sup>154</sup> Countries which ratified the convention: Uganda, Sierra Leone, CAR, Zambia, Gabon, Somalia, Djibouti, Gambia, Togo, Mali and Guinea-Bissau, an updated list of countries is available at: <http://www.internal-displacement.org/kampala-convention/making-it-real> (consulted on 20.10.2011).

specific agency has the responsibility to protect IDPs although UNHCR has a special role and responsibility as 'cluster leader'.<sup>155</sup>

These explanations illustrate that a protection gap also exists for internally displaced by environmental factors and that the option of broadening the guiding principles on internally displacement - although it is discussed as the most promising approach in the literature – is a challenging tasks. Therefore, several researchers and activists call for a new framework which applies to environmental or climate change displacement.

### 3.2.3 Creation of a new framework which applies to environmental or climate change displacement

Several academics but also policy makers have called for a new legal instrument.<sup>156</sup> The Swedish MP Tina Acketoft, rapporteur of a report on environmental refugees for the Council of Europe's Committee on Migration, Refugees and Population encourages Europe to adopt an original legal text. As a result, the Committee on Migration, Refugees and Populations and the Committee on Environment, Agriculture and Regional Affairs of the Parliamentary Assembly of the Council of Europe jointly adopted a resolution and a recommendation.<sup>157, 158</sup> In both texts it is called "to carry out a comprehensive legal study on the gaps in existing international law and normative regulations with a view to an eventual elaboration of a European framework convention for the recognition of the status of environmental migrants" and to "consider adding a new protocol to the European Convention on Human Rights (ETS No. 5), concerning the right to a healthy and safe environment; such a protocol would introduce the precautionary principle into the Convention and would reflect the way the concept of "human rights" has evolved since the Convention was drafted".

Among the proposed international conventions on environmental displacement, the December 2008 draft convention on the international status of environmentally displaced persons, drafted by law specialists at the University of Limoges, is the most complete protection package.<sup>159</sup> Other initiatives in drafting a convention on environmental displaced persons include, among others, a group of Australian experts<sup>160</sup>, the French lawyer Véronique Magniny<sup>161</sup>, the American lawyer Gregory McCue<sup>162</sup> and the two approaches discussed below.

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<sup>155</sup> See Koser 2011, op. cit., p. 300 and Margit Ammer, Manfred Nowak, Lisa Stadlmayr, Gerhard Hafner (2010): Rechtsstellung und rechtliche Behandlung von Umweltflüchtlingen. Dessau-Rosslau: Umweltbundesamt, available at: <http://www.umweltdaten.de/publikationen/fpdf-l/4035.pdf> (consulted on 20.10.2011).

<sup>156</sup> See Cournil 2011, op. cit., p. 374.

<sup>157</sup> See Resolution 1655 (2009): Environmentally Induced Migration and Displacement: A 21<sup>st</sup> Century Challenge. Available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1655.htm> (consulted on 21.10.2011).

<sup>158</sup> See Recommendation 1862 (2009): Environmentally Induced Migration and Displacement: A 21<sup>st</sup> Century Challenge. Available at: <http://assembly.coe.int/Documents/AdoptedText/ta09/EREC1862.htm> (consulted on 21.10.2011).

<sup>159</sup> See CRIDEAU and CRDP, Faculty of Law and Economic Science, University of Limoges (2008): Draft Convention on the International Status of Environmentally-Displaced Persons. In: *Revue Européenne de Droit de l'Environnement*, pp. 381 - 393.

<sup>160</sup> See David Hodgkinson, Tess Burton, Simon Dawkins, Lucy Young and Alex Coram (2008): Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses. Available at: <http://www.ias.uwa.edu.au/new-critic/eight/?a=87815> (consulted on 22.10.2011).

<sup>161</sup> See Véronique Magniny (1999) : *Les réfugiés et l'environnement. Hypothèse juridique à propos d'une menace écologique*. Doctoral dissertation. Paris : University Paris Panthéon-Sorbonne, Department of Law.

Dana Zartner Falstrom proposes a convention addressing the specific issue of environmentally-induced migration which would be elaborated in a similar fashion to the Convention Against Torture. The proposed convention comprises an extensive set of rights and obligations, combined with a mechanism of implementation and includes elements of addressing the root causes for displacement.<sup>163</sup> The proposed convention by Falstrom is criticised for disproportionately placing developing countries under obligations because these countries are mainly affected by environmental change and displacement. However, this can also be viewed as a positive step since the Kyoto Protocol and the United Nations Framework Convention on Climate Change do not provide for obligations for developing countries. On the other hand, it may also be seen as inappropriate taking into consideration that the majority of environmental displaced will be displaced by climate change in the future and that this process is irresistible and not only caused by developing countries<sup>164</sup>.

Bonnie Docherty and Tyler Giannini, two American lawyers proposed a binding instrument in 2009 which provides further support for a narrow definition of 'climate refugees' based on six principles: "Forced migration; temporary or permanent relocation; movement across national borders; disruption consistent with climate change; sudden or gradual environmental disruption; and 'more likely than not' standard for human contribution to the disruption."<sup>165</sup> The proposed convention should be based on the key principle of shared responsibility and the authors suggest establishing administrative bodies to implement the instrument, including a global fund, a coordinating agency, and a body of scientific experts.<sup>166</sup>

Despite the comprehensive proposals to address the issue of displacement due to environmental factors through a new convention or treaty, there is a broad consensus that a specific legal framework is unlikely to materialise.<sup>167</sup> One pragmatic argument against the creation of a new protection treaty is the potential lack of political will to realize protection for people displaced by climate change since millions of refugees have no durable solutions in sight due to a lack of implementation of the principle of burden sharing.<sup>168</sup> Therefore, the creation of a treaty should not be seen as the answer to climate-related displacement as it must be accompanied by the political will to set actions.

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<sup>162</sup> See Gregory S. McCue (1993): Environmental Refugees: Applying International Environmental Law to Involuntary Migration. *Georgetown International Environmental Law Review*, Vol. 6.

<sup>163</sup> See Aurelie Lopez (2007): The Protection of Environmentally-displaced Persons in International Law. In: Lewis & Clark Law School's Environmental Law Online, Vol. 37 and Zartner Falstrom D. (2001): Stemming the flow of environmental displacement: creating a convention to protect persons and preserve the environment, *Colorado Journal of International Environmental Law and Policy*, 1-29.

<sup>164</sup> See Jenny Grote (2008): Der rechtliche Schutz ökologisch motivierter Flucht. Paper presented at the Herbsttagung des Netzwerks Migrationsrecht. Available at: <http://netzwerk-migrationsrecht.akademie-rs.de/wp-content/uploads/2009/02/grote-der-rechtliche-schutz-okologisch-motivierter-flucht.pdf> (consulted on 22.10.2011).

<sup>165</sup> See Bonnie Docherty and Tyler Giannini (2009): Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees. In: *Harvard Environmental Law Review*, Vol. 33, pp. 349 - 403.

<sup>166</sup> See Docherty, Giannini 2009, op. cit., p. 402.

<sup>167</sup> See Zetter 2011 (op. cit.), p. 16.

<sup>168</sup> See McAdam 2011, op. cit., p. 128.

### 3.2.4 Adding a protocol on climate-induced migration to the United Nations Framework Convention on Climate Change (UNFCCC)

Besides the abovementioned options, the addition of a protocol on climate induced migration to the United Nations Framework Convention on Climate Change (UNFCCC) is another debated option to address climate induced migration.

Biermann and Boas advocate for a new *sui generis* protection regime which applies to environmentally induced migration and covers the recognition, protection and resettlement of environmental migrants.<sup>169</sup> They suggest building the protocol on recognition, protection and resettlement on five core principles:

- 1) The *Principle of Planned Re-location and Resettlement* provides the main principles because most climate impacts are predictable and the proposed regime on climate induced migration should therefore not focus on emergency response and disaster relief but on planned and voluntary resettlement over longer periods of time.<sup>170</sup>
- 2) The *Principle of Resettlement Instead of Temporary Asylum* because the majority of environmentally displaced will not be able to return to their homes.
- 3) The *Principle of Collective Rights for Local Population*, for example for affected cities, provinces, small island states etc. affected by climate change (in contrast to the Geneva Convention, which is based on an individual approach).
- 4) The *Principle of International Assistance for Domestic Measures* is proposed because climate induced displacement will mainly occur within a country and a protection regime should therefore focus on supporting governments, local communities and agencies to protect people within their territory as well as financing resettlement programmes.
- 5) The *Principle of International Burden-sharing* because climate change is a global problem and industrialised countries have the main responsibility for the effects of climate change.<sup>171</sup>

An executive committee should be responsible (under the authority of the Conference of the Parties to the UN Climate Convention) to operationalise the protocol. Its task is to maintain a list of specified administrative areas whose population needs to be relocated due to climate change (state parties to the protocol would be entitled to propose areas under its jurisdiction for inclusion into the list of affected areas). The inclusion in this list would trigger specific rights and support mechanisms, such as financial support, voluntary resettlement programmes etc.).<sup>172</sup>

Discussions on climate induced displacement have always been part of the UNFCCC negotiations under the Ad Hoc Working Group on long-term Cooperative Action (AWG-LCA) and resulted in the Cancun Adaptation Framework:<sup>173</sup>

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<sup>169</sup> See Frank Biermann and Ingrid Boas (2010): Preparing for a warmer world. Towards a global governance system to protect climate refugees. *Global Environmental Politics*, Vol. 10, pp. 60-88.

<sup>170</sup> Biermann, Boas (2010), op. cit., p. 75.

<sup>171</sup> Biermann, Boas (2010), op. cit., pp. 75-76.

<sup>172</sup> See Biermann, Boas (2010), op. cit., pp. 77-78.

<sup>173</sup> See Koko Warner (2011): *Climate and Environmental Change, Human Migration and Displacement: Recent Policy Developments and Research Gaps*. Available at: <http://www.un.org/esa/population/meetings/ninthcoord2011/p10-unu.pdf> (consulted on 22.10.2011).

14. “[The Conference of the parties] [i]nvites all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional development priorities, objectives and circumstances, by undertaking, inter alia, the following:

(....)

(f) Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels;” (...)

Although the quoted paragraph is only a small step, the inclusion of climate induced displacement, migration and planned relocation in the Cancun Adaptation Framework has opened new windows of opportunity to work on the issue of climate induced displacement.<sup>174</sup>

### 3.2.5 Temporary protection environmentally displaced persons

A fifth possible option is using various forms of temporary protection as a protection instrument for accommodating persons displaced because of environmental factors.

