



OHCHR Questionnaire in relation to Human Rights Council Resolution A/HRC/35/20 on human rights and climate change

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At its 35th session, held on 22 June 2017, the United Nations Human Rights Council requested “the Office of the High Commissioner to undertake research on addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the sudden-onset and slow-onset adverse effects of climate change and the necessary means of implementation of adaptation and mitigation plans of developing countries to bridge the protection gaps and submit a report on the research to the Human Rights Council at its thirty-eighth session.”

In response to the Council’s request, the Office of the High Commissioner promulgated a note verbale and a questionnaire with five questions to all Member States and relevant stakeholders requesting their input. In our responses to the questionnaire, below, we highlight the key issues that we consider must be given serious consideration. While the five questions relate to the relationship between human rights and climate change, we would also like to take the opportunity to respond to the question posed by the Human Rights Council, which is essentially: What are the protection gaps in terms of the human rights of migrants affected by climate change and what can be done to bridge these gaps? We have responded to this issue under the last question, which calls for additional information.

- 1. Please describe the relationship between the adverse effects of climate change and the rights of migrants, and any human rights obligations to mitigate and adapt to climate change that can be derived from them.**

As indicated in the Intergovernmental Panel on Climate Change (IPCC)’s *Fifth Assessment Report* from 2014, climate change often adversely affects migrants. Some of these adverse effects are recognized in the Report. For example, “[p]opulations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income” from which many migrants come (p. 16). The Report predicts, with strong agreement among scientists based on evidence with a medium level of reliability, that “[c]limate change is projected to increase displacement of people” (id.). The report also notes that while “[d]isplacement and involuntary migration are often temporary ... [w]ith increasing climate risks, displacement is more likely to involve permanent



migration” (p. 71). One reason for this is that “[d]isplacement risk increases when populations that lack the resources for planned migration experience higher exposure to extreme weather events, such as floods and droughts” (p. 73). The Report also notes that migration “can be an effective adequate adaptation strategy” that can protect individuals from the adverse effects of climate change (id.).

Climate change is a man-made phenomenon that can have a serious effect on the human rights and people’s rights of individuals and groups. The most vulnerable people in society will be affected the most severely. Because of this connection between vulnerability and the adverse effects of climate change, the relevant legal obligations of States to combat climate change must include safeguarding the legal obligations of States under international human rights law.

Thus while international human rights instruments might require even more substantive efforts by States to protect the human rights of those under their jurisdiction, they at least require that States meet the legal obligations they have under the instruments of international climate change law. In other words, States that do not abide by their legal obligations under international climate change law are responsible for internationally wrongful acts when their actions or inactions result in the violation of individuals’ or groups’ human rights. It is worth noting that because of the broad impact of climate change, this may lead to State responsibility for widespread and massive violations of human rights.

2. Please describe any relevant commitments, legislation and other measures that you have taken to adapt to and mitigate climate change and / or protect migrants affected by climate change. Please also note and identify any relevant mechanisms for ensuring accountability for these commitments including about their means of implementation for these commitments.

The legal relevance of “disasters” and “environmental changes” has been emphasized in diverse instruments. As recalled by Prof. Kaelin “present international law does not provide them with a right to admission and stay” so our contribution will be to explore the achievements and limitations of existing mechanisms to address this protection gap. Through the legal mapping exercises we are conducting within the Horizon 2020 CLISEL project¹ (www.clisel.eu) and SNSF CLI_M_CO2 project² we were able to identify a multilevel environment where various legal instruments have the potential to assist the population affected by environmental factors in third countries.

In particular, the efforts to assist affected populations at the national, bilateral and regional levels include:

- (1) **short-term solutions** – temporary protection measures to deal with mass influx of persons due to environmentally-related disasters; and
- (2) **long-term solutions** – within the framework of migration as a positive adaptation strategy.

As regards (1) short-term solutions, at the **national level** a number of States already envisage in their own legislations ad hoc provisions that grant temporary protection to people affected by environmentally-induced disasters. Normally, the granting of temporary protection in these cases is justified on the grounds of humanitarian reasons, as in the case of Finland, Italy, Sweden, Argentina, Brazil and the USA.

¹ Climate Security with Local Authorities (CLISEL) From insecurity takers to security makers: mobilizing local authorities to secure the EU against the impacts of climate change in Third Countries (www.clisel.eu).

