

Protecting environmentally displaced people

Developing the capacity of legal and normative frameworks



Research report

Professor Roger Zetter
Principal Investigator and Project Director
Director, Refugee Studies Centre

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Refugee Studies Centre
Oxford Department of International Development
University of Oxford



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Project Advisors:

- Dr François Gemenne (Project Advisor, Sciences Politiques, Paris)
- Dr Kees van der Geest (Project Advisor, University of Amsterdam, Amsterdam)
- Matthew Albert (Legal Advisor, Barrister, Australia)

Research Assistants:

- Jane Chun (researcher Vietnam)
- Marie Percot (researcher Bangladesh)
- Malika Peyraut (researcher Kenya)
- Augustine Yelfaanibe (researcher Ghana)

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Acronyms and abbreviations

BCCSAP	Bangladesh Climate Change Strategy and Adaptation Action Plan
CHRAJ	Commission on Human Rights and Administrative Justice (Ghana)
ECOWAS	Economic Commission for West African States
DRR	Disaster Risk Reduction
EPA	Environmental Protection Agency (Ghana)
IASC	Inter Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IDPs	Internally displaced persons
IDMC	Internal Displacement Monitoring Centre
ILO	International Labour Organisation
IHRL	International human rights law
INGO	International non-governmental organisation
IOM	International Organisation for Migration
LECZ	Low elevation coastal zones
MEST	Ministry of Environment, Science and Technology (Ghana)
MOSSP	Ministry of State for Special Programmes (Kenya)
NADMO	National Disaster Management Organisation (Ghana)
NAPA	National Action Plan of Adaptation (Bangladesh)
NCHR	National Commission on Human Rights (Kenya)
NDRP	National Disaster Response Plan (Kenya)
NDOC	National Disasters Operational Centre (Kenya)
NEMA	National Environment Management Authority (Kenya)
NEAP	National Environmental Action Plan (Ghana)
NEP	National Environmental Policy (Ghana)
NS-NDPAM	National Strategy for Natural Disaster Prevention, Response and Mitigation (Vietnam)
NTP-RCC	National Target Program to Respond to Climate Change (Vietnam)
NGO	Non-governmental organisation
OAU	Organisation of African Unity (now AU)
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PEV	Post-election violence (Kenya)
SEDP	Socio-Economic Development Plan (Vietnam)
SEDS	Socio-Economic Development Strategy (Vietnam)
SLR	Sea level rise
SWG	Sector Working Groups (Kenya)
TPS	Temporary protection status
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNFCCC	UN Framework Convention on Climate Change
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees

Executive summary

It has been estimated that there is the impending threat of displacement of more than 20 million people in the event of sea level change... in the near future. The settlement of these environmental refugees will pose a serious problem for the densely populated Bangladesh and migration must be considered as a valid option for the country.

It is now evident that population in many parts of the country will be so adversely affected that they will have to move out.

(Bangladesh Climate Change Strategy and Adaptation Plan 2009:17 and 59)

I. Framing the study

I.1 Introduction, aims and objectives

Based on evidence collected in four exemplar countries – Kenya, Bangladesh, Ghana and Vietnam – the overall aim of the study is to investigate the capacity of national legal frameworks to protect and mediate the rights of people vulnerable to environmental displacement induced by climate change.

I.2 Rationale for the study – setting the international context

The context and rationale for the research lie in increasing concern about ‘protection gaps’ for people involuntarily displaced by environmental and climate change impacts. Countries in the Global South are most at risk. People who are permanently displaced within their own countries will form a significant proportion of those displaced due to environmental conditions. Smaller numbers may be displaced across the borders of their state of origin. These outcomes constitute a new challenge for both national and international actors.

The study fills a significant lacuna. It assesses how legal protection frameworks might:

- mediate the impacts of displacement on people compelled to move because of environmental change;
- assist in supporting strategies of adaptation and resilience for those at risk of displacement; and
- guide governments in devising relocation policies for people who live in the most vulnerable locations.

Although difficult to generalise from four case studies, the study provides a systematic review of the application and appropriateness of current frameworks, and how they might be adapted to this emerging category of migrants.

I.3 Protection gaps: typologies and scenarios of displacement

Providing protection to environmentally displaced people poses three challenges: determining whether displacement is voluntary or forced; whether it is temporary or permanent; and how protection needs differ between internal or international displacement.

The distinction between voluntary and forced migration is the most complex, particularly in relation to slow-onset climate change. A *progressive* form of rights protection norms is

advocated to take account of the transition from migration which may start as a voluntary process but may become involuntary or forced where permanent depletion of resources render livelihoods impossible. Initially, this could be in the form of temporary protection status and then scaled up to more permanent rights protection measures.

Gaps in protection are also related to the different scenarios of displacement - extreme hazard events, slow-onset events, permanent loss of state territory, conflict over shrinking natural resources. Whether voluntarily or forcibly displaced, the 1988 *Guiding Principles on Internal Displacement* exclusively deal with protection for those within national borders. By the same token, states' obligations under international human rights law will primarily apply with respect to individuals present on their territory. Normative gaps exist for those moving across international borders and where there is a total loss of territory.

1.4 The meaning of rights and protection

Protection, in the study, is defined as both a material commodity (such as shelter) and a set of processes or actions which may be responsive (e.g. reducing imminent, life-threatening risks), remedial (e.g. restoring rights after a disaster or displacement), and proactive (e.g. enhancing dignity of treatment and advocacy for environmentally displaced people). The protection needs of displaced people change before, during and after displacement.

Despite the existence of 'protection gaps', the prospect of adopting a new international legal instrument is unlikely. International consensus supports the use of current instruments. The 1998 *Guiding Principles on Internal Displacement* offer a sound normative framework to protect the rights of those internally displaced by environmental factors but they require adaptation and refinement. For those displaced across international borders, temporary protection schemes warrant further investigation.

1.5 Selection of case studies

Based on a Global South focus, a representative sample of environmentally-stressed countries was selected. The case studies offer a cross-section of environmental conditions, internal and international displacement, slow-onset climate change scenarios - rising sea levels (Vietnam and Bangladesh) and desertification (Kenya and Ghana) - legal and normative rights protection apparatus, and governance structures.

1.6 Data collection and research methods

Primary data were collected by field work in the four countries and included relevant legal instruments on the protection of displaced persons; policy reports and documents dealing with environmental issues, climate and environmental change and displacement; interviews with selected key policy makers in relevant government ministries and departments, international agencies and NGOs. A comparative method has been used to analyse the country reports.

II. Study findings

II.1 Country Profiles

All four countries possess fragile environments and, given the land- and water- dependent nature of their economies, environmentally induced displacement is an enduring phenomenon. There is strong evidence that increasing environmental vulnerability produced by climatic variation – more erratic and uneven rainfall, more enduring drought, intensifying storm surges, more frequent cyclones and typhoons – is resulting in increased internal and cross-border (in Kenya and Ghana) displacement.

II.2 The significance of ‘context’ – population movements and human rights

The patterns and processes of migration play a complex role in the history and politics of the four countries. This context shapes their sensitivity towards displacement as a whole and their willingness to develop protection frameworks for people who are environmentally displaced.

In Kenya, internal migration and displacement are mediated by the legacy of colonial population displacement and the ethno-political dynamics of population movements and relocation in post-independence Kenya. Population movements are further linked to highly politicised land issues. The political violence of 2007 was a watershed in addressing the country’s rights-based needs.

For Bangladesh, the partition of India in 1947, the war of independence in 1971 and the severe famine in 1974 provide a legacy of forced displacement framed by political, social and cultural trauma. These historical experiences have inhibited adoption of policies or instruments dealing with cross-border and internal displacement. Against this backdrop, Bangladeshis have always had to cope with temporary or permanent displacement due to environmental hazards because of its low-lying topography.

In Vietnam, state-managed internal population relocation and migration constitute a distinctive politico-historical context. They remain prominent policy concerns given the cyclone- and flood-prone nature of the country. These factors have a marked impact on the development programmes of the country. Protection frameworks, however, are limited and are closely embedded in the state apparatus.

In Ghana, the politico-historical determinants of current migration patterns and policies are far less dominant than environmental and economic factors. Thus displacement is not the politically sensitive subject it is in the other three countries.

Summarising the current situation in all four countries:

- migration and displacement are highly sensitive issues which are marginalised in political discourse;
- policies to tackle internal migration and displacement are poorly developed and largely reactive;
- state fragility impedes the political commitment to develop effective human rights protection;
- political commitment to human rights is developing but as yet protection frameworks are weak;

- signature and ratification of international treaties have not, as yet, generated strong domestic human rights regimes;
- civil society plays a patchy role in human rights protection, limited by lack of funding, poor coordination and weak state institutions.

II.3 Institutional and policy frameworks

To varying degrees, all four countries have adopted disaster preparedness, disaster relief and rehabilitation (DRR) and mitigation policies as well as institutional capabilities to respond to the rapid-onset natural disaster events which they typically experience. Policy formulation is least developed in Ghana although implementation capacity is weak in all the countries, constrained by limited professional and financial resources. Likewise, policy responses to the challenge of slow-onset environmental and climate change impacts vary between the countries. It is a strong feature of government policy in Vietnam and, to a lesser extent, in Bangladesh. Both have formally adopted national plans for climate change. As yet, it is not a priority policy concern in Ghana and Kenya. Regardless of the scope of environmental policy making, the absence of sound legal frameworks to protect environmentally displaced people constitute a significant gap in the emerging policy apparatus of all four countries, as well as at the international level. The rights-based discourse on which such frameworks might be established is notably absent in all the countries, even where civil society is strong, as in Bangladesh and Ghana. The policy-implementation gap is symptomatic of the more specific challenges of developing the protection frameworks for environmentally displaced people.

II.4 Protecting the rights of the environmentally displaced

It is hard to discern clear and comprehensive domestic policies concerning environmentally displaced people, let alone recognition that they might expect to enjoy specific rights which the state ought to protect. Environmental displacement is acknowledged in all four countries but their governments resist giving either a precise definition or unique rights to environmentally displaced people. This report finds that:

- Increasing internal political tensions created by environmental displacement reinforce the need to strengthen human rights protection;
- Protection for vulnerable groups before and after displacement, and in relation to slow-onset environmental displacement is significantly weak;
- Civil society actors are limited in playing an active role;
- Mixed migration flows and cross-border displacement are an increasing source of tension between governments, host communities and displaced persons;
- State-managed relocation policies to reduce vulnerability lack effective safeguards protecting the rights of relocated communities are open to abuse and are rarely transparent.

III. Conclusions and ways forward

III.1 Overview

Three caveats are noted. Caution is needed in extending the study findings derived from a limited sample of countries. Second, the analysis only examines the scope and implementation of protection frameworks. It does not gauge the effectiveness of these frameworks from the perspective of displaced people themselves. Third, although environmental change may precipitate displacement in the case study countries, it is rarely the unique driver. Isolating a specific category of environmentally displaced persons remains a major challenge.

III.2 Principal conclusions

1. The data confirm significant population displacement in all four countries: environmental factors contribute to the continuing prevalence of temporary displacement and the increasing propensity for permanent displacement.
2. The lack of a comprehensive normative framework to protect the rights of environmentally displaced people constitutes a major gap in all four countries.
3. There are also protection gaps in policy implementation. In Bangladesh, Vietnam and Kenya, migration and displacement are highly sensitive political issues which, together with state fragility, impede political commitment to human rights and protection policies. As a result, effective policy development and implementation is inhibited.
4. The main conclusion from the empirical evidence is that the *1998 Guiding Principles on Internal Displacement*, and more detailed operational guidance, could provide a viable and practical way forward for developing normative frameworks protecting environmentally displaced people remaining in their own countries.
5. Protection in relation to environmental displacement remains problematic for:
 - a. those displaced by slow-onset environmental change;
 - b. vulnerable populations before displacement and after displacement and during relocation – in accordance with the *Guiding Principles*;
 - c. those displaced by environmental factors across international borders.
6. There is a clear and problematic disconnect between intergovernmental activity addressing the issues of environmental displacement and the policy and normative protection gaps and what is happening at national levels. There is a significant challenge in creating synergy between these two levels.

III.3 Ways forward

III.3.1 National governments

The core recommendation is that national governments should give greater priority to developing policies and norms for IDP protection, ensuring that the needs of people displaced by slow-onset environmental change are addressed in these responses. The *1998 Guiding Principles on Internal Displacement* provide the foundation for developing normative frameworks. All three stages of displacement identified in the *Guiding Principles* – before, during, and after displacement including resettlement – should be addressed.

National governments can strengthen their policies by: mainstreaming protection for environmentally displaced people into government plans, strategies and agencies dealing with environmental change, climate change and displacement; enhancing governmental co-ordination; and by developing professional expertise.

The engagement and empowerment of civil society actors to provide rights-based awareness and advocacy on behalf of communities vulnerable to environmental displacement should be a priority for national governments.

National governments should seek to develop regional agreements for managing cross border movement including protection for those who will be both temporarily or permanently displaced. Complementary and temporary measures are needed to strengthen protection responses.

III.3.2 Intergovernmental level

Intergovernmental agencies and humanitarian actors have a key role to play in supporting and encouraging national governments by: developing the knowledge base on environmental displacement and protection responses; by ensuring that international policies and frameworks provide an effective backcloth for national action; encouraging and facilitating national governments in adopting protection policies and norms; and by facilitating international and regional agreements.

Intergovernmental agencies can assist by supporting research into better understanding different circumstances in which voluntary and involuntary migration occurs and the degree to which people are compelled to migrate, in order to inform protection policies and interventions, as well as define who is vulnerable at different stages of environmental events, why, and how.

International actors can broaden and deepen the knowledge base about environmental displacement and related protection and transfer this knowledge and expertise to national governments by, for example:

- developing operational tools and approaches and facilitating transfer of lessons learned;
- defining in more detail the rights of environmentally displaced persons;
- elaborating ways in which protection might apply to people displaced by slow-onset environmental change.

Intergovernmental agencies should work with regional bodies to explore ways of developing appropriate guidelines and policies for temporary and complementary protection measures.

Intergovernmental organisations and humanitarian actors should encourage and support civil society actors to develop rights based awareness and advocacy on behalf of communities vulnerable to environmental displacement.

I. Framing the study

I.1 Introduction, aims and objectives

The starting point of the study is the presumption that states have various duties and owe positive obligations, under international law to different categories of migrants – particularly those compelled to migrate. This study considers how these obligations apply to persons compelled to move because of environment or climate change. Governments and the international community face uncertainty about the adequacy, scope and application of international norms for newly identified categories of displaced populations such as those displaced by environmental or climate change. There is uncertainty about the instruments that might be applicable, and the extent to which new tools are required. This study seeks to answer these questions based on evidence collected in four exemplar countries – Kenya, Bangladesh, Ghana and Vietnam.

The overall **aim** of the study is to assess the capacity of existing normative frameworks, principally at the national level, to protect the rights of people vulnerable to environmental displacement.

The **objectives** of the study are to explore:

- the conceptual and policy issues raised by seeking to extend protection to those displaced by environmental factors;
- the current protection apparatus at national regional and international levels in the four countries, and the role this might play in addressing the needs of environmentally displaced people;
- the scope for strengthening and enhancing national protection apparatus;
- the extent to which different configurations of governance – government, non-governmental and civil society actors – might provide more effective protection;
- the measures needed to enhance the capacity of local and regional government, governance and civil society structures to protect the rights of the environmentally displaced;
- the potential for developing guidelines to enhance national capabilities and responses.

Given the constraints of time and budget and the limited, but representative, cross section of environmentally-stressed countries, the study provides a preliminary rather than definitive analysis of some of these issues.

I.2 Rationale for the study– setting the international context

In recent years the international community has paid increasing attention to the ways in which the rights of displaced people might be better protected, and to the obligations which fall on national governments and international actors to afford protection. It is within this context that the current and potential environmental impacts of climate change raise a wide spectrum of human rights-based challenges (ICHRP 2008:1). Amongst the most significant are those pertaining to people who may be displaced or

compelled to migrate in response to or in anticipation of changing environmental conditions.

