

# “Climate Refugees”

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## Legal and Policy Responses to Environmentally Induced Migration

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The links between environmental factors and migration, as well as possible policy responses, have received increasing attention both in academic and policy debates in the past decade. Recent studies have shown that these links are more complex than traditionally thought. In particular, the attention paid to mobility caused or influenced by environmental factors needs to be complemented by attention to mobility towards areas under environmental strain, as well as to immobility in the context of environmental degradation. The role of migration and asylum policies is essentially limited. Nevertheless, they do have a role to play, particularly in the context of environmentally induced displacement. Based on a recent study for the European Parliament, this paper focuses on the potential of the current European Union policy framework to respond to environmentally induced displacement. To this end, the paper develops a typology of environmentally induced migration and reviews possible policy responses debated on the global level, thus identifying environmentally induced displacement as the most relevant type of mobility in the context of environmental risk that can be addressed by migration and asylum policies. Finally, the paper reviews the European Union policy framework and national protection policies of EU Member States (MS). While the current policy framework already allows accommodating environmentally induced displacement to some extent, the paper also shows several gaps and indicates possible directions on how this framework can evolve.

## **“Climate Refugees”. Legal and Policy Responses to Environmentally Induced Migration**

### **Introduction**

Environmentally induced migration has gained increasing 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 by the Stern Review Team put the number of ‘environmental migrants’ at 200 million by 2050.<sup>1</sup> 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 a broad consensus that environmental factors can play an important role in relation to human mobility, there has been no agreement on how environmental factors impact migration, forced migration and displacement and how much weight should be given to environmental factors as opposed to other drivers of migration.<sup>2</sup> There has also been no agreement on the terminology, which is reflected in the contrasting terms used to describe the phenomenon, such as ‘climate refugees’ vs. ‘environmental migrants’. This paper uses the terms ‘environmentally induced migration’ to denote the broader phenomenon and ‘environmentally induced displacement’ to characterise forced forms of mobility primarily engendered by environmental change. The use of this terminology is further discussed below.

The controversies are, to some extent, also reflected in the debates on possible policy responses to environmentally induced migration, and most policy proposals have focused on environmentally induced displacement as a phenomenon where the link between migration and environmental events appears to be much clearer. As a corollary, the main focus of global debates is on providing protection to victims of environmental events. Nevertheless, there is also no consensus on whether there is indeed a need for specific protection mechanisms and if so, in what context these should be developed. At the global level, five main policy options have been proposed: (1) an extension of the scope of the Geneva Convention, (2) promoting the Guiding Principles on Internal Displacement, (3) the creation of a new legal framework, (4) the addition of a protocol on climate-induced migration to the United Nations Framework Convention on Climate Change and (5) using temporary protection mechanisms for persons displaced by environmental events. Besides the protection options, planned resettlement as either a post- or pre-displacement option, as well as strengthening the resilience capacities of affected populations, should be considered as additional options.

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<sup>1</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.

<sup>2</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)

This conference paper, which is based on a recent study commissioned by the European Parliament<sup>3</sup>, discusses to what extent the current European Union framework for immigration and asylum, in general, and the specific instruments in regard to asylum, in particular, already offer an adequate response to environmentally induced displacement and how the legal framework could evolve in order to provide an improved response to the phenomenon. To this end, the paper focuses on the development of a typology of environmentally induced migration to provide the basis for the assessment of the European policy framework and briefly analyses the global debates on policy responses to environmentally induced displacement to embed the analysis of the EU policy context.

### **Terminological and Conceptual Issues Related to Environmentally Induced Migration**

Most social science literature on the link between migration and climate change 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.<sup>4</sup> 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 and because of their differential impacts on affected populations.<sup>5</sup> How populations will be affected generally depends less on exposure to processes of environmental change or single environmental events as such than on their vulnerability and adaptation capacities. These in turn are determined by the broader socio-economic context, as well as policy responses to environmental change.<sup>6</sup>

As stated by the Intergovernmental Panel on Climate Change (IPCC), extreme weather events are predicted to increase due to climate change.<sup>7</sup> A major distinction can be made between rapid-onset climate events describing extreme weather events, such as monsoon floods, storms, hurricanes, typhoons and glacial lake outburst floods, and slow-onset climate events comprising drought, desertification and land degradation, and sea-level rise.<sup>8</sup> 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.<sup>9</sup> The links between drought, desertification

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<sup>3</sup> A. Kraler, T. Cernei, M. Noack (2011): "Climate Refugees". Legal and Policy Responses to Environmentally Induced Migration. Briefing paper prepared for Directorate General for Internal Affairs, Policy Department C: Citizens' Rights and Constitutional Affairs of the European Parliament. Brussels: European Parliament, available through <http://research.icmpd.org/2011.html>.

