

**Submission of the Asia Pacific Academic Network on Disaster Displacement
to the
Special Rapporteur on the Human Rights of Internally Displaced Persons**

**Consultation on Displacement in the Context of the Slow-Onset Adverse Effects of
Climate Change**

17 June 2020

In 2017, the Raoul Wallenberg Institute of Human Rights and Humanitarian Law initiated a regional thematic study on internal displacement in the context of disasters and climate change across Asia and the Pacific as part of its wider programme on human rights and environment.¹ Focusing on law, policy and practice in ten countries, and closely collaborating with academic partners from China, Cambodia, Thailand, Myanmar, the Philippines, Indonesia, Nepal, Bangladesh, the Solomon Islands and Vanuatu, the study adopted an expressly human rights-based approach grounded in the 1998 Guiding Principles on Internal Displacement.

Academics involved in the regional thematic study have formed the Asia Pacific Academic Network on Disaster Displacement (APANDD), in whose name this submission is made. The following submission is based on insights gained from the study, including through consultations with international, regional and national actors. The submission also includes insights from complementary studies by APANDD partners.

The submission focuses primarily on the first priority area identified by the Special Rapporteur, focusing on legal and policy frameworks, but also provides insights into the differential experience of displacement, addressing the third priority area. Following two general observations, the submission is structured to reflect the three phases identified in the fourth question, namely: prevention of and preparedness for displacement, protection during displacement, and durable solutions. The main source of information relating to legal and policy frameworks is the series of ten national law and policy reports, which systematically review law and policy relating to disaster risk reduction and management (DRRM) and climate change adaptation (CCA) in each of the ten countries. The review used an evaluation tool consisting of nine indicators reflecting a human rights-based approach. To keep the submission brief, reference will be made to these reports, rather than quoting legal and policy provisions in full. The reports are available at <https://rwi.lu.se/disaster-displacement/>. Insights from practice are derived from case studies of specific instances of disaster displacement. These case studies will be published in an edited volume later this year.²

The core of the submission emphasizes the importance of *systematically* integrating displacement into national and sub-national law, policy and practice through a combination of technical cooperation, capacity strengthening, targeted research, and institutional

¹ Details of the study together with a suite of research products are available at <https://rwi.lu.se/disaster-displacement>. For more information on the wider programme on human rights and environment see <https://rwi.lu.se/where-we-work/offices/jakarta/>. The research and the wider regional programme on human rights and environment is supported by Sida, the Swedish international development cooperation agency.

² See Matthew Scott and Albert Salamanca (eds.) (2020) *Climate change, disasters and internal displacement in Asia and the Pacific: A human rights-based approach*. Abingdon: Routledge (in press).

engagement that promotes a human rights-based approach whilst prioritizing measures that are practical, relevant and achievable in local context.

This submission builds on the more general recommendations made by the Academic Network in our submission to the UN High Level Panel on Internal Displacement.³

General observation relating to the treatment of displacement in the context of slower-onset disasters in national law and policy

Law and policy relating to DRRM tends to focus almost exclusively on more sudden onset disasters, and displacement is addressed in this context, primarily in relation to evacuation and protection during particularly the early phases of displacement. There is far less attention in these documents to prevention of displacement or to durable solutions to displacement.

Law and policy relating to CCA tends to reflect less focus on displacement than the DRRM documents considered in the review, but does contain more material relating to slower-onset disasters. Planned relocation is the measure that features most prominently in these documents.

Displacement in the context of slower-onset processes relating to climate change

As processes such as drought and sea level rise are already contributing to (forced) movement of people away from their homes, and in recognition of the anticipated increase in such movement as the climate changes further, the APANDD welcomes the focus of the Special Rapporteur on displacement in the context of slower-onset processes relating to climate change. The focus on these processes is well-placed. Yet, climate change is a systemic challenge that generates impacts across scales of space and time and hence, hazard events and slower-onset processes are interlinked and dynamic. For instance, flooding that is gradually increasing in frequency and intensity as a consequence of climate change is both a sudden-onset hazard event, when it takes place in a given season, but also a slower onset process, as the timing, frequency, and intensity change over time. Therefore, no firm distinction should be made between sudden-onset hazard events and slower onset processes linked to climate change.

Prevention of and preparedness for displacement

The draft National Strategy on the Management of Disaster- and Climate-Induced Internal Displacement of Bangladesh contains over forty measures that can be taken to reduce displacement risk. In addition to this pioneering document, other countries in the study also make specific provision for preventing displacement. For instance, the 2011-2028 Climate Change Action Plan of the Philippines calls for the development of a long term plan for adaptation of highly climate change vulnerable populations, including displaced populations.