There is a general presumption that population displacement is increasingly associated with changes to environmental conditions and to anthropogenically-driven climate change. The principal drivers are the increasing incidence of both rapid-onset events, such as extreme weather events, and the slow-onset impacts of desertification and rising sea levels. Slow-onset impacts are the main focus of the study. The overwhelming majority of the people moving for environmental reasons is, and will be, in the Global South: a significant proportion of them will migrate within their own countries (IASC Informal Task Force 2009:4; Council of Europe 2008, Doc. 11785:2), and for many of them relocation will probably be permanent. Smaller numbers of displaced people will cross international borders, especially from those states predicted to be submerged beneath rising sea levels (McAdam 2010, 2011). These people constitute a different sub-category and are protected differently under international law. These outcomes, and in particular the likely scale of permanent relocation, constitute a new challenge, and a potentially significant responsibility for national and international actors.

There is no agreed category or terminology to describe people compelled to move because of climate or environmental change. This is because it is difficult to attribute this movement solely to these changing conditions. In addition, a continuum of processes of movement – from voluntary to forced – in relation to environmental drivers (see section I.4), make such a definition hard to determine. For the purposes of this study a useful explanatory definition is:

persons or groups of persons who, for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad (International Organisation for Migration 2009 3:19).

In this study the terms ‘displacement’, ‘environmentally induced displacement’ and ‘environmentally displaced people’ will generally be used in preference to migration, environmental migration and environmental migrant in order to reflect the implicitly involuntary nature of movement.

Whilst there is a general presumption that both migration and displacement can be linked to deteriorating environmental conditions and slow-onset climate change, detailed empirical evidence on these links is both limited and often highly contentious (Boano, Zetter et al. 2008; Black 2001; Castles 2002; Bates 2002; RSC 2009). Migration and displacement are complex processes conditioned by social, economic and political factors and so a direct mono-causal link between climate change and migration can be discounted. Nevertheless, the degree of causation related to human agency lies at the core of these arguments; but the scale, distribution and temporal patterns of potential migration or displacement remain uncertain. A large community of researchers is now engaged in: developing the empirical base for understanding these migration and displacement scenarios, processes and impacts; developing predictive tools based on typologies of forced displacement, in identifying ‘tipping points’ and mapping potential environmental ‘hotspots’; and in exploring adaptation and resilience responses. These are the ‘who’, ‘how many’, ‘when’ and ‘where to’ questions (e.g. Brown 2008; Laczko and

Aghazarm 2009). This study, however, is not about the role that climate-induced environmental change plays in the complex micro and macro factors which drive movement, the propensity to move, who moves and the patterns, processes and strategies of migration that different households adopt.

Instead, based on the general prognosis of both migration and displacement increasingly motivated by deteriorating environmental conditions, particularly those induced by climate change, it focuses on another significant lacuna in our knowledge: how normative protection frameworks might:

- mediate the impacts of displacement on people moving as a result of environmental change;
- assist in supporting strategies of adaptation and resilience for those at risk of displacement;
- guide governments in developing their relocation and resettlement policies for people who live in the most vulnerable locations.

As both proliferating climate-driven disasters and irreversible long-term environment change increase the likelihood of migration as well as displacement, the lack of effective norms and the uncertainty of legal protection places at risk a potentially large number of people. Until recently, governments and international agencies paid little attention to these looming problems and the potential implications created by this ‘protection gap’, in part because they lack coherent conceptual accounts on which to base policy and, as noted above, because there is a dearth of baseline data on the patterns and processes of movement related to environmental drivers.

Now, however, international actors are pro-actively seeking to articulate ways of protecting the rights of people susceptible to environmental displacement. Evidence from this study indicates that by contrast national governments are much less active.

In reviewing the current international response and ‘state of the art’, two strategies are emerging.

First there are specific measures to address vulnerability through policies of adaptation and sustainability, thus averting a protection gap by mitigating the propensity to migrate. The 2005 Hyogo Framework for Action, for example, addressed the need for governments to develop disaster risk and vulnerability reduction strategies and to ensure that disaster-induced displacement did not increase vulnerability risks. Proposals at the 2009 United Nations Climate Change Conference sought to substantially enhance an adaptation fund, a major gap in the UN Framework Convention on Climate Change (UNFCCC). But, with the failure to agree a new convention, detailed proposals such as these also did not proceed.

The second main strand of action to tackle the protection gap, and the primary concern of this study, is the protection of people who are displaced which is explored in the next section.¹

I.3 Protection gaps: typologies and scenarios of displacement and migration

The existence of ‘protection gaps’ is surprising given the scope of protection – concepts, norms and legal instruments – available to other groups of forcibly displaced and vulnerable populations in domestic and international human rights law which encompasses refugees, internally displaced persons (IDPs), the stateless persons and indigenous peoples (see section I.5). In parallel, there is a highly developed international humanitarian capacity to respond to the millions of people forcibly displaced by natural disasters, including extreme environmental events, which is also increasingly rights-driven.

The substantial array of extant norms and legal instruments potentially provides some protection for environmentally displaced persons and they are subject of detailed legal analysis (e.g. McAdam 2011). What is lacking, however, is a systematic *empirical* review of their appropriateness, how they might be adapted to this new category of environment-induced displacement and how governments most affected by environmental displacement are contemplating their potential human rights obligations. It is this significant normative and policy ‘protection gap’ which this research seeks to address.

Reconciling legal and normative praxis in relation to environmentally induced displacement with knowledge of the migratory impacts of climate and environmental change lies at the heart of bridging the protection gaps. A key feature of this process is to determine what forms of protection for environmentally displaced people currently exist and, more significantly, what forms of protection could be developed as these population movements increase. The initiatives seek to develop a concept of protection based on international law; and they advocate the incremental adaptation and development of extant legal apparatus rather than proposing new international instruments.

At the intergovernmental level, the IASC, UNHCR, IOM, Council of Europe and the European Commission² are the principal actors promoting these initiatives. Reviewing the ‘state of the art’ from their perspective, there are three recurrent and overlapping challenges in defining and responding to the protection gaps. These challenges are to determine whether displacement is:

- voluntary or forced;

¹ Note that this study report was completed before agreement was reached on the Cancun Adaptation Framework at COP16 in Cancun January 2011 which has significantly redefined international commitment to address the displacement and migration impacts of climate change. Para 14 (f) of the Adaptation Framework reads: "Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels.." http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf.

² Key resources include (IASC Working Group 2008; IASC Informal Task Force 2009; Council of Europe 2008; UNHCR 2009).

- temporary or permanent; and
- how protection needs differ between internal and cross-border displacement.

Of these challenges, the distinction between voluntary and forced displacement in the context of climate and environmental change is both the most complex and delicate one to draw, particularly in the context of slow-onset climate change. As noted above it is clear that, only in exceptional circumstances do environmental factors or climate change uniquely force displacement. Yet, accepting that the rights of displaced persons should be protected, then defining these contrasting typologies of displacement can help to determine which normative frameworks might be invoked to afford the most appropriate protection for displaced people and, accordingly, which agencies – for example specific international organisations or national governments – are responsible to provide this protection.

Designating prohibited areas for settlement because of hazard/disaster risk, or preventing return to highly vulnerable locations after an extreme hazard event, or resettling people from hazard prone areas (a policy adopted in Vietnam and discussed in II.3) constitute perhaps the clearest examples of forced displacement.

The challenge of distinguishing between forced and voluntary movement is much greater in the case of slow-onset climate and environmental change than sudden onset disasters. In the former situation, migration might start as a partially voluntary process (both internally and across international borders) but may become involuntary or forced where permanent depletion of resources – such as water or grazing land, or longer periods of inundation – render livelihoods impossible. Whereas extending protection to people displaced by rapid onset events depends on clear status categories, in these scenarios a *progressive* form of rights protection norms needs to be invoked. In the case of external displacement, initially, this could be in the form of subsidiary or temporary protection status – for which there is emerging practice, discussed below – and then scaled up to more permanent rights protection measures.

The distinction between forced or voluntary displacement also becomes more significant depending on whether it is temporary or permanent. For example, extreme hazard events such as flooding undoubtedly ‘force’ displacement; but the significance of the displacement and the scope of the rights to be protected will differ fundamentally if the displacement then becomes permanent. Characteristically, extreme hazards lead to temporary displacement thus invoking the need for temporary protection measures; but as we shall see in Bangladesh, flooding is estimated to render up to one million people a year permanently displaced.

The distinction between voluntary and forced displacement and thus the nature of the protection gap is also related to the different scenarios of displacement. Here, an IASC working paper points to some useful guidelines (IASC Working Group 2008). Four scenarios are identified. On the first three scenarios – hydrometeorological extreme hazard events, environmental degradation/slow-onset events, significant permanent loss of state territory – the working paper affirms the relevance of international human rights law (IHRL) for those who are voluntarily displaced within national borders and the 1988

Guiding Principles to protect the rights of those forcibly displaced within national borders, whether temporarily or permanently. For each scenario it identifies gaps for those moving across international borders – notably the lack of entitlement to admission or settlement and the lack of criteria to distinguish between voluntary or forced movements. On the loss of territory/statelessness the paper identifies an additional gap where there is total loss of territory and thus the absence of a constituent element of statehood. On scenario four – armed conflict/violence over shrinking natural resources (the likelihood of which is highly disputed) – the paper additionally invokes the general scope of international humanitarian law for displacement within or across national borders and refugee law for those displaced across international borders.

In principle, those who are internally displaced owing to environmental or climatic events have more established rights protections than those who cross international borders. As we shall see in the case studies, whilst the existing international rights frameworks privileges internal over international migrants, a significant protection gap nonetheless remains for those who are, or will be, internally displaced because of poor or non-existent implementation of legal standards. For those who cross international borders there are significant gaps in both principle and practice.

I.4 The meaning of rights and protection

The relationship between rights and protection underpins this report. But what do we mean by protection for people displaced by climate change and other environmental factors? What normative frameworks might afford protection? What rights might be protected and whose duty is it to afford this protection?

This section of the report outlines the meaning of these terms in the context of environmental displacement.³

Since the establishment of the UN, the international community has developed concepts and introduced legal instruments which define and protect an increasing array of civil, political, economic, social and cultural rights, and the corollary duties and obligations on states and international actors. States carry the main obligations and duties to provide and protect human rights. Commencing with the *1948 Universal Declaration of Human Rights (UDHR)*, the international community has framed these principles in norms, conventions, covenants and monitoring instruments which states have, to a greater or lesser extent, ratified. A notable feature of this process has been the increasing attention given to specific social groups, for example women, children, indigenous people and different categories of migrants.⁴ In some cases, the implementation of these instruments is monitored by treaty bodies which have refined the scope of the rights enshrined in these conventional instruments.

With the development of human rights and their protection has come the realisation that these obligations constitute not just a legal challenge, but also a challenge in terms of the

³ For a fuller discussion on which this section draws see Zetter 2009.

⁴ For a fuller account see, for example, Kälin and Künzli 2009.

social and political structure of states and indeed, the international community. This understanding has informed the scope and content of this report.

With this context in mind, the next section considers rights and protection in relation to population displacement related to environmental and climate change.

I.4.1 Rights

There are no international norms that deal specifically with migrants displaced by environmental or climatic factors either internally within a country or internationally. Moreover, despite having some advocates (Council of Europe 2008), it seems unlikely that the international community will agree on such a framework, a conclusion which several intergovernmental bodies have emphasised (UNHCR 2009). Indeed, the relevance of such a framework for international displacement is debatable given the relatively small number of people likely to be internationally displaced, or without an internal migration alternative, because of climate change.

Nevertheless, the inadequacy of any international standards to secure the protection of environmentally displaced people leaves a protection gap. This gap is emphasised by comparison with some other categories of displaced persons and migrants. As such, there is a need to assess the extent to which existing instruments may be reapplied, reinterpreted and reformed to protect the environmentally displaced. The problem lies in whether the scope of these instruments ensures effective protection. Moreover, as discussed below, not all the countries have adopted these instruments and where they have done so, implementation is generally weak.

I.4.1a Human rights

All displaced persons, whether internal or international, are entitled to fundamental human rights. It is immaterial to this entitlement whether the displacement is caused by drought, rising sea level or disaster, or, indeed, any other ‘migration drivers’. These rights include the right to life, health, food, shelter and movement. These rights are owed equally to every human being by state parties to the treaties protecting them. Amongst the most significant instruments in this context are the *1948 Universal Declaration of Human Rights*, the *1966 International Covenant on Civil and Political Rights*, the *1966 International Covenant on Economic, Social and Cultural Rights*, the *1981 Convention on the Elimination of All Forms of Discrimination against Women* and the *1989 Convention on the Rights of the Child*. All four countries in this study are signatories to these treaties.

The right to life is chief among the range of human rights which could be enlivened by a situation of environmental displacement. The connection between the right to life and the environment has received authoritative, albeit minority, judicial endorsement in the International Court of Justice. Judge Weeramantry of that Court stated that ‘the protection of the environment is [...] a vital part of [...] the right to health and the right to life itself.’⁵ Numerous judicial decisions there ‘have expanded the right to life to include

⁵ *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* 1997 ICJ 92, para A(b).

the right to a healthy and clean environment' (Glazebrook 2009:313).⁶ Thus, it could be said that the right to life in human rights provides a legal basis on which states can be said to owe protection to the environmentally displaced.

'The right to life has been interpreted as needing a risk that is actual or imminent' (Glazebrook 2009:314). As such, some environmental issues could give rise to successful protection claims under international human rights law. For example, a person whose house will be imminently and permanently submerged in water may be able to claim a right to protection under international law in that their right to life is at risk. The obligations on states to protect these rights may be invoked in such circumstances, and failure to offer the necessary protection would thereby be in breach of such a state's international human rights obligations to its own citizens.

Whether the same protection is owed to people displaced across international borders by environmental factors or climate change is debatable. Tully postulates that 'neighbouring states are obliged to relocate... individuals [at risk] from immediate and known risks... in order to respect their right' to life (Tully 2007:185). He notes that Malaysia, Nauru and the Solomon Islands have 'invoked the right to life in the context of transboundary environmental harm' in submissions to the International Court of Justice (Tully 2007:198).

I.4.1b Regional human rights

Regional instruments protect similar rights and, in many cases, expand on them. This is especially relevant in the case of Kenya and Ghana, who, as members of the African Union, have signed a series of human rights regional instruments. Both Ghana and Kenya are parties to the *African Charter of Human and Peoples' Rights*. It includes a 'right to a general [sic] satisfactory environment favourable to their development' (Article 24). This provision was uncontested in the negotiations of the Charter and was the first binding international obligation relating to 'right to the environment' (Linde and Louw 2003:173). The African provision has been considered by the relevant Commission on only one occasion. The case concerned exploitation by the Nigerian government of oil reserves and exploration in the Niger Delta. The Commission found that the content of the right included a requirement on the government to prevent pollution and ecological degradation; promote conservation and ensure ecological sustainable development and the use of natural resources; and grant those affected an opportunity to be heard (Linde and Louw 2003:178). These obligations could readily be translated to an environmental displacement context in Africa, in which the violation could give rise to an obligation on the state to secure relocation elsewhere for the affected population.

I.4.1c Stateless persons

International legal instruments also provide specific protection to stateless people: the *1954 Convention relating to the Status of Stateless Persons* and the *1991 Convention on the*

⁶ For example, in Indian courts, this connection has also been recognised. Although none of the four countries is a member of the European Union, it is worthy of note that the European Court of Human Rights has also recently found, in *Budayeva and others v Russia*, a breach of the right to life as a result of failure by a State to prevent environmental damage resulting in a mudslide (see Kolmannskog and Myrstad 2009:320).