<sup>4</sup> See Boano C., Zetter R., Morris T. (2008): Environmentally displaced people. Understanding the linkages between environmental change, livelihoods and forced migration, Oxford: Refugee Studies Centre, p. 18; Tacoli C. (2009), Crisis or Adaptation? Migration and climate change in a context of high mobility, available at: <http://www.unfpa.org/webdav/site/global/users/schensul/public/CCPD/papers/Tacoli%20Paper.pdf>, p. 4 and McLeman R. (2011): Climate change, migration and critical international security consideration. Geneva: IOM

<sup>5</sup> See Oliver-Smith A. (2009): Nature, Society, and Population Displacement. Toward an Understanding of Environmental Migration and Social Vulnerability. InterSecTions, Publication Series of UNU-EHS and Boano, Zetter & Morris 2008 op. cit., p. 18

<sup>6</sup> Parry M. 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>7</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>8</sup> For a categorization of natural disasters, its occurrences and impacts, see Vos F. 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)

<sup>9</sup> See Tacoli 2009 op. cit., p. 6

<sup>9</sup> See Warner K (2010): Assessing Institutional and Governance Needs Related to Environmental Change and Human Migration. Washington: The German Marshall Fund of the United States

<sup>9</sup> See Morissey J. (2009), Environmental Change and Forced Migration: A State of the Art Review, Oxford: Refugee Studies Centre, available at:

and migration are more complex and the occurrence of migration due to these events is more difficult to identify.<sup>10</sup> Sea-level rise can be characterised 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.<sup>11</sup> 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.<sup>12</sup>

Due to the fact that the term environmental refugee has been challenged both in the academic and political debate, it has been suggested to use the more general term of “environmentally induced migration” to denote the broader phenomenon and “environmentally induced displacement” to characterise forced forms of mobility primarily engendered by environmental change. In addition, one needs to differentiate between temporary forms and permanent forms of environmentally induced displacement because they require different responses.<sup>13</sup>

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);	Permanent forced displacement within national borders;  Permanent forced displacement across international borders	Displacement across borders:  Permanent protection  durable solutions (resettlement, local integration)

<http://www.rsc.ox.ac.uk/events/environmental-change-and-migration/EnvChangeandFmReviewWS.pdf>, p. 28

<sup>10</sup> See Warner 2010 op. cit., p. 4

<sup>11</sup> See Morrissey 2009 op. cit., p. 32; McAdam J. (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; Piguet E., Pécoud A., de Guchteneire P. (2011), Introduction: migration and climate change, in: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): Migration and Climate change, UNESCO., p. 10

<sup>12</sup> See McLeman (2011) op. cit., p. 21 and 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>

<sup>13</sup> For a detailed discussion on the proposed methodology, see Kraller, Noack and Cernei 2011, op. cit., p. 29-36

	Sea-level rise (affected area no longer exists)		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 due to worsening life quality) within or across national borders	Weak protection framework for migrants both at international and internal levels

However, as a major recent study commissioned by the UK Government Office for Science has highlighted, there is a need to extend the debate on migration and environmental change beyond the role of environmental change in causing migration from areas affected by it. Migration may also become less likely an adaptation strategy when environmental change undermines the livelihood of most vulnerable populations and, thus, undermines the resources needed to migrate. Particularly vulnerable populations may therefore become locked in areas affected by severe environmental change. Finally, policymakers also need to be concerned about in-migration to areas affected by environmental change or particularly at risk of severe environmental events.<sup>14</sup>

### **Policy Debate on Environmentally Induced Displacement at the Global Level**

Apart 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 especially apparent for persons displaced across borders and in cases 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.<sup>15</sup>

Five options are generally considered at the global level. The first option is the extension of the scope of the Geneva Refugee Convention.<sup>16</sup> However, the emerging consensus is that an

