

# **Rethinking Durable Solutions to Displacement in the Context of Climate Change**

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Displacement caused by conflict and human rights violations is typically resolved through the pursuit of three “durable solutions”: local integration, resettlement or voluntary return. It has often been assumed that durable solutions mark the end of mobility for refugees and internally displaced persons (IDPs). However, in recent years it has become clear that this assumption needs to be reconsidered. Even after the situations that forced them from their homes have been resolved, many former refugees and IDPs remain “on the move,” making choices that subvert the standard durable solutions framework. For instance, they may return periodically to their communities of origin while maintaining permanent residence in a resettlement country, or they may become migrant workers in other countries. The traditional trio of durable solutions may also need to be reconsidered in light of the challenges posed by climate change. In the following piece, we provide some brief reflections on the ways in which displacement linked to climate change may test some of the principles underpinning the durable solutions framework, and necessitate new thinking about solutions to displacement.

Already, the systems in place for supporting solutions to displacement are hard pressed to deal with refugees and IDPs uprooted by persecution and other forms of serious harm. Many wait decades to access a safe and dignified solution to their displacement, due to factors such as lack of political support for local integration, insufficient resettlement opportunities, and persistent insecurity and under-development in return communities. The pressures on the existing solutions framework are likely to increase as the effects of climate change start to influence people’s decisions to move away from their homes. While it is difficult to attribute movement solely to the impacts of climate change, it is clear that increasing numbers of people are already being displaced by disasters, such as major hurricanes and floods, whose severity and frequency are likely to increase with global warming. Slower-onset environmental processes, such as desertification, are also likely to be exacerbated by changes to the climate. Researchers expect that the majority of those uprooted by climate change-related phenomena will become internally displaced. A much smaller number of people, such as those from small island states, may be compelled to seek shelter in other countries. Since they will not qualify as refugees under international law, it is an open question whether the discourse and logic of “durable solutions” will be applied to them. In our view, it may prove more useful to focus on facilitating managed migration opportunities for those who cannot remain in their homes. This applies both to internal movement (for example, by national governments developing planned rural–urban migration schemes in consultation with affected communities), as well to international movement (for example, through the establishment of “merits-based migration” programs for citizens of small island states who wish to move preemptively, as advocated by the President of Kiribati). Indeed, the possibility of planning managed migration opportunities in advance of displacement linked to the effects of climate change sets these movements apart from many forced migration flows sparked by conflict and human rights abuses. For the present, however, it is useful to consider

the ways in which the current durable solutions framework may be challenged by both internal displacement and cross-border migration associated with climate change.

### *A declining role for return?*

Voluntary return is often portrayed by governments, UNHCR and other international actors as the “preferred” solution to displacement. Although this preference is not always shared by refugees and IDPs themselves, since the end of the Cold War voluntary return has undoubtedly become the predominant solution to refugee crises, with fourteen refugees returning to their countries of origin for each individual resettled between 1998 and 2008. Even though refugee repatriation rates have declined in recent years, IDP returns are on the rise, and for a range of reasons return tends to be privileged as the preferred solution. Why is this the case?

The reasons for privileging return range from intolerant desires to clear out unwelcome populations, to more rights-based stances premised on recognition of the right of return in international instruments such as the Universal Declaration of Human Rights (article 13(2)), the International Covenant on Civil and Political Rights (ICCPR) (article 12(4)), and the Guiding Principles on Internal Displacement (Principle 28(1)). Enabling the return of refugees and IDPs to their homes may also be seen as an important form of redress for the “wrong” of displacement.<sup>1</sup> Yet it is clear that return may simply be a less relevant, if not impossible, solution for many of those displaced by disasters or processes connected to climate change. For the citizens of small island states, return may be untenable if fresh water supplies are no longer sustainable (for instance, last year Tuvalu declared a state of emergency on account of severe water shortages), and physically impossible if their territories are eventually inundated. In other cases, while people displaced from areas vulnerable to flooding, mudslides or riverbank erosion may wish to return to their homes (and at present often do so), the risk of exposure to further disasters may mean that a responsible durable solutions policy would require the promotion of permanent resettlement elsewhere instead of return. At times, secure returns may only be viable at great expense, with the construction of barriers against floods and other infrastructure necessary to mitigate the risk of disasters. Who bears the responsibility to fund such measures? Is it the role of national governments, the “international community”, or states that have contributed the most to climate change? There is, at the very least, an ethical dilemma if the durable solutions framework can contemplate return for refugees and IDPs uprooted by conflicts, but not for those displaced from environmentally-vulnerable areas simply on account of the resources that would be required to make this solution safe and sustainable.

While displacement linked to climate change raises new questions about the role of return as a solution, it also generates related questions about how displacement may best be redressed. In recent years, thousands of refugees and IDPs have benefitted from the work of property restitution commissions, through which they have regained their lost homes and lands. Some advocates involved in these processes have argued that just as return is the “preferred” solution to displacement, restitution is the “preferred” form of redress for displacement. This is largely because of the contribution that the restoration of displaced persons’ property rights may make to

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<sup>1</sup> See United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Article IX(19)) and Megan Bradley, *Refugee repatriation: Justice, responsibility and redress*. Cambridge: Cambridge University Press, forthcoming.

enabling sustainable returns.<sup>2</sup> The relevance of restitution as a remedy for displacement will undoubtedly come into question in cases where displaced persons' homes and lands have been lost to inundation or erosion, or are otherwise no longer habitable. Financial compensation may be provided as an alternative form of redress for the loss of land, but it is clear that money cannot substitute for the loss of home and identity, nor for any loss of self-determination on communities' traditional territory. Determining which actors have the responsibility to compensate those displaced in connection with the effects of climate change also raises thorny legal, moral and political questions that have yet to be resolved.