Reduction of Statelessness. It is a matter of some debate as to whether the international legal concept of ‘statelessness’ covers those left without a state because the state itself ceases to physically exist.⁷ Such a scenario is predicted for some states at risk of being overwhelmed by rising sea levels.

This debate and the arguable value of protection provided by these instruments are not relevant to the present study because none of the four countries has signed either of these instruments.

I.4.1d Indigenous peoples’ rights

Many environmentally displaced people will be indigenous to the place from which they are displaced. These people may therefore attain international protection afforded uniquely to indigenous peoples. The *1991 International Labour Organisation’s (ILO) Convention 169 on the Rights of Indigenous People* and the *2007 UN Declaration on the Rights of Indigenous Peoples* afford unique rights to indigenous peoples. Neither instrument directly addresses the question of protection in the event of displacement.

The *Declaration on the Rights of Indigenous Peoples* provides for a unique ‘right to the conservation and protection of the environment’ under Article 29. Moreover, pursuant to Article 26, indigenous people have the express right to ‘own, use, develop and control’ the lands they currently possess. The right to use land would be lost if a place became uninhabitable.⁸

The ILO Convention requires states to adopt ‘special measures’ ‘to protect the rights of indigenous peoples including with regard to the ‘environment’ (Schwartz 1993:365). Article 13 especially notes ‘the crucial nature of the interconnectedness between the environment and indigenous culture’. Similarly, the UN Human Rights Committee has recognised, in General Comment 23, the link between culture, and the use of land and sea resources (Glazebrook 2009: 343).

None of the four countries are signatory to the ILO Convention. In addition, Bangladesh and Kenya were two of only eleven countries in the international community who abstained from voting on the non-binding *2007 UN Declaration on the Rights of Indigenous Peoples*. Both Vietnam and Ghana voted for the Declaration. In this sense, the sample countries have a poor record with respect to the international protection of indigenous rights and how these rights might be affected by environmental displacement.

⁷ See, for example, the extensive analysis in McAdam 2011 (forthcoming).

⁸ This is significantly watered down from Article 8 of the Draft Declaration which included a right of indigenous people to ‘prevention of and redress for: ... any action which has the... effect of dispossessing them of their lands, territories or resources’. Similarly, Article 27 of the Draft Declaration gave ‘the right to just and fair compensation [in the] form of lands, territories and resources equal in quality, size and legal status’. These articles would have been well suited to the climate change migration context, but they were rejected by the international community when the final declaration was negotiated.

I.4.1e Refugee rights

There are a number of international instruments, which deal with involuntary displacement that could apply to displacement attributed to environmental damage and climate change.

The 1951 *Geneva Convention relating to the Status of Refugees* and its 1967 *Protocol* is often cited in the context of environmental displacement. Its scope is limited to those who leave their country of origin. However, it is widely accepted that a person forced to leave his or her country of origin as a result of the effects of climate change will not ordinarily fulfill the definition of ‘refugee’ in the 1951 Refugee Convention. Persecution is a pre-requisite for evidencing a claim to refugee status and environmental factors do not and cannot readily be construed to ‘persecute’ someone.

There are, of course, scenarios where, for example, failure by a government to protect against the dire effects of climate change affecting a particular social group (such as an indigenous group) could ground a refugee claim if members of that group fled to another state as a result (Harvard 2007:67,75-76). Similarly, international flight from a conflict affecting a particular social group over access to environmental resources – such as scarce water resources or agricultural land could potentially form the basis of a refugee claim. Ghana, and especially Kenya, are increasingly vulnerable to such situations. Intensifying drought and livelihood loss is a source of both increasing conflict and regional/trans-border migration in East Africa. However, no situation approaching this threshold appears to present itself in the four selected countries to date. Moreover, neither Vietnam nor Bangladesh are parties to the 1951 Convention and/or 1967 Protocol.

Populist use of the term ‘environmental refugee’ stoked enthusiasm for the potential which the Geneva Convention might offer. But it is now widely recognised that this designation is misplaced and interest in the role of the Convention in the context of environmental change has now receded.

The African region built on and expanded the protection in the Geneva Convention when it adopted the *1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa*. Both Kenya and Ghana are signatories to this treaty. As with the Geneva Convention, it only applies to those who have crossed an international border. The OAU Convention extends the definition of ‘refugee’ to include those who are fleeing events that ‘seriously disturb public order’. Some commentators claim that environmentally displaced people may fall within this expanded definition, but most think not (Schwartz 1993:380; McAdam 2007a). Indeed, the OAU Convention has never been specifically applied to purely environmentally-induced displacement.

I.4.1f Complementary protection

Complementary protection is a form of legal protection accorded to a person who is not entitled to protection under the 1951 Convention, but cannot be returned to his or her country of origin based on expanded *non-refoulement* obligations under international human rights law. Complementary protection is the generic name given to that protection which results from international legal obligations not to return a person to serious ill-treatment such as torture, cruel, inhuman and degrading treatment or

punishment. Complementary protection does not supplant or compete with protection under the 1951 Convention; by its nature, it is *complementary* to refugee status determination done in accordance with the 1951 Convention.⁹

Judicial bodies have found that obligations to grant complementary protection arise under Article 3 of the *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and Articles 6 and 7 of the *1966 International Covenant on Civil and Political Rights (ICCPR)*, among other instruments.

Ghana, Kenya and Bangladesh are signatories to the Convention against Torture, but Vietnam is one of very few states not presently a party to it. In any event, even the severest environmental catastrophe would be unlikely to amount to torture.

All four countries are parties to the ICCPR, Article 7 of which enshrines additional protection. But again it is difficult to conceive of environmental destruction or the impacts of climate change giving rise to a claim of inhuman or degrading treatment or punishment under this Article which would oblige a state to offer protection.^{10 11 12 13} An example of ‘treatment as deliberately caus[ing] severe suffering, mental or physical, which, in the particular situation, is unjustifiable’¹⁴ might arise where state authorities removed barriers that had prevented flooding to an inhabited area. This could amount to inhuman treatment of residents of that area sufficient to ground a complementary protection claim. Again the scope is heavily circumscribed and the point somewhat hypothetical.

However, Article 6 of the ICCPR protects the right to life. Here there may be some potential and the application of this potential source of complementary protection is discussed above in I.3.1a.

An increasing number of States are codifying forms of complementary protection including those in the European Union, Canada, USA, New Zealand and Australia. None of the four case studies in this study have taken this path.

Even in the absence of domestic codification of complementary protection, state parties to the ICCPR may owe protection obligations to those who are displaced by environmental conditions if those conditions amount to inhuman or degrading treatment – difficult though it would be to substantiate these conditions. Nevertheless, this avenue for protection is one that could be strengthened by codification, or strict adherence to the international obligations set out in the ICCPR. This is probably the strongest existing basis on which environmentally displaced people may found a legal right to protection.

⁹ The leading text on this subject is McAdam, J. (2007b). For a study by the UNHCR on complementary protection, see UNHCR (2005a).

¹⁰ See e.g. *East African Asians v United Kingdom* (1973) 3 EHRR 76.

¹¹ Ovey and White, *op cit*, 76.

¹² *Peers v Greece, op cit; Poltoratskiy v Ukraine*, App No 33812/97 (ECtHR, 29 April 2005) para 131.

¹³ *Soering v United Kingdom, op cit*, para 100; *Ireland v United Kingdom, op cit*, para 167.

¹⁴ *Greek case, op cit*, 186.

I.4.1g Rights of internally displaced people

The potential significance of 1998 *Guiding Principles on Internal Displacement* is widely recognised not least because, as we have noted, the majority of people who are, and are likely to be, displaced by changing environmental conditions will move within their own countries. The *Guiding Principles* therefore offer a valuable set of legal norms which could afford rights protection to such environmentally displaced people. Indeed, considerable emphasis has been placed on the scope of the *Guiding Principles* as the most appropriate framework to afford protection to people displaced by environmental factors (e.g. UNHCR 2009).

The *Guiding Principles* are drawn from a wide range of binding international human rights, refugee law and humanitarian law instruments. However, the *Guiding Principles* themselves are not binding unless they have been domestically incorporated.

The *Guiding Principles* define IDPs to include ‘persons or groups of persons who have been forced or obliged to flee or leave their homes or habitual places of residence, in particular as a result of or in order to avoid the effects of...natural or human-made disasters’. The Brookings-Bern Project on Internal Displacement (Kälin et al. (eds.) 2010, 2008) posit that the *Guiding Principles* include the right to:

- dignity and security;
- participation in decision making in relation to displacement, return or relocation;
- move, remain together as a family/household or to be reunited if separated;
- other basic rights including the right to life, food and housing and non-discrimination against IDPs in distributing assistance. Significant in the context of environmental displacement – for example with flooding or rising seas levels in Bangladesh and Vietnam – is that forced relocation should be deployed as a last resort to protect health and safety: it should not be arbitrary.

Although the value of the *Guiding Principles* is accepted – for example they were endorsed at the World Summit on Development in 2005 – there are several significant limitations in their application. As noted above, although these standards are clear, most are not binding, unless they reflect international custom. There are no effective measures for enforcement and accountability. For these reasons, they are regarded as ‘soft’ law.

None of the four countries under study has incorporated the *Guiding Principles* into their domestic legal frameworks although Kenya is in the process of doing so. Finally, although the provision covering the ‘effects of...natural or human-made disasters’ could potentially include people impacted by the rising incidence of extreme weather events associated with climate change, it is less clear if slow-onset climate change – and thus the displacement impacts – would be interpreted as a “disaster” under the *Guiding Principles*.

Thus despite the potential, the lack of a relevant normative framework to deal comprehensively with internal displacement resulting from environmental change, or even to acknowledge that it is occurring, currently constitutes a major protection gap internationally and in the jurisdictions of all four countries.

I.4.1h Temporary protection

The practice of temporary protection status (TPS) was invoked in 1990 to provide safe haven for those who did not fulfil the requirements of the refugee definition but were reluctant to return to potentially life threatening situations. It was used to good effect for Hondurans and Nicaraguans following Hurricane Mitch in 1998. Based on this experience, TPS may offer some scope to resolve certain protection gaps for a significant group not covered by other norms: that is persons displaced by environmental factors across international borders¹⁵. With the rising probability of temporary displacement caused by extreme weather events – especially given their increasing incidence attributed to climate change – TPS could be a way forward. Both Finland (in 2004), and Sweden (in 2005), have adopted similar protection measures. Under prescribed conditions, TPS can be invoked for ‘an individual who is unable to return to the country of origin because of an environmental disaster’ (Swedish Aliens Act 2005, Chapter 4, Section 2). By extending TPS to environmentally displaced people beyond the immediate cross-border/regional destinations, Sweden and Finland have strengthened the normative potential of TPS.

I.4.1i Migrant workers

International legal instruments also provide specific protection to migrant workers under the *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. The Convention, which has only been ratified by a small number of states, provides certain rights to those who are employed in a state in which they are not a national (Article 2(1)). Whilst refugees and stateless people are expressly excluded from protection under this Convention (Article 3(d), and see discussion above), it is possible that employment may be one among the mixed motivations for fleeing a region affected by grave environmental damage.

The Convention re-states many of the rights provided under other, more general human rights instruments, including the right to life and freedom from torture or to cruel, inhuman or degrading treatment or punishment (Part III).

The Convention requires that ‘the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families’ (Article 64). However, the Convention also provides a ‘right of each State Party to establish the criteria governing admission of migrant workers and members of their families’ (Article 79). This broad protection could have far reaching consequences for those who migrate for employment from a place made uninhabitable by climate change.

Similarly, Article 22 provides that migrant workers cannot be collectively expelled and that, if their individual case is considered for expulsion such consideration must be undertaken by a competent authority and in accordance with the rules of procedural fairness, ‘unless compelling reasons of national security require otherwise.’ In such a procedure, a migrant worker could potentially raise the environmental conditions in their country of origin as a factor to be taken into account by the decision-maker considering

¹⁵ The significance of the trans-border migrant protection gap has been emphasised by, for example, IASC Working Group 2008.

their expulsion. However, the Convention is silent as to the weight that may be given to such a consideration. In our view, it is unlikely that this Convention would provide protection to many, if any, of those who flee internationally because of environmental factors and who arrive in another state because of their employment.

Only Ghana among the four countries is a signatory to this treaty.

I.4.2 Protection

What does protection entail in the context of environmental change? Although international law makes reference to protection, it does not define it. There is however considerable literature as to its meaning. Recently, humanitarian actors have increasingly recognised the importance of defining a more clearly a shared understanding of the concept of protection.

For the purposes of this study, protection is defined as being concerned with safety, security and reducing vulnerability. Specifically, two interpretations underpin the meaning of protection employed in this study. Protection may be conceived as a commodity: for example physical assistance to displaced people such as shelter provision. But protection may also be conceived as a process or action: for example protection may occur at a high level of international actors or at the local level of civil society organisations. Here, in line with the International Committee of the Red Cross (Caverzasio 2001), we might distinguish between:

- responsive action which concerns imminent threats to life (for example in the present context, disaster response to reduce the life-threatening risks caused by flooding and drought);
- remedial action for protection (restoring rights after a disaster or displacement such as property restitution and access to land for relocation); and
- environment-building (for example the means to enhance dignity of treatment, improving Disaster Risk Reduction (DRR) to reduce vulnerability and the threat to displacement, better support for civil society organisations to enhance advocacy or DRR activity).

Protection as a process or action intrinsically derives from, and is underpinned by, law and legal concepts. What is legally protected is shaped by political factors. As we shall see in the main part of the study, the extent to which protection is incorporated in national normative frameworks is determined by underlying structural determinants of vulnerability and access to rights. The negative effect of environmental and climate change is that it further weakens states' capacities to fulfil their obligation to protect the rights of vulnerable groups including the displaced. This constitutes a major challenge to developing effective practice.

In summary, this study draws on but amends an earlier UNHCR definition of rights protection:

a conceptual and operational framework that integrates the norms, standards and principles of the international human rights system into policies, programmes and

processes of governmental, humanitarian and development agencies (UNHCR 2005).

I.4.3 Summary

Summarising the discussion we can conclude that:

- a normative ‘protection gap’ exists: current existing instruments and norms are insufficient to address protection concerns for the environmentally displaced;
- adaptation of existing legal apparatus to fill this gap offers the most appropriate way forward;
- the lack of a prescriptive definition of an environmentally displaced person, and the likelihood that this deficiency will remain, confirms that the development of normative, preferably legally binding, instruments constitutes a potentially viable way forward;
- of currently available instruments to protect the rights of displaced persons, the 1998 *Guiding Principles on Internal Displacement* offer the most adequate normative framework to protect the rights of those displaced by environmental factors; but the Guidelines require review and refinement to overcome their current limitations;
- the scope and normative potential of Temporary Protection Status (TPS) and Complementary Protection could also be explored;
- beyond very specific and limited cases, other rights protection instruments are unlikely to offer sufficient additional protection for environmentally displaced people; and
- the role of refugee law, although the most fully developed body of international law dealing with forced displacement, has only the most limited value in the present context.

These conclusions support and elaborate the emerging consensus amongst international actors noted in Section I.3.

I.5 Selection of case studies

Within the constraints of time and budget for this study a number of criteria informed the selection of the four case study countries. A Global South focus was deemed an essential prerequisite. The four countries illustrate different aspects of ‘environmental-stress’ and some evidence of environmentally induced displacement which is likely to become more pronounced. They offer a cross section of:

- changing environmental conditions;
- patterns and processes of internal displacement as well as countries susceptible to significant regional displacement impacts (Kenya and Ghana);
- scenarios of slow-onset climate change – rising sea levels (Vietnam and Bangladesh) and desertification (Kenya and Ghana);
- on-going development of normative rights protection apparatus; and
- governance structures and capacities to protect rights and human security.