<sup>14</sup> See Foresight: Migration and Global Environmental Change (2011): Final Project Report. London: UK Government Office for Science. Available at <http://www.bis.gov.uk/foresight/our-work/projects/published-projects/global-migration>

<sup>15</sup> For a discussion on the protection gaps, see Zetter R. (2011): Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks. Oxford: Refugee Studies Centre

<sup>16</sup> See for example Zetter 2011, op. cit., p. 19

extension and amendment of the refugee definition is neither a feasible nor a desirable option. In the present political climate, opening up the Geneva Convention might risk undermining the scope of protection presently extended to beneficiaries of international protection under the Convention, while extending the personal scope of the Convention is unlikely to materialise for similar reasons.<sup>17</sup> Promoting the Guiding Principles on Internal Displacement<sup>18</sup> is discussed as one of the most promising options in the literature. As “guidelines”, however, they lack legal force and, thus, depend on the political will of governments and other relevant actors to put them into practice.<sup>19</sup> The creation of a new legal framework<sup>20</sup> applying to environmentally induced displacement is unlikely to materialise, mainly because political will is lacking.<sup>21</sup> A fourth option proposed is the addition of a protocol on climate-induced migration to the United Nations Framework Convention on Climate Change (UNFCCC).<sup>22</sup> The inclusion of a paragraph on climate-induced displacement, migration and planned relocation in the Cancun Adaptation Framework adopted in 2010 might have opened a window of opportunity to pursue this option.<sup>23</sup> A fifth possible option is using various forms of temporary protection as an instrument for accommodating persons displaced by environmental events, such as severe weather events.<sup>24</sup> Protection for those who leave can, however, only be part of a more comprehensive policy response. Besides the protection options, planned resettlement and reducing the vulnerability of affected populations through tailored development cooperation measures should be considered as additional options that can be employed to both slow- and rapid-onset events.<sup>25</sup> In addition, bilateral migration agreements, including possible seasonal migration plans, may be useful tools to promote migration as an adaptation strategy to longer term environmental change, particularly on a regional level.

What becomes clear from the preceding discussion of global policy debates is that the debate largely focuses on possible protection gaps and, thus, although not often explicitly so, is largely about environmentally induced displacement following rapid-onset events. Reflecting this focus of the policy debate, the following analysis of the EU policy framework similarly largely focuses on displacement.

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<sup>17</sup> See McGregor J. (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; 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>, p. 9; Castles 2002, op. cit., p. 10

<sup>18</sup> UNHCR (1998): *Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2)*.

<sup>19</sup> See Williams A. (2008), *Turning the Tide: Recognizing Climate Change Refugees in International Law, Law and Policy* 30/4.

<sup>20</sup> Several academics but also policy makers have called for a new legal instrument, see Cournil C. (2011), *The protection of ‘environmental refugees’ in international law*, in: Etienne Piguet, Antoine Pécoud, Paul de Guchteneire (ed.): *Migration and Climate change*, UNESCO, p. 374. 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, 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>21</sup> See Zetter 2011 (op. cit.), p. 16; McAdam 2011, op. cit., p. 128

<sup>22</sup> See Biermann F. and Boas I. (2010): *Preparing for a warmer world. Towards a global governance system to protect climate refugees*. *Global Environmental Politics*, Vol. 10, pp. 60-88

<sup>23</sup> Warner 2011, op. cit., p. 5

<sup>24</sup> 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, 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>25</sup> See Hugo G. (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; Martin 2010, op. cit., p. 3

## Protection for Environmentally Displaced Persons under the Current EU Legal Framework

Currently, there are no instruments specifically regulating 'environmental displaced individuals' protection at the EU level. Legal scholars have argued that, to an extent, available instruments providing complementary<sup>26</sup> forms of protection at the EU level, namely subsidiary and temporary protection, could be applicable to 'environmentally displaced individuals' as enshrined in 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>27</sup> (Qualification Directive) and in 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>28</sup> (Temporary Protection Directive).

