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Conference on Protection and Reparations for "Climate Refugees": Imperatives and Options

Chavannes-de-Bogis, May 4 – 5, 2010

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Among the many concerns raised by the phenomenon of climate change, the likelihood of mass population displacement is among the most pressing and worrisome. For small island states such as Tuvalu, the reality of land loss is already apparent. As to the broader phenomenon of climate-related migration, even conservative figures are daunting. However, there has been relatively little substantive discussion of this crucial issue at the international level, and there is as yet no clear international policy direction for addressing a problem of potentially immense magnitude.

There are a number of reasons for the relative lack of movement on this crucial topic. First, there are no solid estimates of the numbers of likely migrants or refugees, and little certainty as to who will be affected and where the affected are likely to take refuge. Available estimates range from hundreds of millions (according to the Stern Review) to a billion (Christian Aid). But all such estimates involve making choices about relevant timescales and climate scenarios, and also predictions of the likelihood of credible mitigation and adaptation action. This is a second reason for the tardy appreciation of this problem: mass migration, were it to happen, will signal the effective failure of policies to deal with climate change—mitigation efforts will have failed, and adaptive funding or activities will have failed to materialize, leaving migration as the adaptation policy of last resort. To begin to take mass migration seriously, for these reasons, may appear pessimistic or defeatist—but more to the point, such a discussion risks taking place in a relative vacuum. What is, in fact, the likely scenario for population displacement? The answer at present is: we barely know.

For similar reasons, third, climate change refugees are likely to prove extremely defiant in political negotiation. It may seem wiser to states not to engage with the issue as long as they

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are still grappling with so many other difficult sticking points, with these others at least known and, to a degree, quantifiable. Fourth, the bodies that might naturally be expected to think ahead on this issue—UNHCR and IOM—have signally failed to take the issue seriously, at least in public. These bodies deny the legitimacy of the term "climate refugees" but have not put forward a credible alternative; they have dampened expectations of compensation for those needing to flee their homes even in advance of concrete cases appearing; they appear more comfortable referring to climate migration as largely concerning internally displaced persons (IDPs), thus obscuring the likelihood of cross-border migration. In general, they have failed to show leadership on a topic where they would appear the natural experts.

And yet it is vital to begin to think through the policy implications of climate migration and climate refugees. As mentioned, some small island states are already preparing for the likelihood of the disappearance of their territories, and are negotiating deals with other countries to take on their populations. Those conversations are necessarily precarious and the international community as a whole should be paying attention, as precedents set today are likely to be of great importance in future. The islands in question are generally inhabited by relatively small populations, but in some parts of the world, large scale population moves are foreseeable. Bangladesh, for example, could lose 20 percent of its landmass if sea levels rise by 1m (as predicted by the IPCC for the end of the century). In such a scenario, up to 20 million people may lose their homes and need to move. What will happen? Again, the answer, at present, is: we barely know.

With this in view, Bread for the World, the Pacific Conference of Churches and the World Council of Churches organized a Conference on "Protection and Reparation for Climate Refugees" on May 4-5, 2010 in Chavannes-de-Bogis near Geneva. The goal of the meeting was to stimulate discussion between academia, civil society, governments, intergovernmental institutions and churches on the phenomenon of climate displaced people, and to take stock of the challenges and possibilities for responding. The Conference explored the concepts of "climate refugees" and "compensation" as well as best practices and lessons learned from actions seeking to address the problem on national, regional and global levels.

In a first session, Prof. Frank Biermann presented his proposal for a sui generis regime for climate refugees under the UNFCCC, with comments from Ms. Margit Ammer of the Boltzmann Institute of Human Rights and Mr. Peter Emberson of the Pacific Conference of Churches. Three country case studies followed, focusing on Bangladesh, Mozambique and Papua New Guinea.
The remainder of the conference was taken up by three panels, discussing legal, humanitarian and political challenges respectively. These involved debates between representatives of the ACT Alliance, the United Nations University, Bread for the World, the World Council of Churches, the German Forum for Human Rights, Prodipan of Bangladesh and a member of the Bangladeshi parliament, the London School of Economics, the Mozambique Mission to the UN and global and regional church alliance.