² Framing Environmental Degradation, Human Mobility and Human Development as a Matter of Common Concern, funded by the Swiss National Science Foundation.



As regards long-term solutions, provisions may exist at the national level that foster the implementation of labour mobility programmes with third countries, in order to mainstream regular migration from environmentally-vulnerable countries. In this context, national migration measures have been progressively identified to increase labour mobility channels as a concrete option for adaptation to environmental changes by countries of origin. For instance, in the Pacific region, the Kiribati and Tuvalu National Labour Migration Policy Reports highlighted the need to rely on migration as an adaptation strategy to counter the risk of decreasing domestic employment opportunities as a direct result of climate change. The government of Kiribati recognizes “the important role of international labour migration in addressing a deficit of employment opportunities on our islands, and promoting economic and social development. It is also a critical component in the concept of Migration with Dignity, which articulates the importance of training IKiribati to take up skilled labour migration opportunities in response to climate change threats to livelihoods at home” (Fornalé and Kagan, 2017). Also, the Minister of Foreign Affairs, Trade, Tourism, Environment and Labour for Tuvalu noted that “the importance of labour migration as an option for our people is likely to increase further still as climate change continues to batter at our shore and wreak havoc on rain patterns, groundwater and ocean, impacting on subsistence agriculture and other livelihoods options” (Fornalé and Kagan, 2017).

Countries of destination can also play a significant role in concluding and implementing [bilateral agreements](#) with environmentally-vulnerable third countries in order to facilitate regular labour migration towards Italy. To date, Italy has concluded bilateral labour agreements with Mauritius, Moldavia, Albania, Sri Lanka, Morocco and Egypt. Given that some of these countries can be defined as environmentally vulnerable (e.g. the World Risk Report 2016 classified Mauritius as the 7th most vulnerable country in terms of exposure to natural hazards worldwide), this kind of agreement could foster migration as a positive strategy for adaptation to climate change.

In a number of countries, for example Vietnam and Kenya, migration as adaption has been promoted by linking migratory issues to climate change ones within national adaptation plans. Ad hoc mechanisms can encourage environmentally vulnerable countries to integrate migration policies into their climate change policies. This could also be done by taking advantage of existing platforms for discussion, such as the Global Climate Change Alliance (GCCA).

Finally, at the [multilateral level](#) of international law, it is important to recognize that the United Nations Framework Convention on Climate Change (UNFCCC) is the primary legal instrument setting out the legal obligations of States in relation to climate change. It is a treaty that has been ratified by more countries than the Charter of the United Nations. Although it is a framework convention, its provisions are no less legally binding than those of any other type of treaty, including human rights treaties. Moreover, a close examination of the UNFCCC shows that it provides a legal basis requiring States to take action to protect the human rights of migrants, especially through ensuring cooperation, finance, capacity-building and technology transfer to developing countries.



3. Please share a summary of any relevant data as well as any related mechanisms to measure and monitor the impacts of climate change on the enjoyment of human rights for migrants, especially for vulnerable groups such as children, women or migrants living with a disability and the allocation of resources to address these impacts.

Both the Special Rapporteur on Migrants and the Special Rapporteur on Environment, as well as other mandate holders of the UN Human Rights Council, have considered the impact of climate change on migrants' human rights. The [Universal Periodic Review mechanism](#) is also contributing in this specific context. A preliminary study of the reports submitted by Small Island States in recent years shows how climate change is now a recurrent theme in the UPRs and countries are directly questioned about their climate change policies. This is particularly so for the Small Island States where mitigation, adaptation and relocation (internal or external) measures are observed and questioned. For example, the Marshall Islands "had accepted during the first UPR to take a rights-based approach to adaptation to climate change".

The UPR tackles various human rights protection issues directly linked to climate change such as "the protection of people who have been displaced due to natural disasters and climate change and the prevention of future risk of statelessness amongst its population" (Kiribati), the protection of workers in case of forced displacement and the "obligation of emitting States to help and protect human rights [in Palau] by reducing greenhouse gas emissions to safe levels".

While a number of human rights mechanisms consider the impact of climate change on human rights, we still [lack comprehensive mechanisms](#). In this context, the Global Compact for Safe, Orderly and Regular Migration offers a unique opportunity to reinforce international cooperation and strengthen existing monitoring mechanisms.