### Qualification Directive

Directive 2004/83/EC aims to lay down minimum standards for the qualification of 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>29</sup> One of the main rationales of the qualification directive was to harmonise the disparate standards in EU MS by establishing common minimum standards. Instead of creating new protection obligations addressed to particular individuals, Directive 2004/83/EC thus clarifies and codifies existing international and Community obligations and practices.<sup>30</sup>

Directive 2004/83/EC specifies an important condition that has to be met to qualify for subsidiary protection, namely that the individual should face 'serious harm' as defined in Article 15 of 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 the Geneva Convention, the enumeration stipulated in Article 15 explicitly limits the notion of

<sup>26</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>27</sup> OJ L 304, 30.9.2004

<sup>28</sup> OJ L 212, 7.8.2001

<sup>29</sup> Article 1 Directive 2004/83/EC

<sup>30</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)

'serious harm' by establishing an exhaustive list of situations constituting 'serious harm'. None of the grounds are applicable to environmentally displaced individuals.

Nevertheless, paragraph (b) might be applicable if interpreted in a progressive way.<sup>31</sup> 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 environmental circumstances.<sup>32</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 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>33</sup> So far, the ECtHR did not interpret Article 3 of the ECHR as covering environmental conditions<sup>34</sup>, although some scholars argue that it is applicable to extreme cases of natural disasters.<sup>35</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>36</sup> Also, the recast Qualification Directive adopted in December 2011 does not modify the grounds for protection and thus has no impact on the protection that could be granted to environmentally displaced persons.<sup>37</sup>

Nevertheless, in general terms, the Treaty of Lisbon provides a sufficiently broad mandate for the European Union to introduce the necessary amendments.

### **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. It also promotes balancing efforts between MS in receiving and bearing the consequences from receiving such persons.<sup>38</sup>

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<sup>31</sup> See Kolmannskog V. and Myrstad F.: Environmental Displacement in European Asylum Law, *European Journal of Migration and Law*, 2009, p. 313-326

<sup>32</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>33</sup> See European Commission COM(2001) 510 final, op.cit., p. 26

<sup>34</sup> Info from the ECtHR case law data base, available at: <http://cmiskp.echr.coe.int/tkp197/search.asp?sessionId=80888327&skin=hudoc-en>

<sup>35</sup> Kolmannskog/ Myrstad 2009 op. cit. p.322

<sup>36</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>37</sup> See Sgro A.: "Developing EU responses to environmentally-induced displacement: a legal and political challenge about to be overcome?", in

B. Terminski, *Environmental refugee: Theoretical frameworks and current challenges*, Warsaw University Press (forthcoming)

<sup>38</sup> See Article 1 Directive 2001/55/EC

In case of a massive influx following a natural disaster, the temporary protection mechanisms under the Temporary Protection Directive (2001/55/EC) could – in theory – be activated. Unlike the Qualification Directive, its personal scope is not limited to persons in need of international protection *sensu strictu*, i.e. refugees in the meaning of the Geneva Convention or persons under subsidiary protection. Not only are the circumstances described in the directive in which it may be activated not understood as an exhaustive list, but individuals displaced following a serious environmental event may also be argued to “be at serious risk” or to have become victims of “systematic or generalised violations of human rights.” Yet, as a political mechanism of burden-sharing within the EU requiring a Council decision on the activation of the directive, the Temporary Protection Directive is an inherently limited instrument. In addition, it does not provide individual protection, but provides collective protection to a group to be defined on a case by case basis by the Council.<sup>39</sup>

Recent attempts of the Maltese and Italian foreign ministers to invoke the application of Directive 2001/55/EC for activating the mechanism to assure an equal distribution of refugees among MS as a result of mass influx of individuals from Libya and Tunisia have 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 stated that the inflows of persons were not qualified as “massive” according to Directive 2001/55/EC.<sup>40</sup> So far, the Temporary Protection Directive mechanism has never been used.<sup>41</sup>

## EU Member State Responses

Several Member States do have protection mechanisms under national law that accommodate situations where individuals cannot return to their home country because of natural disasters and which could be a model for similar provisions on the EU level.<sup>42</sup> More rarely, Member States allow for admission for humanitarian reasons or state interests, which, in principle, also would allow admitting victims of natural disasters. Residence permit grants under such provisions are typically framed in terms of “humanitarian” or “exceptional” circumstances. At the EU level, they have been discussed in terms of “complementary”, “non-harmonised” or “categorical” protection.