### ***The increasing relevance of resettlement and planned relocation***

In the context of the current durable solutions framework, resettlement has become an “extra-ordinary” solution used primarily in cases where refugees face particular protection needs that cannot be addressed in their country of asylum, and other durable solutions are not available. Demand for resettlement far outstrips supply, with UNHCR requesting resettlement for more than 108,000 refugees in 2010, but only 73,000 departing to resettlement countries. For IDPs displaced by conflict, opportunities to be resettled to third countries are virtually non-existent, while support for resettlement to other communities within their countries is often very limited and ad hoc. However, resettlement of displaced populations and the related process of planned relocation may become increasingly relevant in the context of displacement linked to the effects of climate change. Responding effectively to climate change-related displacement will necessitate moving from a reactive approach—responding to displacement that has already occurred—to a proactive approach, whereby movement is planned in close consultation with members of the affected communities, including those who have been displaced, those at risk of displacement, and members of the (prospective) host community. It will also require careful analysis of the lessons that may be learnt from experiences of development-related relocation and resettlement (when communities are moved to make way for projects such as the construction of dams or roads).<sup>3</sup>

While it is commonly thought that climate impacts will render small island states such as Kiribati and Tuvalu uninhabitable, there remains considerable uncertainty about the extent to which adaptation measures—including voluntary migration as a form of adaptation—will enable at least a small population to remain. “Durable solutions” in this context need to be more nuanced than the traditional three described above. In particular, movement is unlikely to be in the nature of refugee “flight” but rather pre-emptive—in anticipation of slow-onset changes which may ultimately render the continued habitation of a territory untenable. This raises different challenges for governments and other actors interested in supporting durable solutions, in particular how to create solutions that enable people to move in advance of immediate danger. While some advocates have suggested that displaced islanders should have the opportunity to be relocated to more secure locations, states are highly unlikely to formally cede territory to them. Although Kiribati is presently in negotiations with Fiji about purchasing an island to which its citizens could move, this would be a private property transaction and people could only relocate

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<sup>2</sup> S. Leckie, “New Housing, Land and Property Restitution Rights,” *Forced Migration Review* 25 (2006), p. 52, Centre on Housing Rights and Evictions (COHRE), “UN to Adopt Pathbreaking New Global Standard which Demands Return of Confiscated Refugee Land and Housing,” Media Release, 11 August 2005.

<sup>3</sup> E. Ferris, “Protection and Planned Relocations in the Context of Climate Change”, *UNHCR Legal and Protection Policy Research Series* (forthcoming).

if they independently met the requirements of Fijian immigration law. Without acquiring Fijian citizenship, they would remain subject to removal, as there is no obligation under international law for states to shelter those who are displaced across borders by disasters or processes linked to climate change. Furthermore, they may not be accepted on an equal status by the host community. For instance, the Banaban islanders from Kiribati, who were relocated to Rabi island in Fiji in the 1950s when their island was mined for phosphate, still claim that they are discriminated against in Fiji and are not afforded the same opportunities as indigenous Fijians. This example speaks to the fundamental need to engage affected communities in early and meaningful consultation, and for governments to be open to proactive migration opportunities, rather than deferring to remedial protection once displacement has occurred.

### ***The role of local integration***

Particularly when return migration is not a viable option, governments will need to facilitate solutions that enable people to integrate into the communities into which they move, whether they are in their own countries or another state. Effective integration support requires ensuring that those who have recently arrived can access their legal rights and important social services. Since much of the population movement associated with climate change is (already) rural to urban, governments need to carefully develop urban planning schemes which ensure that the necessary infrastructure is put in place to support enlarged cities. In the absence of forward-looking local integration plans, it is likely that there will be a considerable growth of urban slums, as has already been observed in Bangladesh. Lessons from efforts to support the local integration of populations displaced by conflict and human rights abuses may be a valuable source of insight as integration plans are developed.

### ***Supporting solutions***

As humanitarians, human rights advocates, policymakers and researchers rethink frameworks for supporting solutions to displacement in light of the challenges posed by climate change, it will be essential to emphasize equity and even-handedness. These qualities increase the efficacy and popular acceptance of strategies to resolve displacement, and are an essential part of a rights-based approach to this issue. Conceptually and practically, it is generally impossible to identify those who have been displaced by the effects of “climate change” per se, since these always interact with pre-existing vulnerabilities (whether political, economic, social or environmental). It is particularly challenging to determine who amongst this group may be in need of—or have a claim to—special assistance in securing a solution to their displacement. Some individuals and families may be able to craft their own solutions, such as integrating into more secure communities where they have existing ties. Others may be less able to do so, due to factors such as age, infirmity, and access to financial resources, and may therefore need more support from actors such as governments and humanitarian agencies. Determining how to equitably distribute inevitably limited support for durable solutions is always a complex prospect, but this challenge will only become more acute as displacement linked to climate change increases. It must be met with a commitment to equitably consider the needs of not only the displaced, but also the communities that receive them, and be underscored by the fundamental principles of humanity and non-discrimination. At the same time, it must be recognized that while the durable solutions framework may structure efforts to support the

resolution of displacement, there is no one-size-fits-all answer to these challenges.<sup>4</sup> Just as in cases of displacement caused by conflict and persecution, tailored solutions must be developed in close consultation with affected communities.

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<sup>4</sup> For a detailed discussion, see J. McAdam (2012) *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press).