The United States Immigration Act of 1990, for example, foresees temporary protection status in circumstances such as droughts, floods, epidemics or earthquakes in conditions where the state of origin cannot manage the return of its nationals. This status allows for a six-month stay which can be extended to 18 months if living conditions do not improve in the affected country but only applies to persons who are in the United States during the time of disaster.<sup>175</sup> Furthermore, the state of origin has to make a formal request for protection.<sup>176</sup> The reason behind the provision that temporary protection only applies to people who are already in the U.S. is to avoid the ‘pull factor’ of this regulation.<sup>177</sup>

The temporary protection status was applied after Hurricane Mitch in 1998 for Nicaraguans and Hondurans as well as for migrants in the wake of volcanic eruptions. However, this protection is very ad hoc and seems not be adequate to deal with expected migration scenarios.

The European Union directive on temporary protection could also to be amended to accommodate people displaced by environmental factors. Protection would be established in the case when masses of people are suddenly displaced which results in mass influx when it appears not to be feasible to treat applicants on an individual basis.<sup>178</sup> The potential appropriateness of the directive to accommodate people displaced by environmental change will be discussed in detail in the last part of this study.

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<sup>174</sup> Warner 2011, op. cit., p. 5.

<sup>175</sup> See Michelle Leighton (2010): Climate Change and Migration: Key Issues for Legal Protection of Migrants and Displaced Persons. Available at: [http://www.gmfus.org/galleries/default-file/Leighton\\_MAH\\_EditsV2.pdf](http://www.gmfus.org/galleries/default-file/Leighton_MAH_EditsV2.pdf) (consulted on 22.10.2011).

<sup>176</sup> See Cournil 2011, op. cit., p. 369.

<sup>177</sup> See Cournil 2011, op. cit., p. 369.

<sup>178</sup> See Martin 2010, op. cit., p. 9.

Within the European Union both Sweden and Finland<sup>179</sup> have protection measures which are similar to the U.S.<sup>180</sup> Denmark has, on discretionary grounds, granted humanitarian status to victims of famines and their families.<sup>181</sup> In the mentioned cases the decision is made on an individual basis.<sup>182</sup>

The legislation of these countries will be reviewed in the next part of the study to analyse their potential for harmonisation.

### 3.2.6 Resettlement

Planned forced displacement of populations from areas impacted by climate change and the resettlement of these people is one of the most discussed and controversially debated dimensions of the migration and climate change relationship.<sup>183</sup>

Migration and resettlement is increasingly recognised as an adaptation strategy to deal with climate and environmental related effects, although most countries would prefer that their populations would be able to remain in place.<sup>184</sup> Migration and planned resettlement can be seen as a strategy to reduce population pressures in areas with a fragile environment and it is being understood as inevitable for seriously affected populations. In particular, resettlement as a strategy to mitigate harm related to floods or sea-level rise is increasingly integrated in National Adaptation Programmes of Action (NAPAs) resulting in concrete programmes to protect affected populations. One example is the adaptation strategy of the Maldives including the 'Safer Island Strategy' which would resettle populations from smaller, vulnerable islands to better protected ones. The Maldives also established a sovereign wealth fund which could be used to purchase a new island for the country's population.<sup>185</sup>

Planned resettlement has a long history in development field. One example is the initiative of the Ethiopian government in 1985 to resettle 1.5 million people as a consequence of massive food shortages from drought affected areas to more fertile ones. The programme has been widely criticised for the way the relocations were implemented.<sup>186</sup>

As a response, the World Bank<sup>187</sup> and regional development banks, e.g. the African Development Bank<sup>188</sup> or the Asian Development Bank<sup>189</sup>, have developed guidelines to improve the quality of resettlement programmes. The Guiding Principles on Internal

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<sup>179</sup> See Vikram Kolmannskog and Finn Myrstad (2009): Environmental Displacement in European Asylum Law. In: European Journal of Migration and Law, pp. 313-326.

<sup>180</sup> See Michelle Leighton 2010, op. cit.

<sup>181</sup> See UNHCR (2009): Forced Displacement in the Context of Climate Change: Challenges for States under International Law. Available at: <http://unfccc.int/resource/docs/2009/smsn/igo/049.pdf>.

<sup>182</sup> See Martin 2010, op. cit., p. 9.

<sup>183</sup> See Graeme Hugo (2011): Lessons from past forced resettlement for climate change migration. In: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change. UNESCO, pp. 260-288.

<sup>184</sup> See Martin 2010, op. cit., p. 3.

<sup>185</sup> See Martin 2010, op. cit., p. 4.

<sup>186</sup> See Martin 2010, op. cit., p. 5 and McLeman 2011, op. cit., p.21.

<sup>187</sup> See Worldbank (2002): Handbook for Preparing a Resettlement Action Plan.

<sup>188</sup> See African Development Bank, African Development Fund (2003): Involuntary resettlement policy. Available at: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000009-EN-BANK-GROUP-INVOLUNTARY-RESETTLEMENT-POLICY.PDF> (consulted on 23.10.2011).

<sup>189</sup> See Asian Development Bank (1998): Handbook on Resettlement. A Guide to Good Practice. Manila: Asian Development Bank, available at: [http://www.adb.org/documents/handbooks/resettlement/Handbook\\_on\\_Resettlement.pdf](http://www.adb.org/documents/handbooks/resettlement/Handbook_on_Resettlement.pdf) (consulted on 23.10.2011).

Displacement state that “Internally displaced persons have the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”<sup>190</sup> The Guiding Principles also underline the need for consultation with the affected parties, the provision of adequate accommodation and formulate other guidelines for resettlement.

But as described earlier, very few legal provisions exist for internal resettlement due to environmental degradation, and when in place they mostly apply to populations affected by rapid-onset hazards.<sup>191</sup> Besides legal gaps also governance gaps exist because if the need for relocation appears to occur, no government agency has the authority to relocate populations and no funding is designated to relocation. Therefore, it is important to establish mechanisms at national and regional level which can facilitate the resettlement of affected populations displaced by climate and environmental factors.<sup>192</sup> Furthermore, dialogue about ‘good practices’ on resettlement is very limited and it is necessary to incorporate lessons learnt and experiences into planning for resettlement.

Amongst others, the Norwegian Refugee Council calls for a new international environmental migration fund which could provide the financial basis for policy measures to deal with displacement due to environmental factors.<sup>193</sup> This ‘burden-sharing mechanisms’ could be based on principle 7 of the 1992 Rio Declaration on Environment and Development<sup>194</sup> which underlines the shared - but differentiated - responsibilities of all states. “The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command”.

### 3.2.7 Reducing vulnerabilities of affected populations

Development cooperation can play a crucial role in reducing the vulnerabilities and increasing the resilience of affected populations. One policy priority which helps to increase the resilience is access to land as changes in legislations - including privatisation of land use rights – often contribute to the marginalisation of poorer groups. Initiatives which aim at preserving and better management of natural resources are also highly important to protect livelihoods in home areas. As described in a previous section, (seasonal) migration of individual family members sometimes allows a family to remain in its original area of residence. To further facilitate mobility-related income diversification, access to roads and transport networks, as well as education and access to markets are important and development cooperation can play a critical role to promote these sectors.<sup>195</sup>

Besides the potential role of development cooperation in home areas, initiatives should also support migrants at destination. This could include education and information on legislations and regulations in destination areas. Local organisations in destination areas have the

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<sup>190</sup> See UNHCR (1998): Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 15.

<sup>191</sup> See Warner 2010, op. cit., p. 5.

<sup>192</sup> See Hugo 2011, op. cit., p. 266.

<sup>193</sup> See Kolmannskog 2008, op. cit., p. 31.

<sup>194</sup> Full text available at: [http://www.unescap.org/esd/environment/rio20/pages/Download/Rio\\_Declaration-E.pdf](http://www.unescap.org/esd/environment/rio20/pages/Download/Rio_Declaration-E.pdf) (consulted on 23.10.2011).

<sup>195</sup> See Tacoli 2011, op. cit., p. 27.

potential to play an important role to support migrants and ensure that their voices are being heard.<sup>196</sup>

Development projects - in some cases designed to adapt to climate change or to mitigate its consequences - can have serious impacts on the livelihoods of people who were not initially targeted. Prominent examples are the construction of dams for irrigation projects or infrastructure projects to reduce the risk of floods in urban areas which destroy livelihoods or the local community and may lead to migration.<sup>197</sup>

In conclusion, development cooperation can contribute to a reduction of migration through adaptation measures and development cooperation can also facilitate migration as adaptation measure. The provision of technical and advisory services for local governments is an option to support governments in developing climate and migration sensitive development and urban planning and the establishment of service centres for migrants helps to inform migrants about their rights to avoid exploitation.<sup>198</sup> Furthermore, development agencies can support communities to implement disaster risk management through capacity building, building disaster management committees and establishing local early warning systems.<sup>199</sup>

There is also a need to monitor the impacts of adaptation measures on migration as limited knowledge on these impacts exists in development cooperation.

## 4. ANALYSIS OF THE EUROPEAN UNION LEGAL AND POLICY FRAMEWORK

### KEY FINDINGS

- At the EU level, there is currently no distinct **instrument applicable to 'environmentally displaced individuals'**.
- Although there are arguments that the **Temporary Protection Directive might be applicable** in the case of a mass influx of environmental displaced individuals it needs to be activated by way of a Council Decision following a Commission proposal and thus is subject to a high political threshold which makes it difficult to apply even in regard to cases of mass-displacement in the context of warlike situations for which it was originally designed to respond.
- The **Lisbon Treaty provides a sufficiently broad mandate** for a revision of asylum and immigration policy in order to regulate the status of the 'environmentally displaced individuals'.
- Despite the considerable number of the non harmonised protection statuses in EU MS, **only several countries' legislation explicitly consider environmentally**

<sup>196</sup> See Tacoli 2011, op. cit., p. 27-28.

<sup>197</sup> See Tacoli 2011, op. cit., p. 28.

<sup>198</sup> See Report from the EC consultation on Migration and Climate Change. Internal Document.

<sup>199</sup> See Britta Heine and Lorenz Petersen: Adaptation and cooperation, available at: <http://www.fmreview.org/textOnlyContent/FMR/31/Heine%20Petersen.doc> (consulted on 24.10.2011).

**displaced individuals.** Nevertheless, these cases can be considered as **'good practice'** for other MS or a model for EU legislation in amending the legislation in force.

- The **resettlement of individuals** from the countries that have experienced environmental disasters is an important solution that should be considered by the EU. However, a coherent and pragmatic coordination mechanism among MS is required.
- The **Global Approach framework** can be used to enhance the protection of environmental displaced individuals outside the European Union. Besides strengthening resilience capacities of third countries through development and humanitarian aid, the Global Approach can also be used to in strengthen protection mechanisms existing in countries of origin.
- Based on a **human rights based approach** rooted, amongst others, in the European Charter of Fundamental Rights existing policies could be reviewed and additional mechanisms considered to protect migrants displaced by environmental factors.