I.6 Data collection and research methods

Data collection

Data were collected in the four countries as follows:

- national (and where appropriate international/regional) normative instruments, including statutes, guidelines relating to human rights, protection, migration, temporary protection measures, IDPs;
- policy reports and documents dealing with environmental issues, climate and environmental change, internal and international migration, relevant development issues;
- country-based studies and local research publications;
- interviews with selected key policy makers in relevant government ministries and departments (inter alia Interior/Home, Justice, Environment, Local Government ministries and National Disaster/Emergency Planning Agencies);
- interviews with key staff in international and UN agencies;
- interviews with relevant national NGOs and civil society and human rights organisations (e.g. working in the fields of human rights, DRR/emergencies, environmental issues);
- informal interviews with local researchers working on climate change, environmental impacts, displacement and rights; and
- website searches of relevant literature.

Method

A comparative method has been used which draws on the analytical report prepared for each country following an overall template to provide:

- a short country overview outlining the economic and political context, and a background to relevant environmental conditions;
- a context-setting outline of recent and current displacement and migration patterns and processes and relevant policies;
- a review and analysis of the current legal and normative protection and rights-based instruments and frameworks related to displacement, including procedural and institutional elements, and how these are implemented at national and local levels;
- a review and analysis of initiatives to strengthen current norms and legal instruments and the extent to which recently developed National Level Instruments and norms under the *Guiding Principles* (Brookings-Bern 2008), have been adopted and the capacity to address the needs of the environmentally displaced;
- a review of obstacles to implementation of these policies and instruments; and
- an assessment of ‘protection gaps’.

II. Study findings

The study findings are organised as follows. The first section (II.1) provides brief profiles of the changing environmental and climatic conditions in each country. The next section (II.2) discusses the migration and population displacement histories of the four countries and their human rights regimes. These factors are particularly significant for they define the context within which the more specific normative frameworks to protect the rights of environmentally displaced people are located. This leads into the third section (II.3) which describes the institutional and policy frameworks dealing with environmental and climate change issues in the four countries: again, these are important determinants of the way in which human rights are defined and protected in practice. Within these parameters, the next section (II.4) elaborates the current apparatus, at national, regional and international levels, for protecting the rights of environmentally displaced people.

II.1 Country profiles

This section provides a brief overview of environmental conditions in each of the four countries.

All the countries have highly land- and water-dependent economies with manifestly fragile environments and a high degree of vulnerability to environmental and climate change. These characteristics are already exerting pressure on ecological and socio-economic systems, food security, human development and competition for increasingly scarce land and water resources, and thus the propensity for population displacement.

Kenya is an environmentally fragile country, 80% of which is covered by arid and semi-arid landscapes with low rainfall and a strong propensity to climatic hazards. Natural disasters, ascribable or not to this phenomenon, are increasing in frequency: recurrent and intense droughts and flash floods predominate. Some 2,500 people have been killed by floods between 1982 and 2008. Over the same period, four million people have been affected by drought, for which the rising incidence of malnutrition is a significant marker. Dominated by rural agro-pastoral livelihoods, a large proportion of Kenya's population is highly vulnerable to these climatic hazards and the potential impacts of climate change constitute a major challenge. Disaster preparedness and mitigation, as well as responses to the anticipated impacts of climate change, are only now emerging as important public policy issues but have yet to be coherently embedded in government action. Within the region, Kenya is the major destination for international migration comprising refugees as well as pastoralists who chose or are compelled to widen their traditional pasture areas to mitigate increasing environmental vulnerability.

Vietnam, a one party socialist republic, is one of the most vulnerable countries in the world to sea-level rise (SLR) and saline water intrusion. A very high proportion of its population live in Low Elevation Coastal Zones (LE CZ), and the Mekong Delta is amongst the world's three hotspots with regard to potential displacement due to SLR. This area accounts for 50% of Vietnam's rice production and a larger proportion of its fishing production. In addition, the coastal region and the cities in the south, which account for much of Vietnam's impressive economic development in recent years, are in low-lying areas which lack drainage and flood protection. Vietnam is also extremely

disaster-prone, experiencing an annual average of six to ten typhoons and tropical depressions, followed by flooding. Given its susceptibility to natural disasters, Vietnam has a long and established history of disaster management and government policy making, especially in response to typhoons and floods.

Bangladesh is the largest country, in terms of both area and population, that is and will be severely affected by climate change. Bangladesh possesses a very fragile environment and, like Vietnam, is particularly vulnerable to flood and cyclone hazards as well as river bank erosion and saline intrusion. Cyclone *Aila* in 2009 left at least 500,000 people temporarily landless and homeless whilst up to a million people a year are displaced by riverbank erosion. To these rapid-onset disasters, the slow-onset impacts of SLR and glacial melt will add other environmental stressors displacing a growing number of people estimated by the government to reach at least 20-30 million by 2050. Increasing salination is disrupting the rural economy of coastal areas and is already generating displacement. Like Vietnam, Bangladesh is one of the world's prime predicted 'hotspots' for potential population displacement due to SLR.

Ghana, in recent years, has been susceptible to a drier and more variable climate. Rains have become more erratic and uneven in distribution as well as intensity. In the northern savannah areas conditions for rain-fed agriculture have deteriorated with frequent droughts, floods and strong storms posing serious challenges to both livelihoods and property. The coastal belt is already vulnerable to erosion caused by high tides which the impact of climate change is likely to increase with the more frequent occurrence of tidal surges. Substantial biomass depletion of the forest belt, the result of many years of commercial logging and agricultural activities, is now exposing this region to intense sunshine. The savannah areas (Upper West, Upper East and Northern Regions) and the coastal belt are the regions expected to experience the most severe impacts of environmental change leading to potentially large-scale population displacement.

II.2 The significance of 'context'

The challenge presented by climate change and population displacement is visible at different intensities in the four countries. In both Vietnam and Bangladesh, and to a lesser extent in Kenya and Ghana, there is active engagement in government ministries. In Bangladesh there is active public debate in universities, civil society and the media, and the prospect that population displacement will increase is widely acknowledged. In Vietnam public debate on the issue is very circumscribed whilst in Kenya, although climate change and drought are debated, the potential displacement impacts are contested.

These different responses are conditioned, to a significant degree, by the context within which the discourses on displacement in general and human rights in particular are framed in each of the four countries. These issues are reviewed in this section.

Normative protection frameworks on the one hand, and government policies in relation to migration and displacement on the other, do not exist in a vacuum. Their conjuncture is mediated by the historical experiences of the country and contemporary contextual factors such as past and present patterns and processes of migration and displacement,

the socio-economic and developmental circumstances of the country which influence population movement, the political saliency of migration/displacement, the extent to which migration policy features in government discourse and action, the government regime and its disposition towards human rights.

These contextual conditions have a significant bearing on how the four countries are responding to the emerging pressures of migration and displacement induced by environmental factors such as climate change. More specifically, these factors determine the countries’:

- perceptions of migration and population displacement induced by environmental factors as a matter of policy concern;
- willingness to develop human rights protection; and
- capacity to adapt and enhance disaster response mechanisms, such as risk reduction and DRR strategies, to the increasing impacts of climate change – notably population displacement and potentially large scale relocation.

II.2.1 Migration and population displacement

The patterns and processes of migration and displacement play a complex role in the history and politics of each of the four countries. This context shapes their sensitivity towards adopting conventions, norms and legal instruments dealing with the policy challenges of these movements and the rights and needs of those who are affected.

II.2.1a Kenya

In Kenya, internal migration and displacement are closely interlinked with a matrix of land issues. First, land is a crucial element in this equation since it is the principal means of livelihood for the vast majority of Kenyans, yet only 20% of the country’s area is fertile. Second, the problem is also rooted in the country’s colonial history when Africans’ lands were confiscated and inhabitants forcibly removed. Various communities now put forward those historical injustices of forced relocation to claim property restitution. These claims are highly politicised in part because of a third factor: this is the ethno-political dynamics of population movement in post-independence Kenya that lie behind recurrent clashes and conflict-induced displacement following elections in 1992 (54,000 displaced), 1997 (100,000 displaced) and 2007 (660,000 displaced).¹⁶ Next, these migration and displacement episodes are underscored by the scale of internal spontaneous migration which has produced extensive irregular settlement and illegal land appropriation and allocation (frequently on public land) in both rural and urban areas. Finally, traditional pastoral communities – an important minority group in Kenya – have been increasingly susceptible to ecosystem vulnerability and a weakening of coping capacity manifest in new impacts and pressures on the land matrix: wider patterns of mobility in search of pasture on the one hand contrasted with government policies of sedentarisation which lead to urban settlement and marginalisation on the other hand.

¹⁶ The data are disputed but sources for 1992/97 are the Kiluku Report, cited in Government of Kenya (2008) a.k.a. ‘Waki Report’ p.273 and for 2007 in Kenya Human Rights Commission (1998) p.2. UNHCR records 399,000 IDPs in 2009 - UNHCR Statistical Yearbook 2009 <http://www.unhcr.org/4ce5327f9.html>

Jointly, these factors have contributed to land being a highly sensitive element in underpinning the search for permanent solutions to internal population displacement issues. Despite being a signatory to the *Great Lakes 'Regional Security Pact'*, which invokes the 1998 *Guiding Principles on Internal Displacement*, there is little effective progress on implementing these norms.

As regards cross-border population movement, for refugees Kenya is perceived as an island of relative, though fragile, stability in a chaotic region. At the same time, the question of environmental displacement across the region is increasingly significant for Kenya given the important role of pastoralism in the region and the potential impacts which cross-border patterns of migration will have on Kenya.

On the one hand, the same factors driving the displacement of Kenya's pastoral communities, highly exposed as they are to drought in the semi-arid regions of the country, are also propelling increasing cross-border movement into Kenya from the north and west. This is a source of increasing conflict but there are no legal provisions to protect the rights of Kenyan pastoralists let alone those who have crossed the border. Increasing the pressure on its environmental resources and thus the vulnerability of its own population, yet powerless to respond to these impacts, not surprisingly cross-border inward displacement induced by environmental change has become an issue of high political saliency.

On the other hand, Kenya is also host to a large number of refugees fleeing regional conflicts, notably Somalia with over 250,000 refugees in Dadaab camp alone¹⁷ from a total of 358,900 refugees.¹⁸ Apart from being a party to the 1951 *Geneva Convention relating to the Status of Refugees* and its 1967 Protocol, and the OAU 1969 *Convention Governing the Specific Aspects of Refugee Problems in Africa*, Kenya has also ratified the *Regional Pact on Security Stability and Development in the Great Lakes Region*. At the national level, Kenya promulgated a *Refugee Act* in 2006. Despite the legal framework, responding to an anti-refugee discourse, Kenya closed its border with Somalia in January 2007. Inevitably a largely symbolic gesture, this has been matched by much more restrictive and arbitrary controls on refugees and irregular migrants, and *refoulement* of refugees. The difficulty of distinguishing the drivers of environmental displacement from refugee movements further complicates the prospects of deriving an effective policy framework to handle these complex dynamics.

II.2.1b Bangladesh

An understanding of the historical context explains why, in Bangladesh, any policies or normative instruments dealing with migration, displaced people or refugees, are problematic. Bangladesh, with India and Pakistan, experienced massive population displacement with the 1947 partition. This exodus left a legacy of a political, social and cultural trauma in the region. The war leading to Bangladesh's independence in 1971, once again, produced huge population upheavals – perhaps up to 10 million people

¹⁷ As of 4 January 2010, figures provided by UNHCR sub-office Dadaab (pers. com.).

¹⁸ UNHCR Statistical Yearbook 2009 <http://www.unhcr.org/4ce5327f9.html> (figures rounded).

temporarily displaced – followed by the severe famine in 1974 which led to substantial population migration, mostly towards India, on the western and northern borders.

After independence, population movement was, and is still, complicated by a number of factors generating and modifying these existing typologies. The cross-border family, cultural and linguistic links which remain from these three major migratory episodes, underpin the continuing flux of population movement from Bangladesh to India. These informal trans-national communities are reinforced by the presence of millions of Bangladeshis in India who have migrated, mainly from the environmentally fragile coastal areas in the south-west of the country, in search of better economic opportunities. India is increasingly anxious to regulate these various migratory movements, particularly fearing the increase in environmental displacement resulting from Bangladesh's vulnerability. The protracted displacement of the Rohingya refugees on Bangladesh's eastern border, the vast majority of whom are unrecognised and marginalised by the local communities where they are settled, constitutes another problematic dimension to Bangladesh's political response to migration.

The legacy of these complex international events perhaps partly explains why, like her regional neighbours, Bangladesh has signed neither the *1951 Geneva Convention relating to the Status of Refugees* and its *1967 Protocol*, nor the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention relating to the Reduction of Statelessness*.¹⁹ Bangladesh hosts just over 28,500 refugees and just over 200,000 people in refugee-like situations.²⁰

Likewise, the government's cautious response to internal migration is mediated by historical experience. The situation of indigenous tribes on the northern and eastern borders of India and on the Burma border has been a matter of sensitivity. Excluded and marginalised from the hegemonic Bangla linguistic and cultural identity, these tribes have sought refuge in neighbouring India – an additional source of tension between the two countries. Although the 1997 peace accord for the Chittagong Hill Tracts, where most of the indigenous tribes live, recognised the distinct ethnicity and special status of these communities, they have still been subject to substantial internal displacement by the majority Bengali population settling in the less densely populated but fertile hill areas. Religious minorities, notably Hindus, have also been periodically displaced as a result of discrimination or communal violence.

Against this backcloth, Bangladeshis have always had to cope with temporary or permanent displacement due to environmental hazards. Along the main rivers (Brahmaputra, Ganga and Meghna), river bank erosion has regularly induced people to move – often many times in a lifetime. Natural disasters such as cyclones, floods and tidal waves have repeatedly rendered millions homeless. In addition, poverty and unemployment have compelled the landless peasantry to move from place to place in search of seasonal harvesting and employment. Yet, official recognition of any internal population displacement or migration as a subject for government policy remains highly

¹⁹ Oberoi (2006) discusses why countries in the region did not become parties to the convention.

²⁰ UNHCR Statistical Yearbook 2009, <http://www.unhcr.org/4ce5327f9.html> (figures rounded).

sensitive and there is no recognition of the term in legal or normative apparatus of the country except for when limited compensation was granted for displacement from homes after the 1947 partition.

II.2.1c Vietnam

In contrast to the other three countries examined in this study, state-managed internal population migration and redistribution constitute a distinctive politico-historical feature in Vietnam. It remains a prominent policy concern in contemporary Vietnam. This legacy has a marked impact on the lack of normative protection frameworks dealing with displacement.

In common with other centrally-planned economies and following reunification (at the end of the Vietnam War), the late 1970s saw state-managed migration programmes which are the precursors of current planned migration strategies. An estimated 6.7 million people were relocated in the ten year period from 1976 to 1995 under government auspices (Guest 1998, Dang 2005), whilst between 2004-2009, 6.6 million people (about 8% of the population) were relocated.²¹ Both figures are likely to be significant underestimates and exclude spontaneous migration.

Several legal frameworks exist which both directly and indirectly regulate spontaneous migration within Vietnam. Prior to 1990, migration was stringently controlled by the government through the household registration system (*ho khau*) and employment policies. Household registration also regulated access to government rations, subsidies and basic necessities and, accordingly, placed a significant social and financial constraints on spontaneous movement. Except where sanctioned or planned by the government, these policies aimed to deter population migration particularly from rural to urban areas. The household registration system remains one of the government's principal instruments to influence migration and regulate the rights to which internal migrants have access.

Shifting from a centrally-planned economy to a socialist-oriented market economy, the economic reforms (*doi moi*) introduced in 1986 stimulated new migration trends. De-collectivisation and the commercialisation of agriculture, combined with the burgeoning industry, service, and technology sectors and foreign direct investment, created a strong impetus for rural to urban migration, notably to Ho Chi Minh City and Hanoi. With the increasing demand for urban labour, the rules of the *ho khau* were relaxed to allow for greater freedom of movement. The subsequent abolition of the ration and subsidy systems has greatly eased the scope for voluntary movement, but continues to create barriers for non-residents to access essential services and basic rights given to residents.