Four Member States explicitly provide for protection in cases of environmental disasters (CY, FI, IT and SE). In the case of **Cyprus**, it should be mentioned that this protection is only available to persons who have already been granted refugee status or humanitarian protection. The

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<sup>39</sup> See Kolmannskog/ Myrstad 2009 op. cit. p.316

<sup>40</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>41</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>42</sup> See European Migration Network ‘The different national practices concerning granting of non-EU harmonised protection statuses’, 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)

entitlement to receive refugee status requires the element of persecution; natural disaster is not covered in the grounds for granting refugee status.<sup>43</sup>

In the case of **Finland**, in 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>44</sup> [emphasis added] The total length of the provided temporary protection is of maximum three years.

In **Italy**, Art.20 of Legislative Decree nr 286 of 25.07.1998 on the consolidated text of provisions governing immigration and the status of the foreigner provides for extraordinary measures in case of exceptional events<sup>45</sup> and stipulates that the temporary protection measures should be adopted also on the occasion of natural disasters.<sup>46</sup> This, however, has never been put into practice.

Section 2(3) of the **Swedish Aliens Act**<sup>47</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>48</sup>

Existing legislation in other Member States providing different forms of humanitarian status grants leave scope to grant a legal status to ‘environmentally displaced individuals’ too. An example of the consideration of environmental factors in humanitarian status grants can be seen in **Denmark**, which between 2001 and 2006 granted residence permits on humanitarian grounds to families and destitute Afghans from certain areas in Afghanistan where the drought

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<sup>43</sup> CY Article 29 (4) of the Refugee Law of 2000 provides that: “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]

<sup>44</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>; 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]

<sup>45</sup> Available in Italian on: [http://www.immigrazione.regione.toscana.it/lenya/paesi/live/contenuti/norme/286-paesi\\_it.html?datafine=20110806&css=](http://www.immigrazione.regione.toscana.it/lenya/paesi/live/contenuti/norme/286-paesi_it.html?datafine=20110806&css=) (consulted on 13.10.2011)

<sup>46</sup> It reads as follows: 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 humanitarian needs, on the occasion of conflicts, *natural disasters* or other particularly serious events in countries outside the EU” [emphasis added]

<sup>47</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>48</sup> See Glahn B. “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)

at that time was particularly severe and who would have been placed in a vulnerable situation had they been returned.<sup>49</sup>

In addition to or as an alternative to humanitarian statuses, some Member States provide for discretionary status grants on the grounds of state interest, which could also be invoked for individuals affected by environmental disasters and who are unable to return or who have been admitted on such grounds. In the majority of cases, national protection statuses are granted to persons unable to return.<sup>50</sup>

This is also covered by the Return Directive (2008/115/EC), which requires Member States to suspend a return decision should return not be possible and also explicitly allows Member States to withdraw a return decision and grant a residence status. A future review of the Return Directive could consider establishing a mechanism to define additional cases, including serious environmental events in which removal should be suspended, complementing the grounds currently listed under the relevant provisions of the directive. In a similar vein, one could imagine a mechanism at the EU level responding to situations of serious disruption of public life as a result of a major natural disaster affecting a particular country. This mechanism would allow the validity of visas or residence permits of citizens of these countries present in an EU Member State to be automatically prolonged as long as the situation in the country of origin prevails, comparable to Temporary Protection in the US.

There are no mechanisms at the EU level that would allow accommodating individuals affected by slow-onset events, i.e. a more gradual deterioration of their natural environment. However, as the effects of adverse environmental change are mediated by a range of social and economic factors and migration is but one among several adaptation strategies, it is not clear whether international protection mechanisms would, in fact, help address effects of environmental change. In view of the debates about the usefulness of the very notion of environmentally induced migration, it is indeed questionable whether potential beneficiaries of any protection mechanism could be sufficiently defined at all, except perhaps in very specific cases, such as citizens of small island nations that are threatened by extinction by sea level rise. In general, policy responses to slow-onset environmental change, therefore, need to focus on measures “prevent[ing] harmful environmental changes, reduc[ing] their impact, and build[ing] resilience in communities” and promoting migration as a “transformational adaptation strategy” and a way to build local resilience.