Rather than providing a chronological account of these discussions, this report rather gleans and summarizes common themes under the below headings:

1. Terminology
2. A climate refugee regime (new or amended).
3. Collective and individual rights
4. States' obligations (national and extraterritorial)
5. Best practices/lessons learned (participation, transparency, ownership)
6. Suggested strategies for further action (local, national, international levels)

1. Terminology

The 1951 Refugee Convention (United Nations Convention Relating to the Status of Refugees), as amended by a 1967 Protocol, defines a refugee as follows:

'A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to It'.

The definition restricts coverage to those persecuted for their beliefs or their belonging to a particular group. It does not, as it stands, appear to cover "climate refugees" because it is difficult to consider climate change as targeted persecution in the ordinary sense, even though it has a human origin. Although victims may suffer due to their lack of resources, poverty or other forms of vulnerability, it is not clear that such circumstances amount to "membership of a social group".

The 1951 Refugee Convention, then, does not appear easily applicable to climate change migration. Does this mean that the term "climate refugee" should be abandoned? Opinions at the conference diverged on this point, with some feeling the term should be retained, as it carries the moral authority necessary to convey the seriousness of the situation. This was particularly the view of representatives from countries that are expected, in fact, to experience significant population displacement. Others believed that, with the main international organizations apparently unwilling to countenance the term "climate refugees", pursuing it was likely to absorb significant time and energy to little avail.

Other terms coming into general use are "Environmentally Displaced Persons" (EDPs) and "Climate Change Displaced Persons". A number of participants voiced reservations concerning the focus on displacement inherent in all these terms. Such a focus is inherently limiting, excluding pre and post stages of the displacement. All three terms also forget persons who, despite being affected or impoverished because of (or exacerbated by) the effects of climate change, choose not to leave. At this point another suggestion surfaced: the term "Climate Change Victims" within a broader framework of climate change adaptation.

These discussions illustrate a struggle between two modes of thinking about labeling: one is based on legalisms (refugees, persecution, 1951 Convention). A second prioritizes the humanitarian urge to make the victims' fates known to the world and to recognize their status such that they can be protected. And yet, these approaches are complementary rather than contradictory: victims presumably deserve protection whether or not they are displaced.

From a legal perspective, a specific issue arises where people are forced to cross borders due to climate change. There are of course pressing issues for those forced to move within the borders of a given state (IDPs). Whereas international oversight of, and assistance in, such situations is indispensable, the relevant state does, or should remain the primary actor and is generally subject to clear human rights obligations under international law in any actions taken. However, protection of persons forced to cross borders raises quite specific concerns, where both state protection and international human rights law are weak, and voluntary documents such as the IDP Guidelines are less applicable.

If cross-border migrants are unprotected by the 1951 Refugee Convention (as seems at least possible), then some other form of protection at international level is urgently needed to safeguard the rights, needs and human security of persons displaced by climate change. From this perspective, it will be useful for policy-making to have a term referring specifically and clearly to cross-border displacement.

The term "EDPs" may not be adequate to this task, as its natural resonance with IDPs (Internally Displaced Persons) will tend to downplay the degree to which such flows are likely to cross borders. Likewise, terms such as "climate migrants" appear to assume a voluntary basis to movement which would not capture the degree to which movement, in these cases, is "forced". The term "climate refugees" therefore remains compelling as it accurately captures the relevant aspects of the scenario. Another possibility is "forced climate migrants".

At the same time, it is vital to draw attention to the wider effects of climate change and to ensure that the needs of victims, before, during, and after displacement are at the heart of adaptation policies. From this perspective "Climate Change Victims" and "Climate Refugees" (or "Forced Climate Migrants") might be regarded as two complementary terms.

What appears clear at present is that, whatever the legal situation, the current guardians of the international refugee regime—the UNHCR and (less officially) the IOM appear unwilling to regard the issue as coming within their ordinary remit. This does not, of course, mean that the term "climate refugee" should therefore be abandoned. Indeed, to the contrary: with the relevant policy space largely vacated by the key actors, others may need to step into the breach and, if so, forceful arguments and powerful terms will presumably be needed.