Whilst economic factors have been the main drivers of state-run migration strategies, environmental factors have played an increasing role of late. Recent policies and programmes specifically aim to relocate people living in disaster-prone areas.

Although voluntary migration was (and is) still viewed unfavourably, the regulatory system did not completely prevent it but was an effective deterrent. Nevertheless, despite

²¹ Recorded in the 1999 Census reported in Dang (2005).

official controls, spontaneous migrants started to outnumber planned migration towards the end of the 1990s. Now taking place on a massive scale, rapid economic development and the alleviation of poverty would not have been achieved without it. The living standards and income levels of voluntary migrants are higher than those of managed migrants. The support of social networks often minimised the economic and social costs of spontaneous migration and exerted further pull factors.

Significantly, given this policy context in Vietnam, the concept of displacement and that one might have rights-based claims arising from displacement, is non-existent in current policy discussions and frameworks. This leaves a protection and rights vacuum for people who are or may potentially be displaced due to environmental conditions.

Like Bangladesh, Vietnam has not ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, nor either the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. Likewise there is no acknowledgment of the *1998 Guiding Principles on Internal Displacement* in current policy or legal frameworks. Currently Vietnam hosts just over 2300 refugees.²²

II.2.1d

Ghana

In Ghana, as in the other countries of the study, internal and international migration as well as hosting refugees from the region, have long been features of Ghanaian society. But, in contrast to Bangladesh, Kenya and Vietnam the politico-historical determinants of current patterns and policies on migration and displacement appear to be far less dominant than more orthodox economic and environmental drivers. Thus, neither migration nor displacement is the politically sensitive subject it is in the other three countries.

Present day internal movement is only tenuously linked to colonial and post-colonial politico-historical determinants, in stark contrast to Kenya, whilst the ethnic and religious minority interests which feature strongly in shaping migration discourse in Bangladesh are not replicated in Ghana. Colonial land expropriation and the resultant population displacement and relocation were significant. A second legacy of colonial land administration is that today about 70% of the land is under customary administration. Nevertheless, neither of these factors is much implicated in the patterns and processes of migration in contemporary Ghana or the political discourse on migration compared to Kenya. Equally, Ghana, has limited experience of large scale, state-managed relocation or migration policies that characterise Vietnam, except specific episodes of development induced displacement in relation to hydro-electric projects which are a major feature of Ghana's post-colonial development strategy.

Nevertheless internal migration in Ghana is an enduring process given the rich variety of agro-ecological regions in the country and their susceptibility to a varied array of changing environmental conditions and other socio-cultural factors. Although the correlation between environment and migration is weak, increasingly high migration from northern dry regions and from the tropical forest belt of the coastal region suggest

²² UNHCR Statistical Yearbook 2009 <http://www.unhcr.org/4ce5327f9.html> (figures rounded).

the links may be strengthening (van der Geest, 2008, 2010). This is not to say that environmental factors are necessarily any more dominant in the contemporary migration discourse in Ghana in comparison to the other three countries. Rather, that in the absence of politico-historical factors, environmental conditions assume a more prominent role in setting the context.

Turning to international migration, immigrants constituted just under 8% of Ghana's population in 2009. Ghana is a party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, and to the *OAU 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa*. Yet the turbulent regional dynamics which have shaped the migration discourse in Bangladesh and contemporary Kenya are not present in Ghana. Ghana has, and continues to host refugees mainly from Liberia and Togo totalling in all, 13,600 refugees.²³ Having peaked in the middle of the decade, the number is now small. Conversely, a small number of Ghanaian refugees, fleeing localised violence in the north east of the country reside in Togo. Local settlement and integration is promoted for both populations and this seems to reflect the fact that refugee movement is not a salient factor in attitudes to migration in Ghana. On the other hand, despite the ECOWAS protocols on the freedom of movement of persons and goods, the absence of policy on cross-border displacement is becoming an issue with the increasing movement, seemingly environmentally induced, of pastoralists from the Sahel. Local tension between Ghanaian communities and Fulani herdsmen is reportedly intensifying.

II.2.2 Human rights and constitutional frameworks

What are the human rights regimes in the case study countries? What normative frameworks exist for protecting the rights of citizens and non-citizens in the context of inward migration or cross-border displacement? This section outlines these broader national duties and obligations, and how they might provide a foundation for articulating the more specific needs of populations displaced by changing environmental conditions. This is relevant for two reasons. First, as discussed in Section I, environment and climate change potentially impinge upon the enjoyment of a wide range of internationally protected human rights – civil, political, social, cultural and economic, including freedom of movement. Thus, with their emphasis on generic rights and needs, rather than a specific category of migrant causally linked to environmental change, human rights protection offer a potentially important framework which governments might rely upon. Second, and more significantly, the manner in which countries address human rights protection indicates how they might be disposed to developing more specific norms and instruments for the needs of those who are environmentally displaced.

All four countries have signed and ratified many of the international and regional human rights conventions and also conventions which provide rights-based norms through complementary protection (outlined in section I.4). However, not all of these treaties have been implemented or incorporated into domestic law.

Each country has a different legal system; constitutional provisions provide an easy comparator.

²³ UNHCR Statistical Yearbook 2009 <http://www.unhcr.org/4ce5327f9.html> (figures rounded).

The 1963, 1992 and 2001 Constitutions of Kenya contain detailed human rights provisions. A new Constitution was adopted by referendum on 4 August 2010. This contributes to human rights protection in the context of environmental matters and displacement. As earlier Constitutions, this Constitution protects freedom of movement (Chapter 4, Part II, Rights and Fundamental Freedoms). Compared with the previous Constitution, there is a shift in the conceptualisation of the right to property from 'protection from deprivation of property' to the more difficult claim (in Article 38), of 'protection of right to property'. The Constitution also gives special attention to 'marginalized and vulnerable groups' (Article 49) for whom specific protection and recognition of their needs is provided. The importance of participation and representation is included. This may turn out to be significant for populations involved in disaster preparedness and strategies.

Although the word 'environment' does not appear in Kenya's 1963 Constitution, it is mentioned in the preamble of the new constitution in the context of sustainability, and the right to a healthy and sustainable environment is also included as a fundamental right (Chapter 4, Part II and Chapter 5, Part II). The state is deemed responsible for adopting resource management policies and to avoid measures liable to be harmful to the environment. Provision is made for claims for compensation where individuals suffer. Thus, these environmentally-linked dispositions may have some indirect bearing on preventing displacement precipitated by environmental change.

The right of freedom of movement is potentially very significant in situations of displacement induced by environmental and climate change. Yet, in the case of Kenya, this protection is only applicable to its own citizens. These general provisions may be buttressed by more specific rights protection, for example Kenya's *National Cohesion and Integration Act of 2008*, which prohibits ethnic discrimination.

In Kenya and Ghana there is additional machinery to give meaning to the fundamental human rights and freedoms enshrined in their constitutions. In Ghana, a *Commission on Human Rights and Administrative Justice* (CHRAJ) has been established whilst in Kenya, a *National Commission on Human Rights* was established in 2002. In practice these watchdogs have limited powers. Kenya and Ghana have ratified regional human rights treaties through the African Union, including the *African Charter on Human and Peoples' Rights*. For discussion on the scope of this Charter to protect environmentally displaced people see above at I.4. In addition, Ghana is party to various ECOWAS protocols on the freedom of international movement of persons and goods.

Bangladesh also replicates these conditions as indeed does Vietnam. The 1992 Constitution of Vietnam enshrines equal access of all citizens, including migrants, to certain basic rights including freedom of movement and residence. However, the concept and practice of human rights and their protection are still nascent in Vietnam. As discussed earlier the right of freedom of movement, for example, is heavily circumscribed by the household registration system. Except discussion of political rights, most topics are no longer taboo, but rights-based approaches are not yet an active component of political discourse, nor are policies framed using such language. Policies and programmes are

usually based on 'needs' not 'rights', they are not individualised as in the other countries and are identified by authorities, not by communities or civil society.

Civil society is the counterpart of state apparatus in the promotion and protection of human rights. Of the four countries in the study, Bangladesh has the most active and highly developed civil society structures. The primary focus of the NGOs has been on economic and social development and also disaster relief which are complemented by an increasing voice in rights-based advocacy. Civil society, frequently in partnership with INGOs and international development actors, plays a crucial role in the country. Widespread population displacement induced by river bank erosion has been a particularly significant area for human rights activists and NGOs who advocate for the recognition of a special status for these people, perhaps numbering 1 million a year. Notably in rural areas, civil society is particularly vibrant and often seems to eclipse the role of the government. Of course, the promotion of human rights is partly embedded in this developmental agenda. But civil society is much less active in directly promoting, advocating and defending human rights on a broader front or at a national level.

Relatively more active in Kenya than Ghana, civil society plays a similar, but generally less developed role than in Bangladesh, in development and disaster relief. In both countries, NGOs and civil society organisations work with poor and marginalised groups in rural and urban areas on developmental and disaster relief programmes in partnership with international actors. In Kenya NGOs are active in refugee assistance community: for example the Kenyan Red Cross Society is a major player in the humanitarian sector. However, in neither country do civil society actors really undertake the wider task of advocating and defending rights protection issues as part of their concern with environmental and disaster matters. In Ghana, political stability has helped to consolidate these objectives whilst in Kenya, following the severe political violence in 2007, a period of quiescence by civil society actors has been replaced by a much more active role in the political life of the country and the democratic reform process. Overall, the role of civil society actors in all three countries is limited by lack of finance, poor collaboration, relatively weak national institutions and by governments which are generally unsympathetic to rights issues.

In Vietnam although civil society is weak it is not absent. Participation in local decision making is highly regulated. That said, Vietnam has come some way to open its policymaking discussions to include the language of human rights, and awareness of the importance of community participation including in the area of environmental policy. Even so, to the extent that human rights protection exists, it functions within top-down state-driven processes with many civil society organisations and NGOs, in reality, being affiliated to a government body rather than functioning as independent entities.

II.2.3 Conclusions

In summary, despite the diverse histories and political regimes in the four countries and the differing political saliency of migration and displacement issues, there are only modest differences in their disposition to human rights protection. In general, human rights issues are only weakly embedded in the political discourse and the governments of the countries are, on the whole, unsympathetic to promoting human rights policies and

practices. The prognosis for developing a more specific approach to protecting the rights of those displaced by changing environmental or climate conditions is, accordingly, poor.

In part the lack of political will and commitment is the result of competing national priorities in which rights are of a lower order than developmental and poverty reduction goals. However, more problematic with respect to the provision and protection of human rights is the enduring political fragility and instability of two of the four countries – Bangladesh and Kenya – and the prevailing political power structures which favour particular ethnic or social groups. The defence of human rights in these countries is weak. This is less the case with Ghana which has enjoyed relative peace in an otherwise volatile region. Human rights violations, if not serious abuse, are a persistent threat and all the countries have been susceptible to periodic outbreaks of communal violence – small scale in Ghana, severe in Kenya in 2007, for example – or more systemic and protracted failure to defend minority rights in Bangladesh and in Kenya. As regards Vietnam, limited promotion of human rights stems from unclear political will. A contrasting conception of human rights prevails embedded in the political structure of a one-party state.

As regards civil society, these structures remain weak in their capacity to advocate and promote an active defence of human rights. On the other hand, civil society and local community organisations in all the countries (but most notably Bangladesh) have experience in coping with disaster relief – including temporary population displacement – and thus potentially provide a platform for developing a capacity to respond to the human rights of populations increasingly displaced by the impacts of environmental change. Nevertheless, connecting these displacement issues more directly to the government's broader responsibilities for rights protection remains problematic.

Rights and Protection – Conclusions

In all four countries:

- migration and displacement in general are highly sensitive issues which are marginalised in political discourse;
- state fragility impedes the political commitment to develop active human rights regimes;
- protection frameworks for human rights are weak;
- signature and ratification of international treaties have not led to the development of active human rights regimes;
- policies to tackle internal migration are poorly developed and largely pragmatic;
- civil society plays a patchy role in human rights, limited by lack of finance, poor collaboration and weak national institutions.

Despite these limitations, the challenge equally lies in implementing policies and building institutions for protecting the rights of their citizens including displaced people. In all the countries, the governments lack key resources – finance and legal expertise (both in general in relation to human rights and specifically in the area of environment law). Where more advanced provisions have been secured, for example the Human Rights Commissions in Ghana and Kenya, these bodies have no protection power.

II.3 Institutional and policy frameworks

In all four countries, population movement has been an enduring feature of their socio-economic systems and the means by which their populations have adapted to the impacts which changing economic and environmental conditions have had on the fragile land- and water-dependent nature of their economies. To the extent that climatic and environmental conditions impact this movement, they are not new drivers. What is new is the evidence, though not conclusive, that the increasing environmental vulnerability resulting from greater climatic variation – more erratic and uneven rainfall, more enduring drought, more extensive flooding, intensifying storm surges, more frequent cyclones and typhoons – is creating a propensity for internal and external (in to Kenya and Ghana) migration. Because emergency needs dominate the role of humanitarian actors, data are more precise for initial displacement from extreme weather events. There is less evidence on longer term impacts on displacement and the impacts of slow-onset environmental change.

Perhaps the strongest evidence comes from Bangladesh. For example, floods in 1988 and 1998 respectively displaced 45 million and 30 million people, whilst Cyclone Aila in 2009 displaced up to 74,500 households. Without adaptation measures, potentially between 13 million to 40 million will be displaced by a one-metre sea level rise by 2050 (IOM 2010:9-31). In Ghana, in seven peak years between 1991-2009 it is estimated that up to 3.65 million people have been temporarily displaced, mainly by hydrometeorological disasters (NADMO 2009; Centre for Research on the Epidemiology of Disasters, 2010). Van der Geest's study of migration in Ghana (2008) concludes that environmental reasons are the important drivers of migration from the Upper West Region. The survey showed that scarcity of fertile lands for farming, unreliable rainfall and low crop yields and/or food security problems together accounted for 90% of all reasons to move from their home location, either temporally, semi-permanently or permanently (van der Geest 2008).

How, then, are the countries responding to these new dynamics? What progress has been made in developing the institutional and policy making apparatus? Do these developments constitute the basis for developing human rights protection for environmentally displaced people? To varying degrees, all four countries have adopted disaster preparedness, DRR and mitigation policies and plans, as well as institutional initiatives to respond to the rapid-onset events which they typically experience. Bangladesh and Vietnam provide the clearest response to, and the most advanced policy frameworks in response to environmental and climate change and the potential impacts including migration/displacement. This is not surprising given both the vulnerability of these countries and the repeated occurrence of large scale rapid-onset disasters. The dramatic impacts of these events (not least mass displacement) provide a much more powerful early warning than the incremental changes of desertification and the trickle migration of Kenya and Ghana.

II.3.1 Vietnam

Vietnam has the most explicit and instrumental approach to the potential impacts of climate change and this forms the basis for well-grounded institutional and policy apparatus. This is hardly surprising because the Mekong Delta in Vietnam and Cambodia

is considered to be among the world's three hotspots of potential displacement due to sea-level rise. Ho Chi Minh City and disaster-prone areas along the Eastern coast and the Central Highlands are also extremely vulnerable. Vietnam has both a *National Target Program to Respond to Climate Change* (NTP-RCC) (2008), and the 2007 *National Strategy for Natural Disaster Prevention, Response and Mitigation to 2020* (NS-NDPAM). Both these policies are supported by assistance from UNDP. The former is the primary document, outlining government strategies and responses to climate change, which establishes the direction for development of sectoral and geographic adaptation Action Plans and Implementation Plans from 2009 to 2015, whilst the NS-NDPAM is Vietnam's national policy framework for disaster management, designed to address sudden onset extreme climate events and minimise their impact on sustainable development. A National Committee for Natural Disaster Prevention, Response, and Mitigation has been established to implement the strategy. Sea-level rise as a result of climate change is the dominant element in all these policy documents and strategies. 'Living with floods' is embedded in the National Strategy (NS-NDPAM) as the *leitmotif* of government policy making since the catastrophic floods of the Mekong River in 2000.