Against the background of the typology of environmentally induced migration developed in section 1 and the review of policy options to address environmentally induced migration discussed at the global level this chapter analyses the current European Union asylum and immigration policy framework and its potential to address environmentally induced migration. In doing so, the focus will be on environmentally induced displacement. While Articles 77 to 80 of the Treaty on the Functioning of the European Union (TFEU) provide a strong overall mandate for the development of common policies in all major fields of immigration and asylum policy, it is policies on international protection which have progressed most under the comparable framework under the Amsterdam and Nice Treaties. By contrast, policy development in the field of legal migration is – with the important exception of specific policy fields such as family reunification, policies on long term residents or policies on highly skilled migration – still largely a national matter, and more precisely, a matter of national interest, and is likely to remain so in the future. In this context, it is unlikely to see the development of legal migration schemes at the European level that would provide legal migration opportunities to citizens of countries affected by adverse environmental developments in general and climate change in particular any time soon. This said, we will outline certain mechanisms through which EU policy instruments on legal migration could address particular challenges in the context of environmentally induced migration.

In the following, we will address four sets of responses under the current EU legal and policy frameworks on immigration and asylum, namely:

- (1) international protection and complementary protection (section 1), under which we will also review policies on complementary forms of protection awarded under national law and the extent to which these are or could be used to respond to environmentally induced displacement;
- (2) resettlement of refugees from third countries affected;
- (3) alternative solutions under the global approach to migration; and

(4) Possible options under other areas of immigration policy.

## 4.1 International and complementary forms of protection

Currently, there are no instruments specifically regulating 'environmental displaced individuals' protection at EU level. Legal scholars have argued that to an extent or another, available instruments providing complementary<sup>200</sup> forms of protection at the EU level, namely subsidiary and temporary protection could be applicable to 'environmentally displaced individuals' as enshrined in the 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*<sup>201</sup> (Qualification Directive) and in the 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*<sup>202</sup> (Temporary Protection Directive).

### 4.1.1 Qualification Directive

The Directive 2004/83/EC aims to lay down minimum standards for the qualification of the third country nationals (TCNs) or stateless persons as refugees or as persons who otherwise need international protection as well as the content of the granted protection.<sup>203</sup> One of the main rationales of the qualification directive was to harmonize the disparate standards in EU MS by establishing common minimum standards. Instead of creating new protection obligations addressed to particular individuals, the Directive 2004/83/EC thus clarifies and codifies existing international and Community obligations and practices.<sup>204</sup>

As long as environmentally displaced individuals do not qualify under the refugee category, unless they are considered to be persecuted for one of the five recognized grounds in the Convention relating to the Status of Refugees (Geneva, 1951), an analysis is required on whether this category may qualify under the subsidiary protection according to Article 2(e) Directive 2004/83/EC.<sup>205</sup> First, it is important to mention that pursuant to Article 8 Directive 2004/83/EC subsidiary protection cannot be granted if *"in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country"* ("internal

<sup>200</sup> 'Complementary protection' is the "protection granted to individuals on the basis of a legal obligation other than the principle refugee treaty", Ammer M. (2009) *Climate change and Human Rights: The Status of Climate Refugees in Europe*, p. 56 with reference to McAdam J (2007) *Complementary Protection in International Refugee Law*, Oxford University Press, p. 2-3.

<sup>201</sup> OJ L 304, 30.9.2004.

<sup>202</sup> OJ L 212, 7.8.2001.

<sup>203</sup> Article 1 Directive 2004/83/EC.

<sup>204</sup> See: Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, Brussels, 12.9.2001, COM(2001) 510 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0510:FIN:EN:PDF> (consulted on 11.10.2011).

<sup>205</sup> Article 2(e) Directive 2004/83/EC reads as follows: *'person eligible for subsidiary protection' means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country'.*

flight alternative") while taking into consideration the personal circumstances of the applicant (par.2) and assessing whether there are technical obstacles to return to the country of origin (par.3). Therefore, it can be considered that as long as protection is available in at least a part of the country, the application for protection of an environmentally displaced individual might be rejected. Indeed, there are few cases where an entire country has been affected by an environmental disaster. It follows that where the country has been only partially affected and where there is a part of territory where the protection can be guaranteed then the individual cannot claim international protection.

Importantly, Directive 2004/83/EC also specifies an important other condition that has to be met to qualify for subsidiary protection, namely that the individual should face a 'serious harm' as defined in the Article 15 Directive 2004/83/EC. Article 15 reads as follows:

*Article 15 Serious harm*

*Serious harm consists of:*

- (a) death penalty or execution; or*
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or*
- (c) Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*

Although, the scope of protection granted by Directive 2004/83/EC is broader than that of Geneva Convention, the enumeration stipulated in Article 15 explicitly limits the notion of "serious harm" by establishing an exhaustive list of situations constituting 'serious harm'. None of the grounds are applicable to environmentally displaced individuals.

From this list, only paragraph 'b' might be applicable. Paragraph 'a' is not applicable, as the death penalty or execution should be perceived as "legal, administrative, police and/or judicial measures which are either persecutory in themselves or have the appearance of legality and are misused for the purposes of persecution, or are carried out in breach of the law and are sufficiently serious to make return to the country of origin untenable" and therefore cannot be linked to the environmental circumstances.<sup>206</sup> In regard to the application of Article 15(c) the CJEU has clarified in its judgment of 17 February 2009, *Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie*, C-465/07 that the existence of an armed conflict is the sole criterion for assessing the existence of a serious and individual threat.

However, when it comes to the paragraph 'b' it should be noted that the legislator linked the application of this provision to the content of Article 3 of the ECHR without going further in applying other criteria for qualifying the threshold of severity than that which is required by the ECHR.<sup>207</sup> So far, the ECtHR did not interpret the Article 3 of the ECHR as covering

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<sup>206</sup> See: Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, Brussels, 12.9.2001, COM(2001) 510 final, p.19, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0510:FIN:EN:PDF> (consulted on 11.10.2011).

<sup>207</sup> See European Commission COM(2001) 510 final, op.cit., p. 26.

environmental conditions<sup>208</sup>, although some scholars argue that there is a strong argument that it is applicable to extreme cases of natural disasters.<sup>209</sup>

Furthermore, it has been argued that the circumstances arising from Article 15 should be considered as only "man-made situations, and not for instance situations arising from natural disasters or situations of famine".<sup>210</sup> The new proposal for amending the existing Qualification Directive does not bring changes to the existing exhaustive list or interpretation of current Article 15.<sup>211</sup>

An obvious option would be to extend the concept of subsidiary protection and include environmental disasters as one of the protected grounds, notably by amending paragraph (c) to include, besides the armed conflict also the environmental disasters. The status awarded may initially be more temporary and made dependent on the further evolution of the situation in the country of origin. Indeed, an early discussion note presented by the European Commission in 1999 in the context of the discussions regarding the scope and form of subsidiary protection also considered extending the scope of subsidiary protection to environmental displacements, although the suggestion was dropped by the time of the first proposal for the Qualification Directive. Yet the original version of article 15(c) of the first proposal – was considerably broader than the final provision adopted, giving subsidiary protection to individuals displaced as 'a result of systematic or generalized violations of their human rights', which might arguably extend to environmentally displaced persons, even if only in narrowly circumscribed circumstances.<sup>212</sup>

The current proposal for an amendment of the Qualification Directive, however, did not see a need to amend Article 15(c), arguing that the "relevant provisions were found to be compatible with the ECHR".<sup>213</sup>

In general terms, the Treaty of Lisbon provides a sufficiently broad mandate to the European Union to introduce the necessary amendments. Indeed, according to Article 78 of TFEU the Union has competence to "develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*". The TFEU thus provides a mandate for the Union both to harmonize the existing national practices by amending the current legislative framework (i.e. Qualification Directive) and to adopt new legal measures for a EU instrument addressed at environmentally displaced individuals including an all embracing provisions covering both displacement caused by rapid and slow onset environmental events. Measures aimed at

<sup>208</sup> Info from the ECtHR case law data base, available at: <http://cmiskp.echr.coe.int/tkp197/search.asp?sessionId=80888327&skin=hudoc-en> (consulted on 27.10.2011).

<sup>209</sup> Kolmannskog/ Myrstad 2009 op. cit. p.322.

<sup>210</sup> Ammer M. op.cit., p. 62 with reference to the Council of the European Union, Presidency Note: Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, 12148/02, 20.09.2002, 7.

<sup>211</sup> See p. 32 of the Proposal, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0551:FIN:EN:PDF> (consulted on 17.10.2011).

<sup>212</sup> See Kolmannskog/ Myrstad 2009 op. cit. pp.319ff.

<sup>213</sup> See: Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, Brussels, 21.10.2009, COM(2009) 551 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0551:FIN:EN:PDF> (consulted on 17.10.2011).

ensuring a minimum level of protection in all MS for environmentally displaced individuals and to reduce existing disparities between MS' legislation and practice are also compatible with the principle of subsidiarity enshrined in Article 5(1) TEU.

#### 4.1.2 Temporary Protection Directive

The aim of the Temporary Protection Directive (Directive 2001/55/EC) is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries that are unable to return to their country of origin while promoting a balance of effort between MS in receiving and bearing the consequences from receiving such persons.<sup>214</sup>

In comparison with the Qualification Directive that grants protection only in the cases specified in an exhaustive list, the Temporary Protection Directive's list is not limited as long as the wording of the provision of Article 2(c) specifies 'in particular' where the "persons have fled areas of armed conflict or endemic violence" (Art.2 (c)i) and "persons at serious risk of, or who have been victims of, systematic or generalized violations of their human rights" (Art.2 (c) ii). In addition, the situation of the applicants for protection may not fall only under the refugee convention but also under "other international or national instruments giving international protection" (Art. 2(c)). All these stipulations may be interpreted in a sufficiently broad manner in order to identify 'environmentally displaced individuals' as falling under the scope of the Temporary Protection Directive. Indeed, the Finnish delegation explicitly promoted the inclusion of an express reference to persons displaced by natural disasters in the negotiations on the Temporary Protection Directive.<sup>215</sup>

However, a deeper analysis of Directive's provisions shows some important limitations. Above all, the Directive is applicable in only cases of mass influx (see Article 1) and temporary protection is granted only in exceptional cases (see Article 2 (a)). Moreover, it should be noted that the Directive does not provide for a clear mechanism of protection but rather provides a discretionary financial and political mechanism, providing amongst others basis for financial support to MS facing challenges in dealing with large number of applications. The political element is represented in the solidarity principle of burden sharing between the MS (see chapter VI of the Directive).

Furthermore the Directive 2001/55/EC has been adopted as on the basis of the experience of the influx of individuals displaced by the conflict in the former Yugoslavia. Recent attempts of the Maltese and Italian foreign ministers to invoke the application of the Directive 2001/55/EC for activating the mechanism to assure an equal distribution of refugees among MS as result of mass influx of individuals from Libya and Tunisia, has failed. As long as the existence of a mass influx of displaced individuals is decided by the Council on a proposal from the Commission, there will be major political obstacles to activate the temporary protection mechanism. In the concrete case of individuals displaced by the conflict in Libya and the wave of emigration following the revolution in Tunisia the Commission has stated that the inflows of persons were not qualified as "massive"

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<sup>214</sup> See Article 1 Directive 2001/55/EC.