2. Regime

Much discussion focused on whether current solutions and regimes are sufficient to deal with the problem or not.

The keynote speaker, Frank Biermann, appealed for a sui generis regime for climate change migrants based on an Optional Protocol to UNFCCC and emphasized that climate change induced migration will constitute an unprecedented crisis in human history to which old (current) approaches of dealing with problems will not be able to find answers.

The institutional development of the regime would be rooted in five principles concerned with resettlement (2), international assistance, collective rights and international burden sharing. Such a protocol could provide for an executive committee on the recognition, protection and resettlement of climate refugees. The committee could function under the authority of the Conference of the Parties (COP) (as in the Kyoto Protocol, through a discrete meeting of the parties (MOP). The Montreal Protocol provides a possibly useful example of how such a committee might function. The committee's task would be to receive applications from countries with a foreseeable climate refugee problem, and to seek solutions in advance, in cooperation with other relevant states.

In order not to put climate refugees in competition for financing with other climate change victims, a sui generis regime for financing was suggested. The operational aspects of a Climate Refugee Protection and Resettlement Fund could be linked with other financial mechanisms to increase efficiency; the governance of the Fund should be independent and stand under the authority of the meeting of the Parties to the Protocol. Four principles would govern such a fund: a grant basis; the notion that funds would be 'new and additional' to existing development disbursements; the principle that refugees needing relocation due to sea level rise would be fully reimbursed; and, the creation of an open list of designated populations as "climate refugees in need of relocation".

In a similar vein, some argued that a new instrument with human rights elements should be created under the UNFCCC umbrella. Others pointed out that new legal instruments of any kind will be politically difficult to achieve, will take many years to negotiate and enter into force, and that the final outcome is in any case unpredictable.

It was also argued that functioning regimes already exist to deal with the problem of internal displacement (i.e. IDPs/EDPs), which are supplemented by human rights obligations that need only be linked to climate change. However, it is quite doubtful that the IDP regime, which in itself is not very robust, will provide adequate protection for climate refugees needing to cross borders.

In conclusion, the suggestion to push for an Optional Protocol or a similar new international instrument was welcomed as a long term strategy. Although most participants agreed that such a process would be time-intensive and unpredictable, it would also (as a minimum) ensure that the problem garnered international recognition commensurate with its urgency, and alert the international community to the need for both interim and permanent measures to protect climate refugees.

3. Collective vs. Individual Rights

Climate change affects groups, communities, and even nations. Yet it is generally individuals who are the bearers of human rights. In this context, a recurring theme at the meeting concerned the extent to which forced climate migrants should be treated as collective or individual rights bearers. Some argued that a collective rights approach was necessary since climate change effects do not in fact target individuals; that the issues (housing, settlement, emergency measures) arise in any case at the level of groups; and that broader collective rights, such as to cultural autonomy are also at stake in climate change. Indigenous peoples groups have already pursued collective rights aspects of climate change. Others pointed out that if rights are implemented collectively there is a great risk of overlooking individual cases, particularly of those most vulnerable within the vulnerable groups (i.e. women).

Perhaps the issue is not so much between different kinds of rights, but different kinds of remedial action. Remedies, compensation, rehousing and other measures are perhaps best undertaken at the collective level, but this need not involve impinging upon the exercise of individual rights. One area where collective rights must surely be respected in treating mass migration from climate change is the preservation of ways of life (rights to culture) in the event of the entire disappearance of territories, a threat facing some Pacific islands. If whole peoples are forced to move, international support will be vital in ensuring their cultural ways are kept alive.

4. States' Obligations

Under international human rights law a state bears human rights obligations towards all persons within its jurisdiction. In addition, it is often observed that certain extraterritorial obligations can be derived from human rights law provisions. Participants pointed out that some extraterritorial human rights obligations are apparently indicated in Article 2(1) of the ICESCR which refers to an obligation on states to utilize available 'international assistance' towards the fulfillment of the relevant rights. Some subsequent interpretations of the Covenant, including by the Committee on Economic, Social and Cultural Rights, would appear to support this broad case, although states have been unwilling to accept any such duty as binding.