The National Steering Committee for the NTP-RCC, which embraces a wide number of ministries, is chaired by the Prime Minister – an indication of the importance attached to the need for effective cross ministerial co-ordination. Amongst the strategic objectives of the NTP action plans to respond to climate change in the short-term and long-term, it is possible to infer indirect reference to populations at risk of being displaced, and the managed relocation of communities living in areas susceptible to harmful or dangerous environmental change principally in many of the low-lying delta areas. Whilst 'migration' and 'relocation' are mentioned only once throughout the entire document, the potential effects of SLR are a prevalent and recurring theme throughout. Moreover, key government strategies in its efforts to adapt to climate change and mitigate the effects of natural disasters, will inevitably bring about the relocation or displacement of people living in affected areas. As we have seen earlier, state-led migration is a prominent and well-established policy in Vietnam, achieved through various government organs at the central and local levels.

The NS-NDPAM emphasises the importance of awareness raising and participation at the community level, mitigating loss of life and household assets, and the key strategy of 'living with floods' (i.e. adaptation) in areas where flooding is a regular part of life. Of the nine specific objectives, only one explicitly addresses the relocation of people for environmental reasons but planned displacement and relocation may be inferred in other objectives. Yet by 2015, as many as 135,000 households living in high-risk areas will be relocated to safe areas to ensure stabilised life and economic activities.

Acknowledgement of the need to link disaster risk management strategies to long-term development plans is important, a linkage missing in the other three countries. This link is necessary to be able to then further contemplate the importance of providing protection for people displaced by environmental change.

Finally, the Socio-Economic Development Plan (SEDP) 2006-2010 and the draft of the Socio-Economic Development Strategy (SEDS) 2011-2020 provide the wider framework

for implementing the NS-NDPAM. Preparation of the 2011-2020 draft plans is currently underway, with support from United Nations in Vietnam to mainstream climate change challenges and opportunities. Especially pertinent is the intention of UN Vietnam to focus on climate change, migration/displacement, and relocation in its climate change work with the government this year.

II.3.2 Bangladesh

Many of the environmental problems in Bangladesh are endemic and have been inadequately addressed by successive governments. Nevertheless, efforts made for DRR, where NGOs have often taken the lead, have had a significant impact on reducing fatalities and casualties induced by such events. 'Food for Work' and 'Cash for Work' schemes are widely used to support affected people after natural disasters, further indicating the way in which the country's environmental characteristics are embedded in policy making. However, displacement is not comprehensively addressed.

Against this backdrop, the prospect of climate change and its impacts are firmly embedded in the institutional and policy making apparatus of Bangladesh. The *National Action Plan of Adaptation* (NAPA), prepared in 2005 by the Ministry of Environment and Forests in collaboration with UNDP, was the first plan to announce climate change policies. In 2009, Bangladesh adopted a *Climate Change Strategy and Adaptation Action Plan* (BCCSAP). Developing the country's approach to mitigate climate change effects, this is considered to be a very important document for the country's future and covers a comprehensive range of factors such as mitigation, disaster management and capacity building. Significantly, population displacement, an important omission in the 2005 plan, is acknowledged in this recent document. This is further reinforced in the country's *Outline Perspective Plan 2010-2021* where specific objectives are set out to address people endangered by climate hazards. Instigated by the *Disaster Management Act* of 2008 and prepared by the Ministry of Food and Disaster Management, is the 2010 *Disaster Management Plan*. The plan, like most of the other policy documents, does not address the question of displacement, not even short-term displacement. This is symptomatic of the lack of institutional co-ordination and the centralised structure of post-disaster management which hampers effective mitigation and recovery in many disaster prone countries.

II.3.3 Kenya

In Kenya, environmental policies are distributed across several ministries and different legislative instruments dealing with topics such as biosafety, forests, maritime areas and chemical products. The main instrument is the 1999 *Environmental Management and Co-ordination Act* which established both a framework for environmental protection and, under the lead Ministry of Environment and Natural Resources, several agencies to safeguard environmental matters – the National Environment Management Authority (NEMA), two Environment Funds and an Environment Tribunal.

However disaster preparedness and mitigation, and the associated response to the anticipated impacts of climate change, are only now emerging as important public policy issues. A *Disaster Management Act* of 2008, and the 2010 *Disaster Management Plan* have yet to be coherently embedded in government action. Significantly, the impetus to

address these concerns comes not from the environmental and climate change agendas but in response to the severe violence and population displacement following the 2007 elections. This led to a reorganisation of the operational structure dealing with disasters response with the aims of strengthening and formalizing the existing coordinating structure. A *Kenya National Disaster Response Plan* (NDRP) was developed in 2008 under the aegis of the Ministry of State for Special Programmes (MOSSP). This set up a classical framework for disaster response – including slow-onset and rapid-onset disasters – and a national platform for DRR involving four government ministries each one of which is responsible for specific disaster risks. Of these, the Ministry of State for Special Programmes, the *National Disasters Operational Centre* (NDOC) (responsible for flood alleviation), and the Ministry of Northern Kenya and Arid and Semi-Arid Lands (responsible for drought and water shortage) are the most significant in the present context. Two examples illustrate the way in which displacement issues are finding their way into policy making. Following the 2009 drought, a long-term plan, the *National Economic Stimulus Programme* (under the aegis of the NDRP) was launched. Similarly, in the aftermath of the 2007 political violence, MOSSP created the *Mitigation and Resettlement Department* and the *Humanitarian Fund for Mitigation of Effects and Relocation of Victims of Post 2007 Election Violence*.

The comparative advantage that Kenya has in the area of disaster management and response comes from the presence of many UN regional headquarters and international agencies. Since 2007, the government has established Sector Working Groups (SWG), which mirror the IASC humanitarian clusters. Each SWG is co-chaired by the relevant government ministry and the cluster lead agency. The impetus for this initiative was not, however, the increasing incidence of environmental and natural disasters in Kenya, but the political and humanitarian crisis which erupted in 2007-2008. Various UN agencies interceded during and after the crisis to support this restructuring of the government's disaster preparedness and response.

As regards climate change, a number of initiatives have been undertaken. A *Climate Change and Coordination Unit* has been established in the Office of the Prime Minister and a *National Climate Change Response Strategy* was adopted in early 2010 which reviews the challenges and needs in terms of adaptation and mitigation, education, research and training. But tools and policy implementation lag well behind the rhetoric, and the generality of climate change is discussed at the expense of any links to the potential for environmental displacement.

Several international organisations launched a new initiative in 2009 which has potentially wider value as the only example of international policy making.²⁴ This is the *Regional Partnership for Disaster Preparedness/Risk Reduction on Climate Change, Migration and Cross-Border Conflict in Pastoralist Communities* (known, in short, as the 'Security in Mobility' Program). It is the only initiative that focuses on mobility, specifically from the perspective of environmental degradation and climate change in Kenya. It approaches the challenge as a cross-cutting issue. The project acknowledges that the movements of pastoralists is an adaptation strategy in response to the impacts of

²⁴ These included the IOM, OCHA, UNEP, and ISS (Institute for Security Studies).

climate change, and advocates increased protection of these communities, in particular for cross-border movements. Potentially this initiative could be a model for other governments dealing with the growing phenomenon of international environmental displacement.

In Kenya civil society plays a mixed role on the issue of environmental displacement. Limited involvement is partly due to the lack of concrete data and public debate. But some civil society actors increasingly complement the role of public sector and government agencies in environmental programmes. The Kenyan Red Cross Society is not only a major actor in humanitarian assistance, it is also extending its operations to community-based environment programmes focusing on displacement prevention projects such as destocking-restocking²⁵ projects for pastoralists and initiating livelihood diversification through the introduction of more resistant crops – part of a wider IFRC Disaster Risk Reduction strategy (IFRC 2009).

II.3.4 Ghana

Successive governments in Ghana have taken various measures through legislation, policies and the establishment of appropriate institutions to enhance environmental protection and environmental management. The Ministry of Environment, Science and Technology (MEST) acts as a policy and coordinating ministry and is responsible for the *Environmental Protection Agency* (EPA) established in 1994. The EPA, a strengthened successor to previous environmental organisations (including the Environmental Protection Council), has enabled the government to establish a much more co-ordinated approach to environmental policy making and environmental management in Ghana with new legislation to enhance pre-existing environmental laws. There is a *National Committee for the Implementation of Agenda 21* and a *National Environmental Policy* (NEP) and a *National Environmental Action Plan* (NEAP). Ghana has established a *National Disaster Management Organisation* (NADMO) under the Ministry of the Interior, to co-ordinate responses to natural disasters but this does not seem to be embedded in wider frameworks of environmental policy making, and its remit does not appear to extend to the impacts of slow-onset environmental change. One guiding principle of legislation and institutional development under the MEST/EPA has been to reconcile environmental impacts with socio-economic development to achieve sustainable development goals which, at the same time, recognise the role of traditional practices in nature conservation. Policy focal points have been to govern Ghana's rich forest heritage and to institute coastal zone management programmes.

Despite their wide-ranging scope, what is noticeably lacking in these initiatives is any effective engagement with the longer term impacts of changing environmental conditions or the potential impacts of climate change, despite the evidence of their occurrence. Although the relationship between displacement and environmental change are now subjects of academic research in Ghana, and although the government has recognised some of the developmental implications of the climate change phenomenon, this is still

²⁵ A destocking operation consists in buying the pastoralists' livestock in the period of impending drought before they die so as to ensure their livelihood. After the crisis, the farmers have cash to reinvest in new cattle.

not a priority issue at the *National Development Planning Commission* (NDPC). A climate change unit, attached to the EPA and a *National Climate Change Committee*, is coordinated by MEST. A draft document – the *National Climate Change Adaptation Strategy* – focuses on resilience and adaptation but more in relation to rapid-onset disasters than dealing with long term trends. Yet, neither in relation to environmental change in general or climate change in particular does the issue of migration or displacement feature in government policy making. In this context, the pressure on environmental management is further intensified by an unmet need for regional co-operation in West Africa which calls for the elaboration of an effective regional policy and capacity-building programme.

II.3.5 Conclusions

Clearly the four countries are at different stages in developing their institutional and policy capacity to address the impacts of environmental disasters and climate change. Only in Vietnam has climate change been mainstreamed, although the government of Bangladesh is now according very high priority to policy and institutional development. Progress has been made in Kenya in the last three years, whilst in Ghana institutional development and capacity are still at an embryonic stage. With the possible exception of Vietnam, in none of the countries is migration seen as a ‘solution’ to the challenges of environmental change. Rather, given the political sensitivity with which migration is viewed in all the countries, discussed in Section II.2, policy making is largely reactive.

What prompts the governments to take the (limited) action they have? What factors account for the different progress in institution building and policy making? The research did not explicitly address these questions but some tentative conclusions can be drawn. Repeated large scale disasters in Bangladesh and Vietnam of necessity demand government action and strategy. This has been backed by a significant volume of independent research and government commissioned evaluation in the case of Bangladesh.²⁶ Arguably, environmental pressures have been less evident, or are perceived to be less evident, in Kenya and Ghana: this factor may have limited the priority given to environmental policy making. In addition, civil society actors have been an important force in driving this agenda in Bangladesh but, as yet, far less influential in Kenya and Ghana and not evident in Vietnam.

However, whereas in Bangladesh policies to combat environmental change tend to be driven by a DRR, emergency relief and humanitarian discourse, in Vietnam the response is more firmly located in a longer-term development discourse consistent with the significance the government places on this wider economic strategy. In Kenya, policy engagement with environmental issues is more recent and is tending towards longer-term strategy rather than the DRR emergency relief model of Bangladesh.

It is tempting to suggest that a further explanation of these differences lies in how international organisations have mediated these developments over recent years. In Bangladesh, the sustained presence of international humanitarian organisations, and the substantial disaster relief they have provided over many years, perhaps underscore the approach taken by the government. In Vietnam the focus is on development and so

²⁶ For discussion of the research evidence, see IOM 2010.

development agencies such as UNDP and, on migration, IOM are present: the humanitarian context is less evident except during sporadic disasters. In Kenya, growing disaster relief capacity is to some extent built on the back of the pressure to resolve violence and displacement supported by international humanitarian actors such as OCHA and UNHCR. This is paralleled by the equally strong presence of development agencies. To a large extent Ghana's more modest achievements reflect the fact that it sits outside this international framework. It is neither sufficiently disaster-prone to warrant large scale international (or national) intervention to support institutional capacity building, nor is it, as yet, sufficiently impacted by slow-onset environmental change to precipitate international support for developing coherent and long term environmental policies strategies.

Regardless of the different capacities, there is a significant implementation gap in all four countries.

The protection gap in policy and implementation

The policy and implementation gap is evident in:

- failure to address cross-border environmental displacement;
- poor institutional collaboration and coordination of ministries, agencies and NGOs in developing strategy and the practical tools for carrying out these strategies;
- lack of government institutional capacity and resources – qualified staff, finance, logistics and equipment;
- over centralisation of strategy and policy making;
- insufficient engagement of civil society actors;
- inadequate technical expertise especially in the area of environmental law;
- emphasis on DRR and disaster response which is insufficiently linked to institutional and policy needs generated by the impacts of slow-onset climate change;
- assumptions that the challenges of climate change and displacement are problems for the future.

The problems created by this implementation gap are symptomatic of the more specific challenges of developing normative frameworks for protecting the rights of environmentally displaced people. These challenges are now explored in the next section.

II.4 Protecting the rights of the environmentally-displaced

Having framed discussion of protection for environmentally displaced people around several critical parameters we now focus on the substantive issue. Whilst all the countries are states parties to some if not each of the international and regional human rights conventions these international conventions are not always, or only partially, incorporated into domestic law. In practice, the general rights protection apparatus and the specific rights which displaced persons might enjoy are only weakly correlated in the four countries. The lack of more precise normative frameworks to deal, comprehensively,

with internal population displacement constitutes a major protection gap in the jurisdictions of all four countries. This raises significant doubts about their capacity and willingness to respond to the increasing propensity for people to move as a result of climate change and other environmental drivers.

II.4.1 Bangladesh

In Bangladesh, the very terms ‘displacement’ and ‘displaced people’ are yet to gain explicit recognition in the law, although the plans and policies discussed above²⁷ acknowledge the concept and contain extensive provision for pre-displacement mitigation as well as post-disaster relief and recovery measures. Moreover, to the extent that environmental displacement is acknowledged, this is more as a challenge to come, giving the impression that mitigation and adaptation policies have been sufficient, up to now, to contain the problem.

Despite using terms such as ‘environmental refugees’ or even ‘climate victims’ in official Bangladeshi documents, these are not formally defined, nor is there any indication of how such people would be identified and their needs or rights assessed. There is no legal definition of IDPs. Neither the 1998 *Guiding Principles on Internal Displacement* nor more recent norms for national guidelines on IDPs have been incorporated into domestic policies (Kälin et al. (eds.) 2010, 2008). Two exceptions exist, but neither applies to the current topic. There are those displaced by development projects, yet thousands of applicants still await compensation as much as 50 years later. Even here, only landowners are entitled to compensation: small land owners and the landless – poor and vulnerable people – are not accommodated in the process. The second exception relates to those displaced by the 1947 partition of India.²⁸

These provisions aside, the systemic reasons which explain the country’s resistance to recognising the rights of displaced people have been discussed above. Bangladesh typifies the situation of most disaster-prone countries by assuming a humanitarian default option to its fragile environmental characteristics: this option consolidates disaster assistance and relief, support for early recovery, and DRR into disaster management policies and programmes. Based on repeated disaster experiences over many years, the humanitarian safety net is built around numerous schemes addressing vulnerable and poor people in Bangladesh supported by the relief efforts of NGOs and INGOs at times of severe environmental stress. But Bangladesh has not adopted the complementary component – a formal and durable legal and normative protection structure for people before, during and after displacement.