However, it is important to recognise that climate change adaptation measures can also contribute to displacement. Research conducted by APANDD members in Thailand identified a connection between the widely positively-regarded measures to reduce flooding risk in Hat Yai municipality, and a potential increase in flooding and associated displacement risk

³ See <https://rwi.lu.se/disaster-displacement/>

downstream. A connection is also identifiable between climate adaptation infrastructure initiatives and ‘development’-related displacement.

Planned relocation is a strategy identified in a number of national legal and policy frameworks, including the Solomon Islands and Nepal. Nepal’s 2016-2020 Post-Disaster Recovery Framework, for instance, recognizes that relocation is a measure of last resort, and requires that the process respects local livelihoods, culture and traditions and enables people to maintain familiar land use patterns.

Human rights principles relating to participation and free, prior and informed consent are critical to ensuring that the human rights of affected people are respected, protected and fulfilled in any process of planned relocation. An example of good practice in this regard is identified by the UN Special Rapporteur on the Right to Housing, in relation to the REKOMPAK programme in Indonesia (A/HRC/25/54/Add.1) However, in our research in Indonesia, we found that there are local dynamics in terms of resource distribution among people impacted by disaster where effective implementation of planned relocation is often constrained by local government's capacities, highlighting the importance of ensuring equality, improvement of local actors' capacity, and data transparency in the implementation of planned relocation programmes.

A significant number of countries in Asia and the Pacific have recognised the right to a healthy environment in their Constitutions and secondary regulation as recognised by the UN Special Rapporteur on human rights and environment (Boyd, D. (2019/ A/HRC/43/53/Annex V).⁴ Laws and policies concerning this right can contribute significantly to addressing the root causes of displacement and can thereby benefit not only present but also future generations. Healthy ecosystems are more resilient to the effects of both slow onset and sudden unexpected impacts of climate change, enabling societies to continue to develop after these impacts, thereby preventing displacement. For example, nature contributions to people (NCP) derived from healthy ecosystems such as mangroves range from regulating NCP such as flood regulation and water purification, and provisioning NCP such as healthy food and fresh water.⁵

When displacement cannot be prevented, it can be prepared for in a manner that reduces the potential adverse human rights impacts. A number of cases in our research revealed the practice, variously termed ‘adopt a family’ (Philippines) and ‘mentor houses’ (Thailand) programmes, in which municipal authorities enter into formal agreements with owners of more stable homes, who agree to provide food and shelter to identified local individuals in the context of disasters. This practice may reduce some of the risks associated with larger evacuation centres, including in relation to hygiene and sanitation. However, the potential for abuse, including in particular gender-based violence, creates a need for evaluation of and research into this practice, and the identification of practices that address identified risks.

Protection during displacement

⁴ See more information on the right to a healthy environment in Southeast Asian countries at Ituarte-Lima, C; Bernard, V; Paul, D; San, S; Aung, MM; Dany, C; Chavisschindha, T; Paramita, D; Aung, TM and Saenphit, N (forthcoming) Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia, Raoul Wallenberg Institute of Human Rights and Humanitarian Law

⁵ See e.g. Diaz et al. (2018) Assessing nature’s contributions to people, Science 19 Jan 2018, Vol. 359, Issue 6373, pp. 270–272.

As the distinction between displacement and more voluntary forms of human mobility appear difficult to make in the context of slower-onset processes linked to climate change, it is not surprising that legal and policy frameworks tend not to address the protection of people during this kind of displacement. DRRM frameworks tend to contain provisions relating to the protection of people in evacuation centres and temporary (camp) settings, and to the extent that sea level rise, drought or other slower-onset processes trigger emergency response, these provisions may potentially guide the conduct of authorities.

However, owing to the presumably more gradual nature of the displacement, it is expected that municipal authorities in social services departments, housing authorities, tax offices, health clinics and a range of other government bodies, rather than national disaster management authorities, are likely to play a more immediate role in addressing the human rights of people displaced in this context. Consequently, policies relating to housing, access to education, access to municipal health facilities, labour market and so forth are likely to warrant closer scrutiny than standard operating procedures on camp coordination and camp management, for instance. The prohibition on even indirect forms of discrimination on the basis of displaced status, reflected at Principle 22 of the Guiding Principles, provides a strong normative basis for engaging with authorities on this point.