If (extraterritorial) state obligations are still evolving in the area of human rights, they are somewhat clearer in other areas of international law. The principle of common but differentiated responsibilities (CBDR) in the UNFCCC recognizes that developed countries are obliged to take the lead and help other states in dealing with climate change. International law also generally recognizes state responsibility for transboundary harms, environmental and otherwise. These are among several areas where the effective responsibility of some states for the likelihood of climate change migration may translate into a hard legal responsibility. How such responsibilities will play out when states are faced with the reality or inevitability of mass movements of people remains to be seen. But even where the legal case remains malleable, the moral and political case remains compelling.

Participants identified the phenomenon of securitization of the climate change migration issue as potentially problematic. Increasingly governments frame climate migration as a defense concern. When rich country governments approach climate change displacement from a national security angle, some participants pointed out, their interest in solving it may drop—especially if it appears they will not be directly affected. In fact, climate migration is likely to be worst between relatively poorer countries and "climate change refugees" are overwhelmingly likely to be poor and lack mobility over great distances. If national security is a superior concern to the rich states the poor and vulnerable displaced will be forgotten.

5. Best Practices/Lessons Learned

Three country case studies concretized the issues and helped identify a number concerns that will need further refinement and elaboration if climate change migration is to be properly apprehended and treated. Each study concerned resettlement following the loss of housing due to flooding or sea level rise, in the past (Mozambique), present (Papua New Guinea) or future (Bangladesh).

Throughout the discussions it was agreed that resettlements are a measure of last resort. There can be no automatic assumption that climate change gives rise to resettlement—which might provide governments with a cover to facilitate resettling populations for other reasons. Rather, any case for climate change resettlement must be well-founded and unavoidable. If resettlement must take place, it should be closely monitored, international support should be forthcoming and may be vital, and international standards should be observed. Furthermore, the process must be owned by those to be resettled—requiring a transparent consultation process, the availability of relevant information for stakeholders, the rehabilitation of climate refugees in their new location, and due regard to traditional knowledge and local cultures throughout.

The people of Bangladesh are among the most vulnerable to climate change impacts, with predictions over the next century reaching truly catastrophic proportions. According to the fourth IPCC assessment report, Bangladesh is expected to lose about 8 percent of its rice and 32 percent of its wheat productivity by 2050. A one-metre rise in sea-level will put 20 percent of Bangladesh's landmass under water and inundate the whole of the Sundarbans national park, the world's largest mangrove forest. Up to 20 million people are at risk. Saudia Anwer of Prodipan Bangladesh argued that, given the unprecedented nature of this problem, the language of "climate refugees" must be adopted in order to motivate action, and that some system of redress or compensation for those suffering losses due to climate change must be put in place. Bangladesh will need to account for climate refugees in its National Adaptation Plans and its Climate Change Strategy. It must also begin to seek international help in various ways, such as readying other countries to accept skilled and semi-skilled migrant workers at a minimum, as well as to accept climate refugees. Significant attention must be paid to infrastructural development and otherwise integrating relocation into development policy.

The Mozambique case study discussed the resettlement policy response by the government to the floods of 2000. The policy involved the construction of new modern housing for flood victims from low-lying regions, who themselves participated in the construction. Over time,

however, the new housing was eventually abandoned. The project's relative lack of success was explained as being due a number of factors:

- Little consultation with the beneficiaries, who did not "own" the project
- Disregard for local knowledge
- Lack of access to agricultural land for beneficiaries
- Disregard for people's livelihoods (distances from the workplaces were unsustainable)
- Lack of basic infrastructure (water sewage, schools)
- Degraded environment of the resettlement area,
- Fear among beneficiaries of losing land in the fertile low lying areas
- Lack of information.

In response to this presentation a representative of the government of Mozambique noted the challenge facing the government at the time, as the primary duty of every government is to protect life. This is the main driver for resorting to resettlement.