## **Resettlement**

When mass displacement and serious environmental stress coincide, such as in the case of Kenya’s arid and drought-ridden Dadaab region, which is a major receiving area for Somali refugees, resettlement should be considered as an option. However, so far, only a minority of EU countries accept resettled refugees from third countries. Reflecting the reluctance to engage

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<sup>49</sup> See ICMPD (2006): Comparative Study on Categorized Protection. Comparative Study on the Existence and Application of Categorized Protection in Selected European Countries. ACVZ Preliminary study no. 12/2006, January 2006, available at [http://www.acvz.org/publicaties/S\\_VS12\\_ENG.pdf](http://www.acvz.org/publicaties/S_VS12_ENG.pdf), p.33.

<sup>50</sup> Namely Belgium, Bulgaria, Spain, Ireland, Lithuania, Latvia, Malta and Slovakia

in resettlement, it is implemented only on a voluntary basis<sup>51</sup> at the EU level and there is no coordinated mechanism on resettlement issues. However, to promote resettlement, a joint resettlement programme was adopted in March 2012<sup>52</sup>. The joint resettlement programme provides financial incentives and also defines common priorities for resettling refugees from third countries in order to better coordinate resettlement programmes of individual countries. Yet, with global resettlement needs in 2012 projected at some 172,200 persons and only some 80,000 resettlement places available in countries of resettlement<sup>53</sup>, there remains a significant shortfall.

### **Alternative Measures in the EU Context**

Overall, however, policies on admission of individuals affected by serious environmental events or resettlement of refugees in need of international protection from environmentally strained areas are in themselves insufficient to address the migration and environment nexus comprehensively. The EU frameworks on development cooperation and humanitarian aid, as well as the framework for cooperation on migration with third countries, provide a basis for such a broader strategy. Thus, the fight against climate change, including strengthening the resilience of local communities against environmental degradation, is one of the priority areas of the EU's development cooperation activities in the area of environment and natural resources. To some extent, links between migration and environment are already considered in existing country strategy papers under the EU's development assistance framework for ACP countries, although these linkages could be further strengthened.

In addition, while migration and climate change was absent from the initial debates on the Global Approach to Migration (GAM)<sup>54</sup>, the importance of the link between environmental change and migration has recently been more recognised and explicitly addressed in the Stockholm Programme (2009) and the renewed Global Approach to Migration and Mobility (GAMM)<sup>55</sup> adopted in 2011. Preceding it, the European Commission undertook a broad consultation on migration and climate change<sup>56</sup> with the results feeding into the GAMM. In particular, the GAMM highlights the potential role of Mobility Partnerships as providing a framework to help countries affected by environmental change address issues linked to environment and migration.

### **Conclusions and Recommendations**

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<sup>51</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).

<sup>52</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>53</sup> UNHCR (2011): Projected Global Resettlement Needs 2012. Geneva: UNHCR

<sup>54</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>55</sup> See Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions (2011): The Global Approach to Migration and Mobility, Brussels: SEC(2011) 1353 final

<sup>56</sup> See European Commission (2011a): Climate change and migration. Discussion paper.

Climate change and environmental factors are likely to exacerbate other drivers of migration and, therefore, will have consequences on future patterns of human mobility, migration and displacement. The impact of environmental change will depend on the vulnerability and adaptation capacities of the affected populations, as well as policy responses to environmental change. 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 different stages of environmentally induced migration. In the pre-migration phase, 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. In the last phase of the migration cycle, return or resettlement measures, as well as measures that support either reintegration processes into the home location or integration into the new location, might be needed.

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 development 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 Article 15 shall be applicable to qualify for subsidiary protection, an amendment to its paragraph (c) might include, in addition to armed conflict, environmental disasters.

There are strong arguments that in cases 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.

The EU should consider ad hoc mechanisms to respond to serious environmental events informed by a human rights-based approach and building on existing instruments regarding legal and irregular migration. These could include recommendations to automatically extend residence permits for third-country nationals whose countries of origin have been affected by environmental disasters and who, therefore, cannot return or common decisions on the suspension of removing individuals who come from such countries.

In addition, third countries affected by climate change-related phenomena should be assisted in order to support the national institutions in dealing with adverse environmental change under the EU development cooperation agenda and the Global Approach to Migration and Mobility.

Measures may comprise strengthening the adaptation and resilience capacities of third countries to reduce the vulnerability of affected populations and enhancing the protection of environmentally 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 human 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 persons.

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