<sup>215</sup> See Kolmannskog/ Myrstad 2009 op. cit. p.316.

according to the Directive 2001/55/EC.<sup>216</sup> So far, the Temporary Protection Directive mechanism has never been used.<sup>217</sup>

Considering that this Directive is applicable only in cases of mass influx and thus does not include cases involving individual applications; that 'temporary protection' is seen only as an exceptional response and taking into account the high political thresholds to activate the Directive (see Article 5(1)) and considering that the Directive's mechanism has never been used in practice renders the Directive less effective in dealing with migrants displaced by environmental disasters. Indeed, the high thresholds of activating the mechanism call into question whether the temporary protection mechanism will be an effective instrument at all even for situations such as the Yugoslav conflict which provided the original rationale to develop the directive. A flexible and immediate protection mechanism such as subsidiary protection will be more relevant for individuals displaced due to environmental disasters, and indeed other categories of refugees.

### 4.1.3 National responses

#### 4.1.3.1 European Union Member States

The past two decades or so have witnessed the emergence of a large number nationally defined protection statuses, variously framed as 'non-harmonised protection statuses', 'complementary forms of protection', 'categorical protection' or simply 'humanitarian statuses' which to a large extent respond to relevant case law of national higher courts, based both on national human rights law and the European Convention of Human Rights as well as on the case law of the European Court of Human Rights in Strasbourg.<sup>218</sup> Although humanitarian protection statuses are mostly invoked in expulsion cases or when applications for a right to stay on other grounds have been rejected, some EU MS also provide for humanitarian admissions from abroad. As a recent study on non-harmonised protection statuses found there are minimum sixty non-EU harmonised protection statuses at the national level of EU MS.<sup>219</sup> Only a very small number of EU MS, however, have introduced express provisions specifically addressing protection needs of environmental displaced individuals. However, other MS' legislation might be interpreted *lato sensu* as potentially applicable also in regard to environmentally displaced individuals. Under this chapter, the national legislation will be analysed in order to identify whether they give solutions and a better response than the EU framework for 'environmental displaced individuals'.

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<sup>216</sup> See UNU-CRIS Policy Brief, No. 1, Regional responses to the Libyan crisis, September 2011, p. 5-6, available at: [http://eugrasp.eu/fileadmin/user\\_upload/Policy\\_Brief\\_No\\_\\_1\\_final\\_version\\_\\_30\\_September\\_2011.pdf](http://eugrasp.eu/fileadmin/user_upload/Policy_Brief_No__1_final_version__30_September_2011.pdf) (consulted on 13.10.2011).

<sup>217</sup> See European Council of Refugees and Exiles web page, available at: <http://www.ecre.org/topics/areas-of-work/introduction/81-temporary-protection.html> (consulted on 13.10.2011).

<sup>218</sup> See A.Kraler (2011), Fixing, Adjusting, Regulating, Protecting Human Rights – The Shifting Uses of Regularisations in the European Union, in: European Journal of Migration and Law 13 (3), pp. 297–316.

<sup>219</sup> 'The different national practices concerning granting of non-EU harmonised protection statuses', produced by European Migration Network, p. 105, available at: [http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=4D19F304BDB6A81B9C1C8519414938AC?entryTitle=06\\_The%20different%20national%20practices%20concerning%20granting%20of%20NON-EU%20HARMONISED%20PROTECTION%20STATUSES](http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=4D19F304BDB6A81B9C1C8519414938AC?entryTitle=06_The%20different%20national%20practices%20concerning%20granting%20of%20NON-EU%20HARMONISED%20PROTECTION%20STATUSES) (consulted on 12.10.2011).

### **a) Express provisions addressing environmental displacement**

CY Article 29 (4) of the Refugee Law of 2000 provides that:<sup>220</sup>

"No refugee or a person with a subsidiary protection status shall be deported to any country where his life or freedom will be endangered or he will be in danger of being subjected to torture or inhuman or degrading treatment or punishment or persecution for reasons of sex, race, religion, nationality, membership of a particular social group or political opinion or because of armed conflict or *environmental destruction*." [emphasis added]

Nonetheless, it should be mentioned that this protection is only available to persons who have already been granted refugee status or humanitarian protection. The entitlement to receive refugee status requires the element of persecution; natural disaster is not covered in the grounds for granting refugee status (See Art. 3(1) of CY Refugee Law of 2000).

In the case of **FI**, in Section 109(1) of the Aliens Acts it is stipulated that:

"Temporary protection may be given to aliens who need international protection and who cannot return safely to their home country or country of permanent residence, because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or *an environmental disaster*."<sup>221</sup> [emphasis added].

At the same time, Section 88a (1) of the Aliens Acts provides for humanitarian protection if:

"An alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an *environmental catastrophe* or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation." [emphasis added].

The total length of the provided temporary protection is of maximum three years.

In **IT**, Art.20 of Legislative Decree nr 286 of 25.07.1998 on consolidated text of provisions governing immigration and the status of the foreigner provides for extraordinary measures in case of exceptional events and reads as follows:<sup>222</sup>

1. By decree of the Prime Ministers [...] the temporary protection measures should be adopted, as an exception to the provisions of this single text, in the case of major

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<sup>220</sup> Note: the original name of the law is *Refugee Law of 2000 a Law to provide for the recognition of refugees and for the better Implementation of the Convention relating to the Status of Refugees*.

<sup>221</sup> See Finnish Aliens Act 301/2004, amendments up to 1152/2010 included. Unofficial translation, legally binding only in Finnish and Swedish, Ministry of the Interior, Finland, available at: <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf> (consulted on 01.10.2011).

<sup>222</sup> Available in Italian on: [http://www.immigrazione.regione.toscana.it/lenya/paesilive/contenuti/norme/286-paesil\\_it.html?datafine=20110806&css=](http://www.immigrazione.regione.toscana.it/lenya/paesilive/contenuti/norme/286-paesil_it.html?datafine=20110806&css=) (consulted on 13.10.2011).

humanitarian needs, on the occasion of conflicts, *natural disasters* or other particularly serious events in countries outside the EU" [emphasis added].

Although only theoretically, as it has never been implemented into practice, this provision allows the provision of temporary protection in case of "environmental disasters".

Section 2(3) of **SE** Aliens Act<sup>223</sup> provides that a 'person otherwise in need of protection' is an alien who in cases other than those referred to in Section 1 [refugee grounds] is outside the country of the alien's nationality, as he or she is unable to return to the country of origin because of an *environmental disaster*. Nonetheless, the applicability of this provision is limited to cases of sudden environmental disasters, therefore, slow onset environmental changes are not considered.<sup>224</sup>

### **b) Possible interpretations of the national legislations**

In the case of **BE**, although there are no concrete provisions addressed to "climate refugees", the 'regularisation' mechanism under the Immigration Act makes it possible for all categories of individuals to apply for regularization due to "exceptional circumstances" that may include the environmental disasters. Nonetheless, there are no attested cases of this possibility.<sup>225</sup> However, in 2010, during the floods in Pakistan BE decided not to forcibly remove the Pakistani individuals who were on its territory due to these circumstances, but this can be qualified as a political decision based on the bilateral relations between BE and Pakistan rather than as a rule.

In **BG**, the Article 9(3), pt 8 of the Aliens Act reads that:

"Humanitarian status may also be granted for other humanitarian reasons, as well as on the grounds listed in the Conclusions of the Executive Committee of the United Nations High Commissioner for Refugees".

This is the only provision in the country that may be connected with any other applicants that do not qualify under the listed reasons for humanitarian protection and may potentially include the 'environmental displaced individuals'.<sup>226</sup>

Although in **ES** there are neither legal provisions covering the concerned category nor provisions on humanitarian protection, the issue of climate refugees has been on the agenda of NGOs specializing in international protection for years. Regrettably it has not appeared on the agenda of the Spanish Government.<sup>227</sup>

In the **IE** there are no clear provisions offering protection to 'environmental refugees'. However, Section 3(6) of the Immigration Act 1999 provides that the Minister of Justice and

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<sup>223</sup> Aliens Act (2005:716), issued: 29 September 2005, with amendments: up to and including Swedish Code of Statutes 2009:16, Government Offices of Sweden, available at: <http://www.sweden.gov.se/content/1/c6/06/61/22/bfb61014.pdf> (consulted on 01.10.2011).

<sup>224</sup> See: Ben Glahn "Climate refugees'? Addressing the international legal gaps – Part II', available on: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=3E9DB1B0-659E-432B-8EB9-C9AEEA53E4F6> (consulted on 01.10.2011).

<sup>225</sup> Information provided by EMN contact point in BE.

<sup>226</sup> Information provided by ICMPD local representative in BG.

<sup>227</sup> Information provided by a legal expert in ES.

Equality must take certain matters into account before issuing a deportation order with respect to a person who is in Ireland without permission. The law specifies that:

"In determining whether to make a deportation order in relation to a person, the Minister shall have regard to—(h) *humanitarian considerations*;" [emphasis added].

In other words, there is room to make the 'environmental argument' but there is no specific protection. In addition, Section 3(6) of the Immigration Act 1999 is set to disappear with the coming into force of the Immigration, Residence and Protection Bill 2010 unless that Bill is amended to provide an avenue for 'humanitarian protection'. Currently, the Bill provides that only a failed applicant for international protection can be considered for 'compelling reasons', but only in relation to matters already raised as part of the pending protection application, i.e. protection for refugee status/subsidiary protection. Section 89 of the Bill sets out that when the Minister [of Justice, Equality and Law Reform] is preparing to make a determination refusing international protection, "*the Minister shall also decide, in his or her absolute discretion, whether to grant a residence permission to the protection applicant concerned (...) despite that determination, but only if the Minister is satisfied that there are compelling reasons (...) which prevent the Minister from removing the applicant (...) concerned, or otherwise justify permitting that applicant (...) to remain in the State*".<sup>228</sup> In addition, it must be mentioned that IE has not opted into the Temporary Protection Directive (2001/55/EC).

In **LT** under the Law on Legal Status of Aliens<sup>229</sup> there are two main provisions which could be interpreted to cover environmental cases:

- Subsidiary protection (Art. 40 and 87) which is wider than Art. 15 of the Qualification Directive;
- Impossibility of expulsion (Art. 40, 128 and 132) which 'legalizes' all cases of impossible expulsion after one year.

There is no practice, however, regarding environmental cases, but such interpretation is most likely to be used.<sup>230</sup>

In **LV** the Article 4(3)3) of the Aliens Act (Granting International Protection) is the relevant legislation.<sup>231</sup> One can argue that subsidiary or temporary protection should be given to asylum seekers claiming environmental reasons. While admitting that an environmental reason could be considered a violation of human rights, it might be argued that

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<sup>228</sup> Information provided by a legal expert in IE.