A third case study related to Papua New Guinea / Bougainville. The inhabitants of the Carteret Islands, which are at serious risk of submersion due to climate change sea level rise, may need new homes in future, and the issue has become a live one on the islands. Resettlement was discussed as well as general adaptation matters taken in the Pacific region. A series of difficult questions arise if populations are to leave behind the territories upon which they have survived for countless generations. This is especially so for peoples for whom the link to the land is strong or constitutive, as is the case in many of the South Pacific islands. How are cultures and identities to be maintained if people are required to leave behind their homes?

6. Suggested strategy for Further Action

The discussions on further strategy for action regarding climate migration can be organized into three interdependent categories. Participants put forward a number of suggestions regarding strategy for action of the NGO community on the local, national and international level.

LOCAL LEVEL

1) People affected by climate disasters are themselves creative at finding ways to adapt. Further work is needed to define how this potential can be explored, organized and channeled.

2) Big centralized humanitarian aid is often poorly targeted. More people could be helped if governments were committed to coordinating closely with civil society and local government. This approach would also foster acceptance and ownership of the implemented policies on the part of the affected people.

3) Work towards increasing local capacity, supporting communities and households. Educate and build information-sharing networks. Encourage bigger engagement of the private sector with a focus on Corporate Social Responsibility. Work towards achieving balance between response, prevention and recovery strategies. Design "shadow strategies" and lobby for them with local and national authorities.

4) Advocate for turning people into subjects and not objects of policies. Ownership of and participation in the process is crucial for achieving any success. Victims need to be turned into agents of the process.

5) Encourage collective action and sense of community at the local level through:
    - Praying together, adopting a spirit of reference to creation and to one another.
    - Speaking and acting together
    - Creating awareness, which is a catalyst for a shared concern and action—workshops, media friendly information, dancing, story telling
    - Identifying the most vulnerable and providing platforms for them
    - Providing authoritative research
    - Lobbying in creative ways
    - Engaging the private sector
    - Knowledge-sharing in the grassroots
    - Organization building, organizing civil society and channeling the power of many voices to create impact
    - Awareness-building and trust-building
    - Fostering dialogue in the research process and documenting community concerns.

NATIONAL LEVEL

1) Engage the media proactively. Educate parliamentarians and support them in constructive motions. The protection of human rights is a catchy subject.

2) Go to national authorities, representatives on a national level and decision makers and let them know what works on a local scale. Connect them to on-the-ground experience and give them a clearer picture of who suffers and how problems can be prevented or remedied. Spearhead bottom-up action by bringing in actors "from the field" and giving a high profile to traditional local knowledge. Show how traditional and modern technologies can be combined in national strategies.

3) Build national networks of organizations. Come up with a strategy on how to move forward in a coordinated way. Identify leverage points and allies, and work together towards a common goal.

4) Build bridges between different policy communities. Approach policy communities to encourage them to determine what role they can play in solving the puzzle.

5) Clarification of the terminology will help policymakers.

INTERNATIONAL LEVEL

1) Large humanitarian organizations often miss the link to local communities. Try to influence the agenda of the main humanitarian actors.

2) Catalogue and pursue the various different options for acquiring a recognized status for climate change displaced persons. There was some discussion over whether the pursuit of a soft-law option was strategically smart—as it may be more easy to achieve than treaty law—or unwise, as states tend to agree to soft law instruments that they can then evade with impunity.

3) Explore the available routes towards granting people a recognized status. Then prepare documentation and pursue campaigns that will convince states to follow a given route.

4) Bring more attention to human rights in the climate change regime. This must be done with caution, as some states will represent human rights as "poisonous" to negotiations. But it is worth raising the point that state parties to the UNFCCC are also signatories to the human rights conventions and are bound by them.

5) Climate change raises significant problems for the classic notion of the nation state. This is one of the reasons put forward by the participants not to pursue the "responsibility to protect" (R2P) as an option for managing it. Other reservations included arguments that R2P will not work as it applies only to genocide and other serious violations and it is still an emerging international law norm.

6) Exert influence over the regional blocks through national decision-makers. This is particularly true for the SIDS block where decision makers are close to the people.