Three examples highlight the consequences of this deficit but, at least, point towards some opportunities.

²⁷ See, for example, Bangladesh Climate Change Strategy and Adaptation Plan (BCCSAP); National Action Plan of Adaptation (NAPA) 2005.

²⁸ The exception was the definition contained in the Displaced Persons (Compensation and Rehabilitation) Act (1958) which was enacted to provide relief or compensation to the persons, or their successors, displaced from their ancestral place (now located in India) after the 1947 partition. Reenacted several times, this legislation has now been repealed.

Cyclone Aila in 2009 left at least 500,000 people temporarily landless and homeless. Much land was washed away, particularly in the coastal islands. The government, international organisations and NGOs provided food, temporary shelter and minimum health assistance. Registration and needs assessment were conducted, although somewhat haphazardly. But the overall goal was, first and foremost, to provide immediate relief. The fortunate ones reinstalled themselves on their land once the environmental stress was over. Those who permanently lost their land simply joined the broad category of poor and landless displaced. There were, and are, no longer term policies for rehabilitation or relocation and there is no machinery to define what rights the displaced might expect and how these might be protected.

Contrasting the response to a rapid-onset event, two examples illustrate the populations most at risk from the impacts of slow-onset events which climate change will increasingly precipitate – with consequential implications for rights protection. The phenomenon of people displaced by river bank erosion (perhaps a million a year (Abrar and Azad 2004)) has been increasing in the last few years. These people are part of a silent and incremental forced migration. Compensation measures exist. Just as other land is washed away, new land is formed by floods and this becomes *khas* (public) land to be theoretically distributed to the newly landless. But, most displaced persons have to manage by themselves because the land redistribution process inadequately defines their rights to compensation. Amongst many procedural limitations, the redistribution system lacks transparency and so priority is given to river bank erosion victims who were previously larger landowners. Evidence suggests that the majority of the forced migrants become progressively more marginalised and impoverished, either as landless labourers in nearby villages or by moving to towns and cities.

Increasing salination, one of the predicted slow-onset impacts of climate change, is already occurring in south-west Bangladesh and is creating a second population at high risk of displacement. The outcomes are just as pernicious as for those displaced by river bank erosion. By encouraging the expansion of industrial aquaculture (shrimp farming) at the expense of rice production (the usual occupation of poor farmers), the prevailing rural economy is destroyed and small-scale land owners and the landless are pushed to sell their assets to outside investors. The shift from labour to capital-intensive production further reduces their options and consequently precipitates migration to towns or cities. Regular demonstrations and riots in the region are clear symptoms of the growing tension brought about by declining livelihood opportunities and the lack of legal redress to protect the interests of those who are displaced. The complex interplay between economic factors and environmental change as drivers of displacement, exemplified here, will become an increasingly prevalent feature of climate change. Unless rights are safeguarded before, during and after displacement and unless rights to consultation and effective participation in decisions and processes which affect the development of these communities are enacted, similar, and increasingly frequent, displacement or early or pre-emptive migration patterns – and their political and socio-economic consequences – will follow in the future.

Like its regional neighbours, Bangladesh has not acceded to the major international conventions on refugees and stateless persons. No step towards such ratification – at

national or regional levels – is foreseeable. Although, as discussed earlier, these instruments are of limited potential for providing protection in the context of environmental displacement, Bangladesh’s reluctance to accede is symptomatic of its caution towards all dimensions of rights protection where migration is concerned.

II.4.2 Kenya

The 2007, post-election violence disclosed the same crucial gaps in Kenyan jurisdiction as exist in Bangladesh: the lack of a specific legal framework to deal with internal displacement and the protection of the rights of people who are internally displaced. The Kenyan Constitution provides some level of protection for displaced persons, as noted above. But, like Bangladesh, it has neither incorporated the 1998 *Guiding Principles on Internal Displacement* into its national legal or normative frameworks, nor adopted more recent normative national guidelines on IDPs. Moreover, Kenya has not signed the 2009 Kampala Convention on IDPs in Africa (only Uganda has done so). The *Disaster Management Act* of 2008, the 2010 *Disaster Management Plan* do not address the question of displacement, not even short-term displacement.

With only scattered policies and statements but no comprehensive framework, and lacking operational capacity as well, the government was unable to cope with the unprecedented scale and widespread distribution of displaced persons spread across the country after the post-election violence (PEV). The Waki Report²⁹ highlighted the lack of a coherent and organised response and the inability of the authorities to prevent the crisis and to protect people from the violence which forced their displacement. People fled, finding refuge in a spontaneous fashion. Personal security, access to health facilities and basic needs were provided in a sporadic and *ad hoc* manner by local and international humanitarian organisations. The government’s response rested on two Ministries: the Disaster and Emergency Response Co-ordination Department within the Ministry of State for Provincial Administration and Internal Security, and the Ministry of State for Special Programmes (MOSSP); but the government authorities were overwhelmed. The legacy of these events remains evident. A large number of people have not returned to their homes, nor have they been relocated yet. Some 10,000 households remain in temporary camps.³⁰

²⁹ The *Report of the Findings of the Commission of Inquiry into the Post-Election Violence (CIPEV) in Kenya*, better known as Waki Report, reviews the findings of the international commission created by the government of Kenya in February 2008 to investigate on 2007 post-elections violence.

³⁰ This figure is based on a report by OCHA (OCHA, IDPs fact sheet) based on MOSSP figures.

The Waki Commission drew attention to the fact that population displacement was already a widespread problem in Kenya, not only the result of the recent political crisis. Significant in the present context, it noted one of the principal issues to be ‘natural disasters such as drought in large parts of Northern Kenya that often lead to conflicts over natural resources like water leading to displacement’.³¹ Although driven by PEV, these events highlight the matter of legal protection, assistance and long-term solutions, not only for people displaced by political violence but for all IDPs, among them, people forced to move because of environmental degradation.

Of course, a protection framework to support people who are internally displaced by political violence, is not the same as dealing with disaster induced displacement, still less the rights of those displaced by the impacts of slow-onset climate change. To this extent, Kenya’s approach to protection for displaced people mirrors the humanitarian default response of Bangladesh, although in the Kenyan case this is principally explained by political fragility rather than a response to a fragile and disaster-prone environment.

Nonetheless, the outcome of the 2007 PEV has compelled the government and all political actors to confront and initiate wide-ranging reform on three interlinked matters: human rights, the legacy of the country’s internal displacement, and restructuring the institutional and operational framework for DRR, disaster management and response. On the last factor, as discussed earlier, some progress has been made. Important though restructuring the operational capacity is to securing rights for displaced people – for example enhancing physical protection, ensuring temporary shelter are important lessons from the 2007 violence – the other two factors are far more fundamental to the development of a properly functioning protection regime, but progress is less advanced. An informal policy document on IDPs, the *National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya*, supported by OCHA, UNHCR, INGOs, civil society organisations, and IDP representatives was published in 2009. This is an ambitious 50 page document and, although it is not an official document, it is worth elaborating the details of this innovative policy document because it is an example of the approach to rights protection for environmentally displaced people which might potentially be developed in other countries.

³¹ *Report of the Findings of the Commission of Inquiry into the Post-Election Violence (CIPEV) in Kenya 2008:271.*

Draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, 2009

The policy is based on the classical formulation of the 1998 *Guiding Principles on Internal Displacement* with the aim of introducing them in to domestic legislation. If adopted as policy backed by legislation, this could be a crucial tool to address displacement triggered by environmental degradation. The fact that the Ministry of Justice was one of the co-lead ministries preparing the National Policy, along with the more operational Ministry of State for Special Programmes (MOSSP), indicates the importance attached to preparing an effective framework of legal instruments and norms.

Significantly, the document acknowledges environment and climate as paramount causes of displacement, although it focuses especially on displacement induced by natural disasters rather than slow-onset displacement drivers. It would be unfair to characterise the policy as IDP prevention simply premised on a disaster risk reduction strategy, yet it, perhaps understandably, devotes most attention to displacement prevention.³²

Whilst it envisages that the state has the primary responsibility for the overall prevention of displacement, protection and assistance to IDPs, including finding long-term solutions, the draft National Policy also co-opts civil society actors working in the field of internal displacement and human rights, IDP representatives, international agencies and other organisations (for example the National Humanitarian Fund). These bodies will be co-ordinated by a Commission especially established for this purpose. The stress put on co-ordination is to be welcomed in terms of consultation, participation and the scope for embedding the policy. But this begs the key question of accountability and the extent to which the government will be willing and able to meet its obligations to protect the rights of the displaced and those who remain. In this regard, the draft National Policy advocates compliance with the fundamental rights to which the displaced are entitled, whilst also stressing the rights of other vulnerable people, including indigenous communities. Respect for property rights is also noted where policies to support the needs of displaced are adopted such as return, local integration and resettlement.

The adoption of such a wide ranging and comprehensive framework on IDPs could be a milestone in protecting the rights of environmentally displaced people, and in protecting preventative rights in Kenya. Nevertheless, swift enactment and efficient implementation are far from being guaranteed. Political resistance and the scarcity of resources and capacities could severely hinder the process.

³² Three main imperatives are outlined to prevent displacement: restricting activities liable to damage the environment and to increase disasters risk; the cardinal importance of public consciousness-raising through data collection and the need to support resilience; planning via early warning mechanisms, contingency planning and coherent disaster management policies.

Given the political complexity of rights-based issues and the endemic fragility of the Kenyan state, it is difficult to anticipate the progress of these initiatives. Indeed it appears that solutions to the displacement events of 2007 and earlier eras are being marginalised. Moreover, the reforms concentrate on addressing the displacement impacts of political violence and natural disasters. Protecting the rights of those displaced by the impact of other environmental and climate change-related phenomena is not part of this agenda at present. On the other hand, the initiatives provide a platform for developing and extending the scope of the reform process to encompass these other issues.

Domestic attention to the rights of the internally displaced, links to a new set of international instruments which have been developed at the regional level for IDPs. Both these initiatives indicate a willingness to respond to the challenge of IDPs, and the protection of their rights, within a framework which could be used to answer some of the environmental displacement issues.

Kenya has ratified the *Regional Pact on Security, Stability and Development in the Great Lakes Region* obliging it to adopt the specific provisions on IDP protection promulgated by the 2006 *Protocol on the Protection and Assistance to Internally Displaced People*. The Protocol replicates the 1998 *Guiding Principles on Internal Displacement*, requesting states to commit themselves to implement them through domestic legislation and to adopt practical assistance measures. These measures include prevention of forced displacement, protection during displacement and long-term solutions in the form of supported return, relocation or compensation. A notable element of this Protocol, given the sharply increasing number of internally displaced people in the region, is the scope of its definition of IDPs. Principle 2 outlines the different causes of displacement from a broad perspective ‘armed conflict, situations of generalised violence, violence of human rights or *natural or human-made disasters*’ (emphasis added) and ‘large scale development projects’ (Principle 6(2)(c)). Such an extensive definition offers the potential to develop a protection framework for people compelled to move within their countries because of environmental disasters. But, specific attention is given to communities whose mode of livelihood depends on the land (Principle 9). This emphasises the necessity for states to recognise the specific attachment of indigenous or pastoralist communities to their land. Again, given the regional migration of pastoralists already driven by drought and desertification, this, like the wide-ranging definition of displacement, at least offers the potential for extending a protection framework.

Another recent initiative has been led by the African Union which adopted, in 2009, the *Convention for the Protection and Assistance of Internally Displaced People in Africa* (the Kampala Convention). This replicates the Great Lakes Pact, identifying the same causes of forced displacement (with the exception of development projects) and ensuring the specific protection to people attached to land in Article 4, s.6.

Significant though these new initiatives are for advancing the rights protection of IDPs, both internally and at the regional level, Kenya (and, indeed, Ghana) has not acceded to the Kampala Convention. Similarly, the Great Lakes Regional Pact, the 1998 *Guiding Principles* and the many domestic plans and proposals post 2007 have yet to find their way into national law. In the aftermath of 2007 post-election violence, various actors from

civil society, human rights NGOs and even the Waki Commission pressed the government to promulgate an IDP law. The Kenya National Dialogue on Reconciliation, established after the 2007 crisis under the aegis of the African Union, raised this as imperative to the peaceful reconstruction and rehabilitation of the country. This too remains a vacuum in Kenya's normative frameworks.

Kenya is a party to the *Convention on the Status of Refugees*, it has promulgated its own *Refugee Act* in 2006 and it has established the Department for Refugee Affairs, an important function of which is to supervise protection measures. Somali (and Sudanese) refugees are granted *prima facie* status which, to some extent, increases the likelihood of Somalis, displaced as a result of the drought, claiming refugee status. In practice Kenya seeks to apply increasingly restrictive conditions on refugees mobility within the country. Amongst several reasons for this resistance, is the impact on Kenya's fragile environment caused by the Somali, as well as indigenous pastoralists. Increasing desertification is likely to exacerbate current tensions. These outcomes are indicative of the ways in which environmental change will put additional pressure on establishing clearer normative frameworks for protection. As discussed above, the refugee convention has limited applicability to protecting the rights of environmentally displaced people. Yet, paradoxically in these circumstances, it has become a protection tool.

Whilst not unique to Kenya, the issue of indigenous pastoralists is both complex and significant in relation to protection. The new constitution refers to these communities and seeks, in principle at least, to provide affirmative action to protect their rights. What is less clear is how these proposals and the special provisions that are envisaged in the constitution will be enacted if environmental pressures increase through drought and desertification.

II.4.3 Ghana

In Ghana, climate change impacts such as displacement by natural disasters or slow-onset events are not yet linked to issues of human rights concerns. Environmentally induced displaced persons are not catered for by existing norms or instruments. Instead, the discourse is focused on reconciling environmental pressures with socio-economic priorities in order to achieve sustainable goals of national development. Although climate change awareness is gathering momentum, it is yet to be mainstreamed into policies and programmes as a national priority. Thus, even compared with the uneven efforts of Bangladesh and Kenya, Ghana's progress in developing a specific rights protection framework for the displaced is very limited. There is weak political commitment and limited professional and financial resources.

There is little evidence that Ghana seeks to implement norms set out in the 1998 *Guiding Principles on Internal Displacement*, although, as discussed earlier, there are provisions to protect the rights of people affected by development or project induced displacement, including compensation and re-location. In the case of people displaced by natural hazards and disasters, there are also provisions under the *National Disaster Management Act, 1996* (Act 517) which define natural disasters where assistance can be invoked. In addition, the definition of a disaster provided by the *National Disaster Management Act, 1996* could, in principle, be extended to designate people displaced by slow-onset events

such as climate change as people affected by environmental disaster thus invoking provisions of the *National Disaster Management Organisation (NADMO)*. All this falls far short of a comprehensive framework.

However, displacement ‘induced’ by environmental degradation in the three northern regions of the country and the coastal belt are already symptomatic of the emerging problem of whether, and if so how, the rights of those currently affected will be protected. Whilst the government has yet to respond, some NGOs and civil society organisations are calling on state institutions to mainstream climate change issues into all their projects and activities. This requires, amongst other initiatives, the strengthening of domestic legislation and national institutions and enhancing governance structures, in particular those responsible for promoting and protecting the rights of people who will be most impacted by climate change.

In summary, there is a patchy and unsystematic approach to the protection needs of environmentally displaced people in Ghana.