<sup>229</sup> English version of the LT Law on Legal Status of Aliens is available on the Söderköping Process web site: <http://soderkoping.org.ua/page11317.html> (consulted on 10.10.2011).

<sup>230</sup> Information provided by a legal expert in LT.

<sup>231</sup> The provision in Latvian reads as follows: "täiendava kaitse saaja on välismaalane, kes ei kvalifitseeru pagulaseks ja kelle suhtes ei esine täiendava kaitse andmist välistavat asjaolu ja kelle suhtes on alust arvata, et tema Eestist tagasi- või väljasaatmine päritoluriiki võib talle nimetatud riigis kaasa tuua tõsise ohu, sealhulgas:

3) *konkreetselt tema või üldse tsiviiltsükute elu ohtu sattumise*". The Aliens Act is available at: <https://www.riigiteataja.ee/akt/109122010004> (consulted on 21.09.2011).

environmentally displaced individuals qualify for the temporary protection clause under the Art. 5(2) 2) Aliens Act<sup>232</sup>.

In the case of **MT**, although the law does not contain provisions addressed to environmental displaced individuals, Temporary Humanitarian Protection (THP) granted on a largely discretionary basis to a wide category of people may in principle be applicable to environmental displacees. Originally it was developed to cover those who could not return for humanitarian reasons, but it has recently been extended to cover even those rejected asylum seekers who have been in MT for a number of years and have not yet been removed (i.e. more regularisation than protection). Nonetheless, THP is not yet founded in the law; it is regulated purely by an administrative policy which is implemented by the Office of the Refugee Commissioner. Therefore, victims of environmental disasters could be granted this form of protection if it was impossible for them to return, however, this type of protection is granted on a discretionary basis and should not be perceived as a regular practice.<sup>233</sup>

In **SK**, the Act No. 480/ 2002 Coll. on Asylum stipulates in its article 29 that:

"Temporary shelter should be granted for the purpose of protecting foreigners from violent conflicts, endemic violence, impacts of a humanitarian disaster or permanent or mass violation of human rights in the country of their origin."

Temporary shelter is the same as temporary protection in the meaning of the Council Directive 2001/55/EC. Due to the fact that it is dependent on the decision of the European Union Council it is not in use and therefore temporary shelter for persons in need of such protection is not granted in SK. This is the only legal provision that might be broadly interpreted to include the environmentally displaced individuals. The Act on Stay of Foreigners does not stipulate anything on granting protection for third country nationals based on the grounds of environmental disasters<sup>234</sup>.

No similar provisions have been identified in the legislation of EL, DE, DK, HU, NL, PL and the UK.

#### 4.1.3.2 Non EU Member States

In the US a Temporary Protection Status (TPS) is granted to *"persons in the United States who are temporarily unable to safely return to their home country because of ongoing armed conflict, an environmental disaster or other extraordinary and temporary conditions"*.<sup>235</sup> However, it should be noted that this type of protection is granted on a state-by-state level or under a bilateral agreement, and may occur only if some *specific conditions are met*.<sup>236</sup> The first requirement is linked to the existence of a serious environmental disaster or other extraordinary devastation that temporarily prevents the return of its nationals. *Second, the country affected by an environmental disaster shall be unable to adequately handle the return of those nationals.* Lastly, the country must make a

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<sup>232</sup> Information provided by a legal expert in LV.

<sup>233</sup> Information provided by a legal expert in MT.

<sup>234</sup> Information provided by a legal expert in SK.

<sup>235</sup> See Cohen R., Bradley M. (2010), Disasters and Displacement: Gaps in Protection, in Journal of International Humanitarian Legal Studies, vol. 1, 2010, p.12.

<sup>236</sup> See Ben Glahn, op.cit.

formal request to the US Government in order to be eligible for TPS.<sup>237</sup> As a result, it has been argued that this type of protection leaves a large amount of discretion to the US on deciding whether to consider a potential affected country as being eligible for TPS. Moreover, this measure is not applicable for permanently devastated countries as long as there is a viable Government to address the request and to execute the obligations that are regulated in the bilateral agreement (if existent). In addition, as TPS places a larger emphasis on political commitments than on legal obligations, the undesired cooperation from the side of the affected country gives the US the possibility to refuse or halt the application of TPS without bringing legal responsibility to the US.<sup>238</sup>

## 4.2 Resettlement

Resettlement in the context of environmental or climate change impacts can apply in three different scenarios. Firstly, populations, individuals or families forcibly displaced by the impacts of environmental or climate change might need to be resettled from the area or state in which the affected people have sought protection to a third state or another area within the country. Secondly, persons who have been displaced by conflict and sought protection in areas which are under environmental pressure might be in need for resettlement. And thirdly, as discussed in section 2.2.6, above, resettlement can be chosen by governments as an adaptation measure when they seek to move populations out of harm's way owing to changing risks, for example increasing frequency of floods, or from areas where livelihoods are no longer tenable. In the present section, we concentrate on the first two options. It should also be noted that a clear distinction seems necessary between the resettlement of refugees from outside EU territory to an EU MS and intra-EU resettlement of refugees. The first category of resettlement might be considered as an expression of solidarity between EU and affected third countries and qualify under the meaning of the Geneva Convention while the second category of resettlement is an expression of solidarity among EU MS themselves.<sup>239</sup>

The UNHCR defines resettlement as one of the three durable solutions for refugees under the Geneva Convention: "Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country."<sup>240</sup> Resettlement is defined in international refugee law and the UNHCR therefore advocates limiting the application of the terminology to refugees as defined in the Geneva Convention. When referring to internal displaced persons, whether displaced by environmental factors or conflict, and to displaced persons by environmental factors across national borders, the UNHCR uses the term 'relocation' to describe the planned movement of populations or individuals to chosen areas.

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<sup>237</sup> See Ben Glahn, *op.cit.*

<sup>238</sup> See Ben Glahn, *op.cit.*

<sup>239</sup> See Communication from the Commission to the European Parliament and the Council on the establishment of a joint EU resettlement programme, Brussels, 2.9.2009, COM(2009) 447 final, p.3.

<sup>240</sup> See UNHCR (2011): UNHCR Resettlement Handbook, available at: <http://www.unhcr.org/4a2ccf4c6.html> (consulted on 28.09.2011).

The European Commission recently published a communication on the "Establishment of a Joint EU Resettlement Programme" to address resettlement of refugees from outside the EU to an EU MS.<sup>241</sup> In the context of the development of a Common European Asylum System (CEAS), the European Commission emphasize a that the EU should be more engaged in the resettlement of refugees from third countries. In the Green Paper on the future of the CEAS the EC underlines again the importance of resettlement which "reflects the EU's commitment to show international solidarity and share the burden of the countries in the regions of origin which accommodate the vast majority of refugees."<sup>242</sup> Regional Protection Programmes – a concept initially promoted by the UK government and subsequently taken up by the European Commission - were also designed to include a resettlement component, whereby EU member states undertake, on a voluntary basis, to offer resettlement places in their countries.<sup>243</sup> The Commission also advocates for supporting other areas beyond Regional Protection Programmes to provide assistance to emergency situations or help to resolve protracted refugee situations. The European Refugee Fund provides for financial assistance for the resettlement of refugees from third countries to the EU member states.<sup>244</sup>

In its communication on the establishment of joint EU resettlement programme the Commission underlines that the resettlement needs are much greater than the available resettlement places.<sup>245</sup> It would therefore be necessary to involve more member states in resettlement activities which is in the words of the EC not only a humanitarian purpose regarding those people who are actually resettled indirectly for those who remain in the first country of protection, but also burden sharing with those countries which accommodate a large number of refugees.<sup>246</sup>

Besides the lack of available resettlement places and the absence of a structured coordination regarding resettlement policies within the EU, the EC also highlights the need for better targeting of resettlement priorities and financial support. Under Article 13(3) of the Decision establishing the European Refugee Fund III four categories of displaced for which the EU member states are provided with financial support per refugee resettled are specified.<sup>247</sup> Those four categories comprise: "a) persons from a country or region designated for the implementation of a Regional Protection Programme; b) unaccompanied minors; c) children and women at risk, particularly from psychological, physical or sexual violence or exploitation; d) persons with serious medical needs that can only be addressed through resettlement."<sup>248</sup> The EC advocates, while acknowledging that persons falling under the four categories undeniable deserve resettlement and protection, to extending the categories because they are "too rigid and not sufficiently adaptable in order to respond to newly arising needs."<sup>249</sup> The EC attributes these difficulties to a lack of regularly discussions

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<sup>241</sup> See European Commission COM (2009) 447 final, op. cit.

<sup>242</sup> See European Commission (2007): Green Paper on the future Common European Asylum System. Brussels: COM(2007) 301 final.

<sup>243</sup> European Commission (2005), Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, COM (2005) 388 final, Brussels, p. 4.

<sup>244</sup> For more information, see:

[http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_external\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_external_en.htm) (consulted on 28.10.2011).

<sup>245</sup> See European Commission COM (2009) 447 final, op. cit., p. 5.

<sup>246</sup> See European Commission COM (2009) 447 final, op. cit., p. 5.

<sup>247</sup> See Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/ 904/EC.

<sup>248</sup> See Decision No 573/2007/EC, Art. 13(3).

<sup>249</sup> See European Commission COM (2009) 447 final, op. cit., p. 6.

on the resettlement needs of the four categories at EU level and that the categories are not subject of up-to-date assessments. Discussions and regular assessments would allow better recognition and identification of those who need protection. To close the protection gap, the EC proposes to ensure “regular common definition of key priorities for resettlement and providing a financial incentive for Member States to resettle in accordance with those priorities.”<sup>250</sup> The EC therefore proposes the amendment of the ERF III decision in order to provide additional financial assistance to EU member states.<sup>251</sup>

Persons displaced by environmental factors could be one of the priority groups when mass displacement after natural hazards or other disasters which are aggravated by environmental degradation occurs as it is now the case in the context of drought in East Africa, in particular in Somalia. Resettlement could in this case also help to relieve Kenya and the refugee complex close to Dadaab.<sup>252</sup>

The EC already mentions “[p]rojects related to the study of new types of conflict and threats, including environmental damage, which may have an impact on the flows of persons seeking protection in the EU” in the annual work programme 2009 of the European Refugee Fund Community Actions.<sup>253</sup>

However, it should be noted that from the practical perspective it appears that there is neither uniform way of exchanging the information between EU MS nor standard coordination at EU level on resettlement issues. The resettlement activities are realized on bilateral contacts basis between resettlement countries and UNHCR<sup>254</sup>.