4. Please identify and share examples of good practices and challenges in the promotion, protection and fulfilment of the human rights of migrants in the context of the adverse impacts of climate change.

Our response focuses on good practices and challenges related to promotion, protection and fulfilment of the human rights of migrants, adopting a multilevel approach.

The [HRC](#) has itself established a minimum requirement of holding an annual discussion of one or more aspects of the adverse impacts of climate change on human rights. Because this is done under an ad hoc item that does not even appear on the Council's regular agenda, the consideration of the impact of climate change on human rights, including the human rights of migrants, is also ad hoc. Thus although the Council held a panel discussion in 2017 it is unclear if and to what extent this issue will be addressed by the Council in the future. Perhaps the leading challenge to the promotion, protection and fulfilment of the human rights of migrants in the context of the adverse impacts of climate change is failure to assign to States the responsibility for actions that cause interference with the human rights of migrants. As the adverse effects of climate change have been recognized by virtually all States to be the result of human action and as States, often through their own self-reporting, are able to apportion responsibility for actions or inaction to a significant degree, State responsibility for internationally wrongful actions (and inactions) that result in human rights violations due to the adverse effects of climate change would appear amenable to attribution.



Moreover, States' parallel legal obligations are defined in instruments of both international climate change law and international climate change law. A significant protection gap exists, however, due to the absence of a mechanism with the clear authority to determine State responsibility for its failure to meet its legal obligations related to international climate change law and intersecting international human rights law by actions or inactions that are attributable to the State.

Migration as Adaptation

The potential to refer to migratory mechanisms for environmental migration governance requires some persistent **protection challenges/emerging needs** to be addressed (Fornalé and Kagan, 2017):

- Temporary admission schemes are limited by caps and this can affect their effectiveness;
- “Need to establish an open access mobility regime” and to shift from temporary to permanent mobility options;
- Identify migration measures that involve potential migrants at all skill levels;
- Reduce the “risk of recruitment malpractice linked with inadequate capacity for regulating recruitment practices in origin countries”;
- Support countries of origin in developing “a strong domestic framework in line with international standards”;
- Increase consular liaison services to protect migrant workers abroad;
- Increase access to information for all potential migrant workers before their departure.

5. Please provide any additional information you believe would be useful to understand efforts made and challenges faced as well as the necessary means of implementation for climate change adaptation and mitigation related to the protection of migrants and persons displaced across international borders because of the sudden-onset and slow-onset adverse effects of climate change.

A focus of UN HRC Resolution 35/20, UN Doc. A/HRC/35/20 (7 July 2017) is on the question: What are the protection gaps for the human rights of migrants affected by climate change and how can this gap be closed?

In relation to action that can be taken by the Council, a suggestion that has been repeatedly voiced by civil society actors since 2009 is the creation of a mandate for a **Special Rapporteur on human rights and climate change**. This mandate-holder would be able to focus attention not only on the impacts of climate change, some of which require an in-depth understanding of complex adverse effects, but also on the legal obligations of international climate change law, which govern action that is necessary to ensure respect of the human rights of migrants. This mandate-holder should have the responsibility to report regularly on the human rights of migrants affected by climate change. In this respect it would be important to ensure that the mandate of a Special Rapporteur on human rights and climate change also includes related concerns with a specific focus on migrants. An example of the latter is the issue of the impact of climate change on health, especially on the health of migrants who are among the most affected.



In relation to action that may be taken within the realm of international climate change law, the lack of a legally binding implementation mechanism to enforce international legal obligations remains a significant gap in the protection of the human rights of migrants affected by climate change.

Stakeholder engagement: Local Authorities and Human Rights Promotion

Local authorities have a role to play in the protection and implementation of human rights of migrants. Cities are the “first arrival points”³ for migrants (including environmentally induced migrants): indeed, almost “60% of the 14.4 million refugees worldwide and 80% of the 38 million internationally displaced persons are thought to live in urban areas”.⁴ It follows that the local level is where the *integration* of migrants takes place in the first instance,⁵ and that it is up to the local governments to adopt – to the extent possible, taking into account the relevant powers that are granted by the national or regional laws⁶ – and/or to implement integration policies for migrants.