7) Be careful in choosing messages. In addressing forced displacement it will be important to remain cautious about potentially volatile issues such as compensation or human rights text. While adopting a pragmatic approach with the UNFCCC, it is also possible to pursue climate change in Geneva with the Human Rights Council. Instead of importing human rights into climate change, import climate change into human rights.

8) Although human rights may be volatile in the negotiating rooms they can nevertheless be effective "in the corridors" by refocusing discussion on states' obligations. Persistence and determination will be needed.

9) Develop a strategy on how to develop and derive climate change victims' rights from civil and political rights and how their participation in the decision-making process can be enhanced. Look into how the local communities can play a key role and have ownership over the response.

10) Emphasize the importance of "vulnerable individuals" as well as, or rather than, "vulnerable states" in order to retain a human rights perspective.

11) Form NGO partnerships in key countries. Develop fundraising strategies in connection with concrete adaptation needs.

12) Climate change is a global problem, but we are not globally organized or represented, there is no global public, global media or global governance. Seek ways to remedy this situation. Civil society is important but pragmatically we need to link local and global. For global-level advocacy we need global information.

13) Look into the role of social movements in transforming victims into agents of change.

Conclusion

Wrapping up, it was stressed that the principal needs are for new thinking, for reform of the global governance system, for the nurturing of a "global public" able to represent and address the global public interest. Two approaches were postulated in the course of the meeting. First, a "visionary" approach, with a new Optional Protocol to the UNFCCC as a possible goal; second a "pragmatic" approach exploring all existing avenues for a slow but sure progress in furthering the cause of human rights through the climate change process. Many participants saw an Optional Protocol as a good but far-fetched idea and stressed the need for solid interim measures. But it may also be necessary to keep a visionary "horizon" in view even while pursuing solid practical steps.

What is the role of the churches in addressing climate change refugees? The church can enhance the participation of local people(s), while pointing to human rights language and procedures, including complaint procedures and standard setting mechanisms, in order to ensure that victims become active stake holders. Invoking human rights language means foregrounding the protection of people suffering from the impacts of climate change. The churches must raise the urgency of victims' rights on each relevant occasion. They must also be ready to rock the boat occasionally, where complacency about the suffering of climate change victims becomes dominant, as is frequently the case.

In addition, the churches can develop their role as a platform of exchange and exposure, reaching out, for example, to members of parliament or parliamentary committees and members of local communities; seeking cooperation among existing civil society organisation dealing with climate change. In addition, the churches are well positioned to enhance social mobilisation, resistance and empowerment among the suffering people and their supporters. Climate change for churches should mean seeking justice.

From this perspective it is important to remember that climate change is not just about law and legal instruments; it is also about making governments change their policies and concepts on development. The churches might therefore aim to identify "champions" among states and governments. Candidates might include, for example, the Arctic Council, the Pacific Islands Climate Change Cooperative (PICCC) and the Alliance of Small Island States (AOSIS).

Climate change presents challenges at many levels, but it is above all a challenge to the imagination. In order to determine how to avoid immense population displacement, we need first to imagine the kind of world that will permit mass forced migration—and we must then imagine another kind of world. We need to imagine not only how to bring our carbon consumption down but also how to help our fellows in other parts of the world adapt to climate change. What kind of adaptation is relevant to migration? Sea walls? Cities on stilts? New canal systems? We need to start now to construct this future world. But we also need to imagine what it will mean if we fail. Indeed, it seems increasingly short-sighted to assume we will avoid sea-level rise or manage adaptive measures, given the tortuously slow progress of negotiations to date. We need to imagine that millions will, one day not too far away, be on the move, and we need to start thinking now about the appropriate way to manage this eventuality.

Key words: climate change, state, role of civil society, international institutions, securitization of the problem, unpredictability and discrepancy of science, best practices and case studies, terminology, visionary vs. pragmatic approach, transparency, ownership, local communities, information sharing, collective vs. individual rights, competing agendas, financing and compensation, extraterritorial obligations, complaint procedures and social mobilization.