Moreover, resettlement is also implemented on the voluntary basis only<sup>255</sup>. Up to now EU MSs have expressed a low willingness for the resettlement of refugees, with the number of refugees resettled to a European country being far lower than the number of refugees resettled to other industrialized States, notably the Australia, Canada and the USA).<sup>256</sup>

Nonetheless, in its Annual Report on Immigration and Asylum (2010) the European Commission specifies that the negotiations for the creation of a Joint EU Resettlement Programme must come to an operational and positive end by reaching an agreement between the European Parliament and the Council.<sup>257</sup> Therefore, there are high expectations that in the near future the EU policy framework, including the resettlement issues will be improved.

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<sup>250</sup> See European Commission COM (2009) 447 final, op. cit., p. 6.

<sup>251</sup> See European Commission COM (2009) 447 final, op. cit., p. 7.

<sup>252</sup> The EC suggests within the framework of the joint resettlement programme the establishment of a mechanism through which EU-wide common resettlement priorities are defined. According to the EC, priorities could apply to geographic regions and nationalities as well as to specific categories of refugees. “The EU could, for example, prioritize the resettlement of Iraqi refugees from Syria and Jordan, Somali refugees from Kenya, or Sudanese refugees from Chad.” See European Commission COM (2009) 447 final, op. cit., p. 8.

<sup>253</sup> See European Commission (2008): European Refugee Fund 2008-2013, Community Actions, available at: [http://ec.europa.eu/home-affairs/funding/refugee/work\\_programme\\_2009\\_en.pdf](http://ec.europa.eu/home-affairs/funding/refugee/work_programme_2009_en.pdf) (consulted on 28.10.2011).

<sup>254</sup> See European Commission COM (2009) 447 final, op. cit.

<sup>255</sup> See: [http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_external\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_external_en.htm), (consulted on 17.10.2011).

<sup>256</sup> See: [http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_external\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_external_en.htm), (consulted on 17.10.2011).

<sup>257</sup> See Communication COM(2011) 291 final from the Commission to the European Parliament and the Council on Annual Report on Immigration and Asylum (2010), {SEC(2011) 620 final}, Brussels, 24.5.2011, p.7, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0291:FIN:EN:PDF> (consulted on 17.10.2011).

Besides the discussed option that the EU commits to resettlement of refugees or displaced persons from outside EU territory to an EU member state, the EU could also support third countries in establishing effective resettlement mechanisms which reflect the rights of the displaced populations concerned. Resettlement occurs to a high proportion within countries and this tendency is likely to increase as an effect of climate-related displacement and resettlement. In many cases resettlement within third countries lacks consultations between the local government and communities and resettlement programmes are often underfunded which results in deprivation of those resettled.<sup>258</sup> Nevertheless, finding durable solutions to a displacement is an obligation for the state and important for the individual, as stated in article 28 of the Guiding Principles on Internal Displacement.<sup>259</sup> The free choice should remain with the individual whether to integrate locally return or resettle in another part of the country. The UNHCR points to the fact that durable solutions often lack sustainability. Some preconditions to make durable solutions sustainable include the representative consultation with and inclusive participation of the affected communities as well as transparent information on the process. These measures ensure that the affected individuals make voluntary decisions. As experiences with forced relocations show, forced relocation tend not to be sustainable and should therefore be avoided.<sup>260</sup> Furthermore, resettlement sites should be safe from secondary hazards and recurrent disasters and need to be carefully selected. Other factors which should be taken into account when finding durable and sustainable solutions are the recovery or creation of livelihoods, compensation for lost or damaged property in case of prohibition of return and the provision of proper housing to services such as health or education.<sup>261</sup> These measures could be taken in the framework of the EU Global Approach on Migration which will be discussed below.

### **4.3 Alternative measures in the context of the EU Global Approach on Migration**

The following section reviews alternative measures that may be taken in the context of the Global Approach to Migration in the form of support provided to, and cooperation with third countries to address situations of environmentally induced displacement. The focus under this line of analysis will be to what extent the European Union can strengthen resilience capacities and protection mechanisms existing in third countries or on the global level and enhance protection of environmental refugees outside the European Union.

The Global Approach to Migration can be described as the external dimension of the EU's migration policy. Adopted in 2005, it covers three thematic areas, namely legal migration, irregular migration and migration and development. The Global Approach has already been

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<sup>258</sup> See Hugo 2011, op. cit., p. 268.

<sup>259</sup> Article 28 of the Guiding Principles says that "Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons." See UNHCR 1998, op. cit., Art. 28.

<sup>260</sup> See UNHCR 2009, op. cit., p. 8.

<sup>261</sup> See UNHCR 1998, op. cit., p. 9 and Care et al (2009): In Search for Shelter. Mapping the Effects of Climate Change on Human Migration and Displacement. Available at: <http://www.careclimatechange.org/publications/global-reports/41-%20in-search-of-shelter> (consulted on 28.10.2011).

subject of several communications with short term measures and geographic focus.<sup>262</sup> The overall framework was endorsed by the European Council in 2005.<sup>263</sup>

While migration and climate change was absent from the initial debates on the Global Approach to Migration, the High Representative and the European Commission recently presented a joint paper "Climate Change and International Security" which highlights that "climate change is ... a threat multiplier which exacerbates existing trends, tensions and instability" and has an effect of migration patterns.<sup>264</sup> Also the Stockholm Programme, adopted by the European Council in 2009, underlines, that "connection between climate change, migration and development needs to be further explored, and the European Council therefore invites the Commission to present an analysis of the effects of climate change on international migration, including its potential effects on immigration to the Union".<sup>265</sup>

The European Commission already took action to address this need by organizing a targeted consultation to discuss the linkages between climate change and migration. The outcomes of the consultation are supposed to feed into the communication package on the revision of the Global Approach which adoption is foreseen for November 2011. The consultation and its background paper, which provided the framework for discussions, covered the following thematic areas: forecast scenarios and evidence on the migration/climate change link, potential measures to increase third countries resilience capacities, preparedness and protection responses to displacement and the legal framework for protection climate/environmental migrants.<sup>266</sup>

In the background paper the European Commission noted that there is an urgent need for an agreed terminology and definition at international level and to clarify the legal status of people migrating due to climate change to ensure adequate legal protection. The EC is also concerned about the uncertainty in predicting how climate change is likely to influence migration patterns in particular to the European Union. Despite this uncertainty the EC urges the international community to take a proactive approach: "[A]sylum and migration, tackling climate change, development cooperation and humanitarian action are policy fields in which the international community should invest more in order to alleviate suffering."<sup>267</sup> According to the EC, the suitability of existing legal instruments at EU level to accommodate environmental migrants should be explored.

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<sup>262</sup> See European Commission (2005): Priority actions for responding to the challenges of migration: First follow-up to Hampton Court. Communication from the Commission to the Council and the European Parliament. Brussels: COM(2005) 621 final; European Commission (2006): The Global Approach to Migration one year on: Towards a comprehensive European migration policy. Communication from the Commission to the Council and the European Parliament. Brussels: COM(2006) 735 final; European Commission (2007): Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Brussels: COM(2007) 247 final/2.

<sup>263</sup> See Council of the European Union (2005): Presidency Conclusions of the Brussels European Council (15/16 December 2005), Doc 15914/1/05, REV 1.

<sup>264</sup> See European Commission (2008) S113/08 op. cit.

<sup>265</sup> See European Council (2010): The Stockholm Programme – an open and secure Europe serving and protecting Citizens. Brussels: 2010/C 115/01.

<sup>266</sup> See European Commission (2011a): Climate change and migration. Discussion paper.

<sup>267</sup> See European Commission 2011a, op. cit., p. 4.

#### 4.3.1 Discussions on adequate legal frameworks for protecting environmental displaced persons and migrants coming to the EU

During the consultation the main options which are also debated at international level were discussed. Among the participants was general agreement that the refugee terminology and the 1951 Geneva Convention should not be extended to accommodate 'climate refugees' because practitioners and policy-makers fear that a re-opening and negotiations would lead to a more restrictive convention. Although most of the participants would welcome the adoption of an international framework to close the 'protection gap' for environmental migrants, the realization is assessed as unlikely due to a lack of political will.<sup>268</sup> The Guiding Principles for Internally Displaced Persons are seen as significant baseline though containing political, normative and institutional gaps.

It was underlined that any responses to environmental displacement must be based on human rights. One concrete proposition was to set up a catalogue addressing human rights related issues in the context of displacement and resettlement including access to land and political and civil rights.<sup>269</sup> The European Commission adopted in 2009 a Communication "on the Establishment of a Joint EU Resettlement Programme"<sup>270</sup> whose possible suitability in the context of migration and environmental change will be discussed in one of the following sections.

The concept of "responsibility to protect" was also mentioned as a concept which could feed into the discussion on protection of environmental migrants. This relatively new concept which is not legally binding under international law focuses on the responsibility of every state towards protection of its own population from certain threats. The international community should only bear the responsibility if a state is unable or not willing to take its responsibility.<sup>271</sup> The initial concept developed by the International Commission on Intervention and State Sovereignty (ICISS) included phenomena such as genocide, mass rape or ethnic cleansing, famines and "overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened".<sup>272</sup> However, the UN General Assembly endorsed a narrow understanding of the concept in its resolution 1674 and considers only "genocide, war crimes, ethnic cleansing and crimes against humanity".<sup>273</sup> Climate change and natural disasters are explicitly excluded from the scope of the notion of the Responsibility to Protect. Therefore, it appears difficult to include environmental change and degradation under this concept, the only way might be to argue that coping with environmental degradation is necessary for the prevention of genocide, ethnic cleansing, war crimes and crimes against humanity.<sup>274</sup>

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<sup>268</sup> See European Commission (2011b): Consultation on Climate Change and Migration. Draft report.

<sup>269</sup> See European Commission 2011b, op. cit., p. 6.

<sup>270</sup> See European Commission COM (2009) 447 final.

<sup>271</sup> See Margit Ammer (2009): Climate change and Human Rights: The Status of Climate Refugees in Europe. Available at: <http://www.udhr60.ch/report/ClimateChange-paper0609.pdf>.

<sup>272</sup> See ICISS (2001): The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty. Available at: <http://responsibilitytoprotect.org/ICISS%20Report-1.pdf>.

<sup>273</sup> See UNGA (2006): Resolution 1674, available at: <http://www.un.org/News/Press/docs/2006/sc8710.doc.htm> (consulted on 28.10.2011).

<sup>274</sup> See Ammer 2009, op. cit., p.

Furthermore, the suggestion was made to review existing labour exchange agreements for example between Colombia and Spain. The establishment or extension of labour migration schemes would be a promising policy option to respond to slow-onset environmental change when migration cannot be characterised as forced migration since the availability of legal migration opportunities allows people to diversify their livelihoods.

The review of existing EU member states legislation regarding statuses for environmental migrants was only mentioned incidentally, although it might be worth exploring. The Temporary Protection Directive was referred to because it might offer protection but participants questioned its suitability as the context of its adoption and the priority groups mentioned in the directive are far from environmental or climate migration.<sup>275</sup>

Besides the question which legislative framework might apply to environmental migration or environmental displacement, it was discussed how to increase third countries' resilience capacities. These discussions together with other issues that could be incorporated in the Global Approach to Migration in order to comprehensively address environmental migration and displacement are reflected in the next section.