The concept of integration has been described as “the process of inclusion of immigrants in the institutions and relationships of the host society”, which includes the protection and implementation of the human rights of migrants, as also outlined during the Fourth Global Mayoral Forum,⁷ which took place in Berlin (DE) on 26–27 June 2017. During the Forum, which was devoted to the topic “Mayors as Humanitarian and Development Actors: Preparing, Welcoming and Integrating”,⁸ it was affirmed that

[e]nsuring inclusion, *protecting rights*, promoting gender equality and women’s empowerment and valuing the contributions of all migrants are essential aspects of building cohesive, safe and gender-inclusive societies.⁹ [emphasis added]

We can also talk, more generally, of a “[h]uman rights approach to urbanization”.¹⁰ This approach follows the one that was proposed by the New Urban Agenda, which was released during the 2016 UN

³ See C. Thouez “Working with Cities on Mobility, Diversity and Prosperity” *IOM’s Migration Policy Practice* (June 2014), 8.

⁴ United Nations Conference on Housing and Sustainable Urban Development, Habitat III Issue Papers (New York, 2015). Accessed from http://migration4development.org/sites/default/files/habitat-iii-issue-paper-2_2_migration-and-refugees-in-urban-areas-2.0.pdf. See also O. Ferrari, J. Irvine, C. Riallant, White Paper - Mainstreaming Migration into Local Development Planning and Beyond (International Organization for Migration, 2015), 10, available at http://publications.iom.int/system/files/pdf/whitepaper_mainstreaming.pdf.

⁵ W. Bosswick, F. Heckmann, *Integration of migrants: Contribution of local and regional authorities* (European Foundation for the Improvement of Living and Working Conditions, 29 January 2007), 1, available at https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0622en.pdf.

⁶ See F. Velasco Caballero, “Can there be a Local Immigration Policy?”, in F. Velasco Caballero, M. de los Angeles Torres (eds.), *Global Cities and Immigrants. A Comparative Study of Chicago and Madrid* (Peter Lang, 2015), 35 and T. Caponio, M. Borkert (eds.), *The Local Dimension of Migration Policymaking* (Amsterdam University Press, 2010).

⁷ The meetings of the Mayoral Forum on Mobility, Migration and Development started in 2014; with the involvement of IOM, the World Bank, UNITAR, UN-Habitat and the European Commission, it gathered 30 cities from all over the world, including Ankara, Athens, Budapest, Cologne, La Paz, Fez, Lisbon, Madrid, Milan, Quito, Paris and Seoul, with the aim to address the challenges of human mobility at the local level. See C. Thouez, *Supporting City-to-City Exchange Towards Applied Innovation: The Mayoral Forum on Mobility, Migration and Development* (Swiss Agency for Development and Cooperation (SDC) Migration and Development Network, April 2016), available at <https://www.shareweb.ch/site/Migration/sdcs-topics-in-migration/migration-and-development/mainstreaming-migration/supporting-city-to-city-exchange-towards-applied-innovation-the-mayoral-forum-on-mobility-migration-and-development> and C. Thouez, “Working with Cities on Mobility, Diversity and Prosperity” *IOM’s Migration Policy Practice* (June 2014), 9.

⁸ See the official website <http://www.madenetwork.org/upcoming-events/4th-global-mayoral-forum-human-mobility-migration-and-development-berlin>.

⁹ See the Report of the Closing Session of the Fourth Global Mayoral Forum on Mobility, Migration and Development, Berlin, 26-27 June 2017, 2, available at http://www.globalmigrationgroup.org/system/files/Final_TPs_Fourth_Global_Mayoral_Forum_on_Mobility_Berlin52.pdf.

¹⁰ United Nations Task Team on Habitat III “Migration and Refugees in Urban Areas” Habitat III Issue Papers (3 June 2015) 2, 5, available at http://unhabitat.org/wp-content/uploads/2015/04/Habitat-III-Issue-Paper-2_2_Migration-and-Refugees-in-Urban-Areas-2.0.pdf



Conference on Housing and Sustainable Urban Development (Habitat III),¹¹ and that assigned a significant role for cities within the framework of “an inclusive urbanization mode”.¹² Such a model should in particular

*ensure the full respect for human rights and humane treatment of refugees, internally displaced persons, and migrants, regardless of migration status, and support their host cities in the spirit of international cooperation [...]. We further commit to strengthen synergies [...] at the global, regional, national, sub-national, and local levels by ensuring safe, orderly, and regular migration through planned and well-managed migration policies [...].*¹³ [emphasis added]

In order to achieve its objectives, it also

urge[s] all national, sub-national, and local governments, as well as all relevant stakeholders, in line with national policies and legislation, to revitalize, strengthen, and create partnerships, enhancing coordination and cooperation to effectively implement the New Urban Agenda and realize our shared vision.¹⁴

From these excerpts, we can infer two main indications:

- the respect of human rights should be granted to all migrants, “regardless of their status”: we could add that it should be granted also irrespective of the reason for migration, including climate change;
- the respect of human rights requires cooperation among all levels of governance, in that it should foster a multi-level governance approach to human rights protection for migrants.