Durable solutions

Durable solutions to displacement were addressed in a number of the legal and policy frameworks considered. Our series of national law and policy reports addresses this element by considering the extent to which national frameworks reflect each of the eight features of a durable solution identified in the IASC Framework on Durable Solutions (2010). In particular, Vanuatu's National Policy on Climate Change and Disaster-Induced Displacement references durable solutions 55 times, and is grounded expressly in the Guiding Principles on Internal Displacement. Extensive provision for durable solutions is also made in the Bangladesh National Strategy on the Management of Disaster- and Climate-Induced Internal Displacement.

In practice, our research found land ownership to be a key barrier to durable solutions. In the Solomon Islands, for instance, people displaced from informal urban settlements in the context of flooding in Honiara in 2014 were provided plots of land in a newly zoned part of the city, but were not granted title and could not afford to purchase it. Many consequently returned to the exposed and vulnerable settlements from which they had earlier been displaced. In Bangladesh, people in Gaibandha district who did not own land had been displaced multiple times in the context of floods, and many faced repeated evictions from squatted land, in addition to the recurrent risk of flood-related displacement. Recurrent flood-related displacement was also observed in relation to people living in informal settlements in Hat Yai municipality in Thailand. These observations resonate with earlier insights from Sherwood, et al. in relation to the complexity of finding durable solutions in Port-au-Prince following the 2010 Haitian earthquake.⁶

Like for preventing displacement, durable solutions for those people who have been displaced will largely depend on whether they have an long-term access to NCP in line with human

⁶ See Sherwood et al. (2014) Supporting durable solutions to urban, post-disaster displacement: Challenges and opportunities in Haiti. Brookings Institution and IOM. Available at: <https://www.brookings.edu/wp-content/uploads/2016/07/Supporting-Durable-Solutions-to-DisplacementHaiti-March-4-2014.pdf>

rights standards including gender equality. A human rights based approach to displacement requires addressing women's particular challenges on the recognition of land rights and resource tenure rights including those that get amplified when they are displaced as a result of climate change. Furthermore, women are disproportionately affected by climate change compared with men but they are also vital agents of positive change, enhancing the resilience of households and communities, and reducing vulnerability.⁷

Recommendations

We observe that there is a scarcity of knowledge and opportunities for dialogue in both academic and policy communities relating to effective legal and policy responses to displacement in the context of slower onset processes linked to climate change. Our recently completed research demonstrates that the following questions in particular invite further research and analysis, and could serve as bases for enhanced national and regional dialogue on the topic:

1. Risk-sensitive and climate-adaptive land use planning is an essential component of any strategy to reduce displacement risk. Such planning needs to take place from local to national levels, and entails a whole of government, whole of society approach. To what extent do existing approaches to land use planning integrate displacement considerations, and what direct and indirect impacts of such planning are identifiable in practice? How are the gender dimensions of land rights and resource tenure rights addressed?
2. The Guiding Principles on Internal Displacement have been identified as an effective tool for addressing displacement, including in the context of disasters. What is the practical application of the Guiding Principles in complex urban environments, particularly informal settlements, where reasons for moving are likely to be complex, multifaceted, and difficult to discern at scale, particularly when movement is linked to slower onset processes linked to climate change?
3. The ability of some people to move voluntarily (internally or internationally) has been demonstrated to reduce displacement risk.⁸ What legal and policy mechanisms are currently in operation that promote (even indirectly) 'migration as adaptation', and what impact is discernible on the mobility of people who stay behind?
4. Climate-related displacement is intertwined with structural inequalities both locally and globally. How can the rights of climate displaced persons be protected in a manner that corrects rather than perpetuates these inequalities, and what is the role of the Warsaw International Mechanism on Loss and Damage in designing and implementing rights-based responses to climate-related displacement?
5. The right to a safe, clean and healthy environment has been demonstrated to enhance environmental protection in a wide range of countries that have integrated this right into national legal frameworks. What opportunities exist for addressing root causes of

⁷ UNDP, 'Gender, climate and disaster resilience' (2019); Ituarte-Lima, C; Bernard, V; Paul, D; San, S; Aung, MM; Dany, C; Chavisschindha, T; Paramita, D; Aung, TM and Saenphit, N (forthcoming) Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia, Raoul Wallenberg Institute of Human Rights and Humanitarian Law

⁸ Government Office for Science (2011) *Foresight: Migration and global environmental change*. Final Project Report. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf

displacement, and facilitating durable solutions to displacement, that build on the right to a safe, clean and healthy environment.

Such research could be undertaken (sub)regionally or comparatively across regional levels, and would contribute to enhancing understanding of the phenomenon of displacement in the context of slower onset disasters linked to climate change, as well as the role of international, national and sub-national law, policy and practice in addressing this growing challenge.

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