#### 4.3.2 Possible EU actions to increase third countries' resilience capacities

Most of the participants agreed that a strong need for additional funding for adaptation measures exists which should not be covered by the budget for development cooperation. Even when effective adaptation measures are in place, it is still necessary to focus on the socio-economic factors as they play a central role for the magnitude of a natural disaster. It was stressed that the impacts of adaptation measures should be evaluated and monitored to create a knowledge base and to enable a scaling-up of good practices.<sup>276</sup>

Migration as adaptation strategy could also be supported through development cooperation for example through the establishment of service centres for (potential) migrants in order to maximise the impacts of migration on human development.<sup>277</sup> Therefore, governments in developing countries could benefit from capacity building activities on better management of migration flows. Also regional mobility could be promoted to allow (temporary) mobility of individual family members which could strengthen household's resilience capacities. A consortium of the international organizations IOM, UNEP, OCHA and ISS (Institute for Security Studies) launched an initiative in 2009 which focuses on mobility and environmental degradation and climate change of pastoralist communities in East Africa. The project acknowledges mobility of pastoralist communities as an adaptation strategy to environmental degradation and advocates for better protection of pastoralists.<sup>278</sup> This initiative could serve as a model for other regions with pastoralist or highly mobile communities.

Mainstreaming migration and climate change into development planning was mentioned several times. One opportunity could be to integrate migration and climate change into

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<sup>275</sup> See European Commission 2011b, op. cit., p. 22.

<sup>276</sup> See European Commission 2011b, op. cit., p. 15.

<sup>277</sup> See European Commission 2011b, op. cit., p. 15.

<sup>278</sup> See UNEP, IOM, ISS and OCHA (2010): Security in Mobility. Advocating for Safe Movement as a Climate Change Adaptation Strategy for Pastoralists in the Horn and East Africa. Available at: <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1165377> (consulted on 31.10.2011).

Country Strategy Papers and National Indicative Programmes which serve as the framework for the European Commission development assistance towards the ACP countries. However, it was also raised that these strategy papers would become to 'heavy' and complex. Environmental factors are already integrated in the strategy papers through the Country Environmental Profile that provides the necessary information but no link to migration is being made.<sup>279</sup> It was encouraged to integrate environment in migration profiles.

A review of existing country strategy papers<sup>280</sup> showed that migration and environment is already to a certain extent integrated in the development planning. This could be further intensified since the European Commission has a great knowledge base of a large number of created migration profiles.<sup>281</sup>

#### 4.3.3 Strengthening protection mechanisms in third countries

Complementary to the approach of strengthening resilience capacities of third countries the European Union could strengthen protection mechanisms existing in third countries to enhance protection of environmental displaced outside the European Union.

Since the beginning enhancing protection for refugees and displaced and to find durable solution was a priority of the EU's Global Approach.<sup>282</sup> In line with this priority, the EU implemented Regional Protection Programmes in close cooperation with the UNHCR based on a Memorandum of Understanding between the European Commission and the UNHCR.<sup>283</sup> Activities of Regional Protection Programmes include the establishment of an effective Refugee Status Determination procedure, improving reception conditions of refugees or resettlement or projects targeting the local community hosting the refugees.<sup>284</sup>

The European Commission also activities could also encompass projects and activities improving the general protection situation in the host country.<sup>285</sup> This could be a starting point to not only focus on refugees as defined in the Geneva Convention but also on IDPs. Developing countries could be supported in integrating the Guiding Principles on Internal Displacement in National law and to recognize that environmental displaced people might expect to enjoy specific rights.<sup>286</sup> Bangladesh, Kenya and Ghana for example have already

<sup>279</sup> See European Commission 2011b, op. cit., p. 15.

<sup>280</sup> Country Strategy Papers between 2007-2013 are available at [http://www.eeas.europa.eu/sp/index\\_en.htm](http://www.eeas.europa.eu/sp/index_en.htm)

<sup>281</sup> Migration Profiles were first proposed as a tool by the European Commission in the Communication on Migration and Development in 2005. According to the EC migration profiles would "aim to gather information on issues such as the labour market situation, unemployment rates, labour demand and supply and present or potential skill shortages by sector and occupation, skills needs in the country, skills available in the diaspora, migration flows, incoming and outgoing financial flows linked with migration, including migrant remittances, as well as relevant gender aspects and those related to minors." See European Commission (2005): Migration and Development. Some concrete orientations. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Brussels: COM 390 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0390:FIN:EN:PDF> (consulted on 28.10.2011).

<sup>282</sup> See European Commission COM (2005) 390 final, op. cit., p. 6.

<sup>283</sup> Pilot Regional Protection Programmes were implemented in Tanzania to cover the Great Lakes Region having a large refugee population and in the Western Newly Independent States (NIS) Ukraine, Moldova and Belarus. New Protection Programmes might be developed in the horn of Africa region, Afghanistan and North Africa (see European Commission (2011): A dialogue for migration, mobility and security with the southern Mediterranean countries. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Brussels: COM (2011) 292 final.

<sup>284</sup> See European Commission COM (2005): 388 final, op. cit.

<sup>285</sup> See European Commission COM (2005) 388, op. cit., p. 4.

<sup>286</sup> See Zetter 2011, op. cit., p. 54.

acknowledged environmentally induced displacement in various policy documents which can be considered as a first step towards legal recognition.

As mentioned earlier, the project 'security in mobility' advocates for the protection of pastoralists in Eastern Africa and therefore proposes a Regional Normative Framework to facilitate and protect pastoralists' mobility.<sup>287</sup> This comprises among other activities the formation of local institutions in the border areas to facilitate cross-border collaboration, the harmonization of laws regionally to address inconsistencies and inadequacies in the pastoralists land tenure systems that increase insecurity in mobility across borders or establishing frameworks for managing natural resources sharing among communities.<sup>288</sup> This measure would also be an important step to enhance the protection of populations who are highly dependent on the environment and could be extended to protect also other affected groups, such as agricultural communities or communities living in vulnerable areas.

The Mobility Partnerships provide for the necessary framework to establish a structured dialogue on migration, mobility and security<sup>289</sup> between the EU and third countries. Therefore, these may also cover, among other aspects, environmental migration issues. Under the Mobility Partnership framework the EU can provide assistance in strengthening the domestic capacities of the third countries in dealing with the internal displaced individuals related to the climate change circumstances, while keeping the cooperation in assuring stability, respect for human rights democracy and good governance in the concerned countries.<sup>290</sup> Moreover, in relation to countries which are most likely to be affected by environmental degradation and disasters, the EU might go further and include environmentally induced migration from the partner countries to the EU in the discussion within the mobility partnership framework. Nonetheless, the mobility partnerships would be, in principle, a relevant instrument to bilaterally cooperate on all sorts of measures regarding environmentally displaced.

#### **4.4 Possible options under other areas of immigration policy**

Although an universal right to a healthy environment is not yet regulated at the international or European levels the environmentally displaced individuals may invoke some other rights enshrined in the human rights instruments, in particular, on the principle of non-refoulement, right to life and right to family reunification as stated in the ECHR as well as in the Charter of Fundamental Rights of the European Union.

Nonetheless, environmental factors are in general only merely incidental to the main causes that are protected: i.e. fear of being tortured, executed and discriminated, family reunification, access to an effective remedy etc.

Although the Charter on Fundamental Rights of the European Union in Article 52(3) stipulates the possibility for EU law to grant more extensive protection, going further than

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<sup>287</sup> See UNEP et al 2010, op. cit., p. 12.

<sup>288</sup> See UNEP et al 2010, op. cit., p. 19-21.

<sup>289</sup> See: Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions (2011), *Communication on migration*, COM(2011) 248 final, p.16, 4.5.2011, Brussels.

<sup>290</sup> Communication COM(2011) 248 final, op. cit. p. 17.

the ECHR, in asylum issues the Charter is only confirming the principles already laid down in the ECHR and Geneva Convention (see Article 18).

However, with the upgrading of the Charter to a legally binding document following its incorporation into the Lisbon Treaty, the Charter, arguably, considerably strengthens the overall anchoring of EU policies in a fundamental rights framework. Moreover, according to Article 2 TEU the EU is based on the values of respect of human rights, which makes the respect of fundamental human rights a core element of EU policies in the area of migration and asylum. In addition, it can be expected that the Court of Justice of the European Union will provide authoritative interpretation of EU law (see Article 267 TFEU) in the light of the Charter in the future, thus also interpreting the meaning of the Charter for specific policy fields.

Apart from any future interpretation of the Charter of Fundamental Rights by the CJEU, the Charter already provides a normative framework for evaluating existing policies and practices and developing novel political responses to environmentally induced displacement.

One possible scenario in response to temporary impossibility to return to a country affected by an environmental disaster would be to develop a political or legal mechanism at the EU level that would provide a basis for temporarily prolonging the validity of visa or residence titles of third country nationals of a country affected by a natural disaster. Article 79 TFEU gives sufficient grounds to the Council in common with the European Parliament to take the necessary legislative measures in order to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in MS, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings (see Article 79(1) TFEU), including the conditions of entry and residence (Article 79(2) a) TFEU). Any measures on a continuation of stay in EU in case of the impossibility of return would thus be covered by the TFEU, while leaving at the discretion of the MS the duration and the method of granting the prolongation of the stay (i.e. national visas, residence permits etc.). Formally, such a formula could be framed as a recommendation by the Council or as a Council decision.

In addition, MS may postpone the removal of TCNs due to specific circumstances including technical difficulties under Article 9 (2) of the Return Directive.<sup>291</sup> The Directive provides a non-exhaustive list of obstacles to removal and thus leaves considerable room for discretion and allows MS to decide on other cases when TCN cannot be removed. In addition, the Return Directive explicitly grants MS to grant more favorable provisions (see Article 4). Article 9(2) of the Return Directive thus can in principle already now be invoked in regard to the specific case of persons subject to return decision. A future review of the return directive could consider establishing a mechanism to define additional cases in which removal should be suspended complementing the grounds listed under article 9(1) of the Directive. This could involve specifying generic categories (such as citizens of countries affected by a natural disaster), but also could be implemented by providing a general mechanism to define relevant categories by Decision of the Council.

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<sup>291</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008.

Neither a possible framework for prolonging the validity of stay of residence titles or entry visas, nor measures under the Return Directive provide a mechanism to admit individuals displaced by natural disasters. Mirroring a political mechanism to extend the validity of residence titles or visas one could however also think of mechanisms to recommend the admission of particular categories of persons affected by natural disasters, such as persons in need of medical treatment, orphans, and other highly vulnerable persons. Such a mechanism, however, will be of an essential political nature and it will require political will to adopt relevant recommendations or to design particular visa schemes for humanitarian admissions. In practice, such humanitarian visas could be incorporated into EU emergency responses to individual disasters and could build on international examples discussed in the review of non-harmonized protection statuses above.