The importance of the role played by local authorities in migration governance has also been acknowledged in the framework of the UN Negotiations for the Global Compact for Safe, Orderly and Regular Migration. The 2016 New York Declaration recognized “the particular needs of local authorities, who are the first receivers of migrants”¹⁵ and the recent Zero Draft of the Global Compact for Safe, Orderly and Regular Migration, in Objective 2 (*Minimize the adverse drivers and structural factors that compel people to leave their country of origin*) and Objective 7 (*Address and reduce vulnerabilities in migration*), calls for the involvement of

local authorities [...] in the identification, referral and assistance of migrants in a situation of vulnerability, including through agreements with national protection bodies, legal aid and service providers, as well as the engagement of mobile response teams.¹⁶ [emphasis added]

Even though it does not expressly refer to the protection of human rights of migrants, we can infer from the commitment to guarantee “assistance” to migrants “in a situation of vulnerability” – which could also include situations of environmentally-induced migration – that it also covers the respect of their human rights.

The human-rights based approach to local policies on integration is also in line with the Declaration accompanying the Sustainable Development Goals, which calls for international cooperation “to ensure

¹¹ The New Urban Agenda was adopted at the UN Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador, on 20 October 2016 and was endorsed by the UN General Assembly on 23 December 2016. See the full text at <http://habitat3.org/wp-content/uploads/NUA-English.pdf>.

¹² United Nations Task Team on Habitat III “Migration and Refugees in Urban Areas”, cit., 4.

¹³ See point 28 of the New Urban Agenda.

¹⁴ See point 21 of the New Urban Agenda.

¹⁵ Para 54 of the New York Declaration for Refugees and Migrants, GA Resolution 71/1 (3 October 2016), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1.

¹⁶ Objective 7, let h of the Zero draft of the Global Compact for Safe, Orderly and Regular Migration.



safe, orderly and regular migration involving full respect for human rights [...] of migrants regardless of migration status, of refugees and of displaced persons”¹⁷ (in that this implicitly includes situations of environmentally induced migration) and highlights the “need to build peaceful, just and inclusive societies [...] that are based on respect for human rights [...] and good governance at all levels and on transparent, effective and accountable institutions”¹⁸ (fostering a multilevel governance approach to the protection of human rights).

- ✚ Fornalé E., “Adaptive migration: pluralising the debate on climate change and migration, Themed Section”, *The Geographical Journal*, vol. 183 (4), (2017) 322-328 (with Andrew Baldwin), available at: <http://onlinelibrary.wiley.com/doi/10.1111/geoj.12242/epdf>.
- ✚ Fornalé E. and Curtis Doebbler, “UNHCR and protection and assistance for the victims of climate change”, *The Geographical Journal*, vol. 183 (4), (2017) 329-335, available at: <http://onlinelibrary.wiley.com/doi/10.1111/geoj.12193/epdf>.
- ✚ Fornalé E. and Sophia Kagan, “Climate change and human mobility in the Pacific Region: Plans, policies and lessons learned”, World Bank Group, Thematic Working Group on Environmental Change and Migration, KNOMAD (December 2017), available at: http://www.knomad.org/sites/default/files/2017-12/KNOMAD_WP31_Climate%20Change%20and%20Human%20Mobility%20in%20the%20Pacific%20Region.pdf.
- ✚ Dimitra Manou, Andrew Baldwin, Dug Cubie, Anja Mihr and Teresa Thorp (eds.), *Climate Change, Migration and Human Rights: Law and Policy Perspectives*, Routledge (2017).

¹⁷ Declaration of the GA Resolution 70/1 (Transforming our world: the 2030 Agenda for Sustainable Development), 21 October 2015, para. 29, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

¹⁸ Declaration of the GA Resolution 70/1, para. 35.