## 5. CONCLUSIONS AND RECOMMENDATIONS

This study has firstly examined the complex relationship between climate or environmental factors and human mobility, migration and displacement and it secondly has assessed the adequacy of the current EU framework for immigration and asylum to respond to environmentally induced displacement on the other. The study was structured in three parts: the first addressed the linkages between climate and environmental change and migration, which led to the elaboration of a typology of environmentally induced migration. The second part comprises a review of the global policy debate, including possible policy responses to environmentally induced migration. The third and core part identifies possible policy and legal responses under the current EU policy framework that would address environmentally induced migration.

Given the importance of a clear understanding of the phenomenon of environmentally induced migration for this study, we reviewed the social science literature on the link between migration and climate change. Most studies agree that a determinative and direct link between environmental change and migration is not easy to identify because migration results from a combination of triggers in source and destination countries. The degree to which environmental factors will lead to mass displacement is part of a controversial debate. Any prediction is difficult because of the high level of uncertainty of the effects of environmental change in general and because changes will have a different impact on one region than on another. This relates to the vulnerability of the affected populations and their adaptation capacities as well as the rapidity and severity of events. A major distinction can be made between rapid-onset climate events describing extreme weather events, slow-onset climate events comprising drought, desertification and land degradation and sea-level rise. When rapid-onset disasters occur people often flee to avoid loss of life or physical harm, or people might decide to move because of the destruction of livelihoods. The links between drought, desertification and migration are more complex and the occurrence of migration due to these events is more difficult to identify. Sea-level rise can be characterized both as a slow-onset gradual environmental change and as a contributor to the impact of flooding and storms. At the same time, sea-level rise is the most dramatic manifestation of climate change because of the possible disappearance of small island states. However, while migration may be perceived as a failure to adapt to worsening conditions in countries or areas of origin, migration can also in many cases be seen as an effective adaptation strategy. Migration, in particular seasonal migration, is a way to diversify household income while at the same time allowing family members to remain in the area of origin.

Based on this review of the literature, we developed a typology of environmentally induced migration to serve as a basis for identifying possible policy responses to the different forms and dimensions of the phenomenon. We use the term 'environmentally induced migration' to characterise the broader phenomenon and 'environmentally induced displacement' to characterise forced forms of mobility that are primarily engendered by environmental change. We further differentiate between temporary forms of environmentally induced migration and permanent forms because both forms require different forms of protection.

Aside from the academic debate on environmentally induced migration, the subject has increasingly become a topical issue at the policy level, notably in the context of international

efforts to counter climate change and its effects. The international debate on possible policy responses was triggered by the discussion of 'protection gaps' existing for people displaced by the impact of environmental or climate change. Protection gaps are in particular apparent for persons displaced across borders and in the case of slow-onset climate events. A clear protection gap also exists for internally displaced persons due to poor implementation of legal standards and the weak status of the Guiding Principles on Internal Displacement.

To address these gaps, five options, which are considered at the global level, were reviewed in the present study. The first discussed option was the extension of the scope of the Geneva Refugee Convention; in line with other conducted studies, we concluded that the extension and amendment of the refugee definition is not a feasible option as it might lead to a devaluation of the current protection for refugees under the Geneva Convention. The option of broadening the Guiding Principles on Internal Displacement is discussed as the most promising approach in the literature, although the Guiding Principles only provide guidelines and lack legal force. The option of creating a new framework which applies to environmental or climate change displacement is unlikely to materialise, mainly because of the potential lack of political will. Besides the mentioned options, the addition of a protocol on climate induced migration to the United Nations Framework Convention on Climate Change (UNFCCC) is another debated option for which the inclusion of a paragraph on climate induced displacement, migration and planned relocation in the Cancun Adaptation Framework has opened new windows of opportunity. A fifth possible option is using various forms of temporary protection as a protection instrument for accommodating persons displaced by environmental factors. Due to the fact that different policies and responses are needed at each stage of environmentally induced migration, ranging from actions to mitigate climate change, the offer of protection in the phase of displacement and (re)integration and resettlement, two other main approaches are considered at the international level: planned resettlement and reducing the vulnerability of affected populations through tailored development cooperation measures.

Currently, at the EU level, there is neither a distinct instrument covering 'environmentally displaced individuals' nor provisions that could be *lato sensu* interpreted in order to include under a protection status the concerned category of applicants, except in the case of a massive influx of them, which would be covered by the Temporary Protection Directive. Theoretically it might be argued that the Temporary Protection could be pertinent to these applicants, the requirements for granting the protection as well as the administrative procedure for launching the mechanism available under the Directive makes it less effective in dealing with those environmentally displaced individuals who might not arrive within a 'massive' influx to EU border.

In addition, an amendment to the current existing EU instruments may not solve the issue. For instance, the Temporary Protection Directive regulating special protection granted under exceptional circumstances is seen more as a financial and political tool that could be theoretically applicable under particular circumstances to those individuals environmentally displaced due to sudden disasters, who have been evacuated by an appeal of international organizations and are unable to return in safe and durable conditions (see Article 2(c)). What is missing, however, is the regulation of the applicants for protection due to slow onset environmental changes or of single or fewer applicants being considered as victims of

sudden environmental disasters. Therefore, it seems necessary to introduce provisions in the EU asylum legislation for solitary applications from victims of environmental disasters by also providing protections for people temporarily displaced for slow onset environmental reasons. Furthermore a holistic approach seems to be more relevant in this case, in particular, a comprehensive instrument for environmentally displaced individuals that would regulate the procedure and method, including the rights and obligations, for granting protection to victims of environmental displacement.

At the national level of EU MS there are several dozens of non-EU harmonised protection statuses that can be granted to asylum related applicants. However, only four MS have stipulations about protection in the case of environmental disasters (i.e. CY, FI, IT and SE), while the other MS legislation might be interpreted in its broader meaning as applicable towards 'environmentally displaced individuals' too. The decision on granting protection to 'environmentally displaced individuals' might be of political character without necessarily having legal stipulations (see BE). Nonetheless, there are no officially recorded cases of granted protection to the category of individuals concerned.

The resettlement of individuals from countries that have experienced environmental disasters is a plausible solution that is still shaped at the EU level. Although currently resettlement is implemented on a voluntary basis and there is no coordinated mechanism on resettlement issues, there are strong considerations for a Joint EU Resettlement Programme.

Under the Global Approach, consistent assistance can be given to third countries affected by climate change phenomenon in order to support the national institutions in dealing with environmental issues, particularly taking into consideration the rich experience of EU in drafting and implementing migration policy instruments.

The human rights protection instruments available at international and European levels do not fully apply to environmental issues as they are only merely incidental to the main causes that are protected: i.e. fear of being tortured, executed and discriminated, family reunification, access to an effective remedy, etc. Nonetheless, human rights protection lies at the core of EU policies, which could be broadly interpreted to cover environmentally displaced individuals, while some additional mechanisms not necessarily linked to immigration might be considered.

## **Policy recommendations**

The review of the literature has shown that climate change and environmental factors are likely to exacerbate other causes of migration and therefore have consequences on patterns of human mobility, migration and displacement. It could also be derived from the literature that the impact will depend on the vulnerability and adaptation capacities of the affected populations and the rapidity and severity of events. Permanent and significant migration will only take place if social factors exacerbate the impact of the disaster, if the affected society is highly dependent on the natural environment for its livelihood and the frequency and the extent of the damage as well as the management of the disaster. Most persons fleeing natural disasters remain within their country or region of origin, while international migration only accounts for a small proportion of all disaster-related movements. In particular, migration as a response to gradual deterioration will take different forms. From

the perspective of households affected by environmental degradation, migration can also be seen as a strategy that assists people in their adaptation to changing circumstances; in several countries, rural livelihoods include mobility as a way to diversify income activities instead of relying solely on a singular income generating activity. Therefore, drawing a line between forced and voluntary environmental migration is challenging.

This points to the fact that different policies and responses are needed at each stage of environmentally induced migration: In the pre-migration phases actions to mitigate climate change and to strengthen the adaptation capacities of communities can take place; in the phase of migration and displacement, which can be temporary or permanent, internal and across borders, policies providing for the protection of affected individuals or populations and facilitating measures are necessary; and in the last phase of the migration cycle return or resettlement measures as well as measures which support either reintegration processes into the home location or integration into the new location might be needed.

As at the international level the legal debate is unlikely to be solved in the near term, the EU may decide to be one of the pioneers in this field, in particular because there are already attempts at the political level to consider environmentally displaced individuals under the Common European Asylum Policy<sup>292</sup>. In light of the above, we put forward the following recommendations to the European Parliament with the aim of offering different possible mechanisms to be considered by the EU in dealing with environmentally displaced individuals:

- EU may wish to start with the complementary protection regime first, as an *ad hoc* mechanism and depending on the further evolution to guarantee primary protection to environmental displaced individuals. The national provisions analyzed can be used as a model for the European legislator in amending the content of the Qualification Directive. As long as the reasons listed in the Article 15 shall be applicable to qualify for subsidiary protection, an amendment to its paragraph (c) might include, in addition to armed conflict, also environmental disasters.
- There are strong arguments that, in the case of a mass influx of environmentally displaced individuals, the financial and political mechanisms available under the Temporary Protection Directive might be applicable. However, a more flexible and at the same time more objective mechanism to activate the directive should be considered, as the directive currently can only be activated upon a commission proposal and a related decision by the Council.
- A holistic approach covering all the aspects of environmentally induced migration is a more relevant approach, engaging a comprehensive instrument for environmentally displaced individuals that would regulate the procedure and method, including the rights and obligations, for granting protection to victims of environmental displacement.

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<sup>292</sup> See European Parliament Report A5-0333/2002 of 08.10.2002 on the proposal for a Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM(2001) 510 – C5 0573/2001 – 2001/0207(CNS)), p.55, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2002-0333+0+DOC+PDF+V0//EN> (consulted on 17.10.2011).

- The EU should consider ad hoc mechanisms informed by a rights-based approach and existing instruments regarding legal and irregular migration (for example prolongation of residence titles for third-country nationals whose countries have been affected by environmental disasters, postponement of removal, etc).
- The EU should promote the resettlement of individuals from countries that have experienced environmental disasters and further develop the Joint EU Resettlement Programme.
- Under the Global Approach, third countries affected by climate change related phenomena should be assisted in order to support the national institutions in dealing with adverse environmental change. Measures may comprise strengthening the adaptation and resilience capacities of third countries to reduce the vulnerability of affected populations and enhancing the protection of environmental displaced individuals outside the European Union. The EU should consider providing support to local governments to address migration as an adaptation strategy and to facilitate migration while ensuring that the rights of the migrants are protected during the whole migration cycle. The mobility partnerships would be, in principle, a relevant instrument to bilaterally cooperate on all sorts of measures regarding environmentally displaced.

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