II.4.4 Vietnam

Not surprisingly, Vietnam reveals a distinctive if not unique picture amongst the four country sample. As noted above, Vietnam can justifiably claim to have made the strongest advances not only in recognising the phenomena of environmental and climate change and their dramatic social, economic and physical impacts, but also in its policy and strategic response to the challenges, not least population relocation. And yet, it continues to disregard recognising and protecting the rights of those who might be displaced or resettled. Thus, although there are echoes of many of the limitations and challenges to rights protection for the environmentally displaced that have been discerned in the other three countries, the overall shape and nature of the regime is in marked contrast. There are at least four reasons for this.

First, given Vietnam’s susceptibility to natural disasters, especially typhoons and floods, it has a long and established history of disaster management. This parallels the experience of Bangladesh. But as discussed earlier, the *National Target Program to Respond to Climate Change* and the *National Strategy for Natural Disaster Prevention, Response and Mitigation*, and indeed the whole orientation of the government recognises the inevitability of climate change. These strategies provide the basis for far more effective co-ordination and active implementation of policies that address impacts including displacement.

Coupled with this vulnerability to environmental change is the dominant role which large-scale state controlled/state managed migration policy plays in the country’s economic development. Within this context, the government has pro-actively implemented government-managed policies and programmes which relocate people living in disaster-prone areas. This constitutes the most dramatic contrast with the other three countries which are characterised by reactive policies and strategies. At least 135,500

flood-affected vulnerable households will be relocated by 2015 in residential clusters and dykes³³ by means of a closely managed planning process.

Third, again like Bangladesh but for different reasons, the concept of displacement is paradoxically non-existent in current policy agendas, and the normative framework of the country. This might seem curious given the prominence of state-managed migration and relocation programmes in general, and the prevalence of relocation policies in the government plans and strategies dealing with climate change and disaster response. However, the explanation perhaps lies in the interpretation of the political vocabulary: displacement is perceived as a reactive and uncontrolled process in comparison to proactive government settlement strategies and regulated migration policies. Instead government documents speak of '*relocation, arrangement and stabilisation of life for people in disaster prone areas*' (emphasis added).³⁴ Both phrases are how the government describes the concept of displacement.

Fourth, state-driven relocation, coupled with reluctance to recognise the concept of displacement, leaves a normative vacuum for people who are, or may potentially be, displaced due to environmental conditions. There are strong echoes here of the neglect found in the other three countries. In the case of Vietnam, this situation is consistent with the stance of the government in relation to both individualised rights-based approaches and the discourse on protection. To the extent that protection exists, it is viewed very much in literal terms as short-term physical protection, excluding its other legal, social and economic dimensions. Protection policies and programmes are usually framed around 'needs' not 'rights', which are also determined by authorities, with little independent input or participation by affected communities. Civil society organisations exist but are relatively weak. These limitations jeopardise the effectiveness and sustainability of migration programmes.

Because the concept of internal displacement is not appreciated in Vietnam, and because notions of rights and protection are nascent rather than fully established, there is clearly little scope to apply the 1998 *Guiding Principles on Internal Displacement*. The state's views regarding un-managed migration is reflected in the invisibility of unregistered migrants in the state system, despite the fact that this already forms a large proportion of internal migration and will increase substantially with worsening environmental conditions. State-driven relocation programmes are the standard model.

That said, expanding the use of rights-based protection frameworks within existing and newly developed national legal and policy frameworks, as well as state-managed programmes may be possible. Closely scrutinising the strategies and plans, it is possible to find oblique clues and references that the government may be moving in this direction. Thus, under 'Responsibilities and Solutions' in the 2007 National Strategy, a proposal was made to 'formulate the Law on Natural Disaster Prevention and Response... suiting national socio-economic development.' While the new law may present an opportunity to

³³ Dykes refer to areas along rivers, canals, and ditches, and historically have been the most popular type of location for houses in the Mekong Delta.

³⁴ National Strategy for Natural Disaster Prevention, Response and Mitigation, 2007.

enhance rights-based protection offered to people who are or may be displaced due to environmental conditions, there is no sign from the government that a new law will indeed be developed and enacted, nor as yet formally discussed by the National Assembly despite the anticipated 2013 promulgation date. According to the Implementation Plan, the law would:

...be applied nationwide to enhance responsibility of all levels, governmental agencies, economic organizations, social organizations and people in natural disaster prevention, response and mitigation, damage recovery, people's life stabilization, economic activity recovery, and ecological damage mitigation (emphasis added).

The proposal to 'enhance responsibility at all levels' may allude to protection responsibilities in the context of 'people's life stabilization' (i.e. relocation of people living in disaster-affected areas).

Related activities in the Implementation Plan (2009) are:

...review, revise, and supplement other legal documents related to natural disaster risk prevention, response and management....issue new policies to support disaster prone areas...based on the needs for socio-economic development during 2009-2020.

While these activities are quite broad, acknowledgement of the need to link regulations on disaster risk management and long-term development plans is an important step forward. This link is necessary to be able to then further contemplate the importance of providing rights protection for people displaced by environmental change. However, as rights-based and protection frameworks are only nascent in Vietnamese policy making, it will take time for these concepts to become accepted and incorporated into policy and normative frameworks. Moreover, with a host of ministries and government agencies involved in the National Strategy, the problems of co-ordination will further complicate the opportunity of establishing basic rights-based machinery.

Nevertheless, there is one component of rights-based protection for households subject to relocation/displacement where practice in Vietnam is far advanced in comparison with the other three countries. For communities that are designated for compulsory government relocation or disaster mitigation programmes, the schemes provide compensation and interest free loans to the targeted populations. Depending on the location and the scheme, the loans allow beneficiaries to raise housing foundations and build houses on stilts to mitigate the impact of floods, or to purchase a housing plot and house frame in a relocation cluster. Beneficiaries in the mitigation projects have more constrained loan repayment schedules compared with current schemes for those who are relocated where, after a five year grace period, repayment is scheduled over the succeeding five years. The criteria for eligibility not only relate to designated locations for mitigation or relocation but also poverty levels. This suggests that the overall strategy is targeted as much to poverty alleviation as to the impacts of environmental change. Inevitably implementation is complex. Access and designation criteria for eligibility do not necessarily work equitably. Evidence suggests that these projects may be pushing poor households into poverty – replicating the experience of development induced relocation schemes elsewhere in the world (Dun 2009). Similarly, loans are sometimes used for paying off debts, not housing construction and repayment rates are low.

Important as these limitations are, the key point here is that although planned relocation of households vulnerable to environmental change features in the policy apparatus of the other three countries, only Vietnam has developed a systematic approach to an important set of priorities – compensation and relocation finance.

II.4.5 Conclusions

The concept of environmentally induced displacement is a live political issue in Bangladesh and in Kenya, less so in Ghana. In Vietnam, despite possessing the best organised response of the four case study countries to the problems of environmentally induced displacement, the phenomenon has only a limited presence in political discourse. If it is hard to discern clear and comprehensive policies concerning IDPs and environmentally displaced people, let alone recognition that they might expect to enjoy specific rights which the state might protect, their plight is at least widely acknowledged in policy documents in all the countries except Vietnam. This can be considered as a step towards recognition. Nevertheless the governments in all four countries noticeably resist giving either a precise definition or a legal status to environmentally induced displaced persons. Official recognition would oblige the governments to establish specific policies and legal dispositions to handle the problem which is a politically and financially risky option for any of the governments in both the short and long run.

Normative protection for environmentally displaced people – conclusions

- To the extent that the rights of environmentally displaced people are recognised, they are focused on rapid-onset disasters and humanitarian assistance during the displacement phase. Protection for people at all three stages identified in the *Guiding Principles* – before, during and after displacement including resettlement – and in relation to slow-onset environmental displacement, are significant ‘protection gaps’.
- Increasing internal political tensions created by environmental displacement reinforce the need for human rights protection and transparent policies to respond to the concerns of displaced persons.
- There is a lack of clearly articulated and agreed national policies for IDPs including environmental displacement. Without this platform, national governments are unable to develop effective protection.
- Civil society actors working in the field of internal displacement and human rights have an important role to play in empowering the communities they represent, in raising awareness and in contributing to the development of national policies.
- Mixed migration flows and cross-border displacement driven by environmental change are intensifying environmental pressures and are an increasing source of tension between governments, host communities, migrants and displaced persons. Regional agreements and protocols as well as better protection policies could help to resolve these issues.
- State-managed relocation policies to reduce vulnerability lack effective provision and protection of the rights of relocated communities. They should have a role in consultation and participation in strategy formulation.
- The rights of communities and households relocated after environmental displacement are poorly articulated. Relocation tools – including compensation and restitution – are inadequate, rarely transparent and open to abuse.
- Clearer government recognition of environmental and climate change, and their impacts are an essential precursor to developing a regime which effectively protects the rights of environmentally displaced people.

III. Conclusions

III.1 Overview

In all four countries of the study, the evidence suggests that environmental displacement is an increasing phenomenon and that it is becoming a critical issue in national discourse and policy making. These countries typify the experience of many other countries especially in the Global South.

It is against this background that worldwide, governments, intergovernmental bodies and humanitarian actors have expressed growing concern that environmental change, and in particular the impacts on people who are displaced by these changes, effects the enjoyment of a range of human rights. There is further concern that the rights accorded to other categories of displaced persons are insufficiently articulated for this emerging category resulting in a 'protection gap'. In principle, a human rights approach could offer significant possibilities for the development of proactive principles and guidelines to protect environmentally displaced persons in terms of rights to freedom of movement, life, development, property, health, food and water as well as other economic, social, cultural, civil and political rights. The challenge has been to identify both the conceptual and operational apparatus to respond to these demands.

Since the majority of those who are, or predicted to be, displaced by environmental change remain in their country of origin, and given the unlikely prospect of the international community agreeing on a new set of norms or instruments, one answer to this challenge has been to look to the 1998 *Guiding Principles on Internal Displacement* and the supporting operational framework of protection which has been developed and consolidated over the last decade or so. However, in their current form, the *Guiding Principles* do not explicitly address environmental displacement. The statelessness conventions and to a very limited extent the 1951 *Geneva Convention relating to the Status of Refugees* and the 1967 *Protocol*, buttressed by the general body of international human rights law, may also have a role to play, especially to the extent that they may form the basis for complementary and temporary protection claims.

This exploratory study has provided a systematic empirical analysis of the protection challenges faced by environmentally displaced people in the four countries. It confirms the lack of rights-based protection norms and instruments in the four countries of the study, but points to the ways in these norms might be strengthened.

These conclusions now summarise the study's overall findings, the challenges, and the possible ways forward for developing an internationally-based normative framework of rights protection for environmentally displaced people. There are, however, three important caveats.

First, the study deals with a very limited sample of countries that are experiencing population displacement attributable to environmental change. Caution is needed in extending the findings to other countries experiencing significant levels of environmental displacement.

Second, the analysis of the protection frameworks only assesses the context, presence and scope of these frameworks and makes some assessment of their operational capacity. Importantly, it does not gauge the effectiveness of these frameworks from the perspective of displaced people themselves. This will be the aim of the next stage of the research.

Third, the case studies confirm the more general conclusions of current research that although environmental change may precipitate displacement, it is rarely the unique driver. In some circumstances displacement can be considered as forced. Research evidence privileges multi-causal explanations of migration and displacement over the mono-causal impact of changing environmental conditions. For these reasons, identifying a specific category of ‘environmental migrant’ remains a major challenge.

III.2 Principal conclusions

III.2.1 Environmental displacement

Data on population mobility are limited and imprecise; but in general they confirm that all four countries are experiencing significant levels of population movement and that environmental factors are a contributory factor. Displacement – both in absolute numbers and proportionately – is most evident in Bangladesh, Kenya and Vietnam. Alongside the continuing prevalence of temporary displacement as a result of environmental factors such as floods and cyclones, the propensity for permanent displacement appears to be increasing.

III.2.2 The lack of adequate normative frameworks

An understandable preoccupation with the short-term impacts of rapid-onset events dominates government and civil society actors in the case study countries. As a result, the study reveals the lack of comprehensive normative frameworks to protect the rights of internally displaced people. The needs of environmentally displaced people in particular, constitute a significant protection gap in all four countries. A protection gap is evident in the lack of political will to provide protection, the absence of normative apparatus, weak implementation capacity and limited public resources dedicated to responding to environmental change. In contrast to the broadly optimistic stance adopted in the academic literature, the real world challenges are more profound than anticipated. With the increasing propensity for people to migrate, in part as a result of, or in anticipation of, environmental change, this evidence raises concern about the capacity of the four countries – and many similar countries – to develop policies which respond effectively to these changing processes and patterns of migration and displacement, in particular, to develop consider how the rights of these persons might best be protected.

III.2.3 Structural limitations

The protection gap is not only normative, but also one of policy implementation. Underpinning the challenge in developing more effective protection for environmentally displaced peoples are structural constraints – historical experiences and contemporary contextual factors – which mediate the way in which displacement and human rights discourse and policy are framed and effective implementation is inhibited. Notably in Bangladesh, Vietnam and Kenya, population movement is a highly sensitive issue which is marginalised in political discourse. Policies to tackle internal migration and displacement are poorly developed, largely pragmatic and lack transparency. Moreover,

state fragility impedes the political commitment to develop active human rights regimes and so human rights protection frameworks are weak.

III.2.4 The potential roles of the 1998 *Guiding Principles on Internal Displacement*, and Complementary and Temporary Protection measures

The main conclusion from the empirical evidence is that adapting existing norms is arguably the only viable way for developing some form of rights-based protection for people displaced by environmental and climate change. The 1998 *Guiding Principles on Internal Displacement*, together with the more detailed norms and operational guidance based on these Principles (see e.g. Brookings Institution-Bern University Project 2008), buttressed by complementary and temporary protection measures – possibly negotiated at regional level – for those who cross international borders could provide a basic, albeit, suboptimal framework. The study has illustrated the relevance of these avenues for legal protection and their operational potential to deal with the emerging patterns and processes of environmental displacement in the case study countries. The *Guiding Principles* do exist in embryonic form in Bangladesh, Kenya and Ghana and provide a foundation for future expansion and consolidation. Moreover, given the likelihood that internal displacement will predominate, national level governments must be the primary actors for developing and consolidating a sound protection apparatus. However, as the evidence shows, the *Guiding Principles* are very weakly embedded in all four countries and compliance is extremely poor. Limited political will or operational capacity to develop rights-based protection – even for those who are and will be displaced internally – will ensure that anything more than a ‘soft law’ framework is extremely unlikely to be developed. This conclusion mirrors the emerging consensus amongst intergovernmental actors who, nonetheless, have a key role to play in supporting the development of normative frameworks.

III.2.5 Three specific protection gaps

An understandable preoccupation with the short-term impacts of rapid onset events dominates government and civil society actors in the case study countries. As a result, three specific protection gaps are evident.

First and most obviously, policy making responses lag far behind recognition that displacement related to slow-onset environmental change, such as rising sea levels and desertification, is increasing. Incorporating slow-onset conditions into policy frameworks dominated by disaster response has substantial implications for the development of rights-based protection.

Second, the *Guiding Principles* advocate protection at three stages – before, during and after displacement including resettlement. To the limited extent that rights are recognised and protected, current practice in the four countries tends to focus on the middle phase – during displacement, in other words the emergency phase. A protection gap is most marked in what governments do (or fail to do), in terms of specifying and protecting rights before displacement (i.e. rights related to mitigation, adaptation and resilience strategies) and after displacement (i.e. rights related to return and, more especially, related to resettlement).

Third, protection for people who are displaced by environmental change across international borders remains a significant gap in terms of both temporary protection measures and the needs of people who are permanently displaced across borders by environmental factors: this latter case is particularly intractable.

III.2.6 Disconnection between intergovernmental actors and national governments

The study reveals a clear and problematic disconnect between activity at the intergovernmental and national levels. At the intergovernmental level, as Section I outlined, a number of agencies have been actively engaged in addressing the issues of environmental displacement and the policy and normative gaps in protection. But little if any of the activity that is happening at the intergovernmental level connects with or supports national governments. As the study shows, at this level there is little progress and less willingness to engage the issues of rights protection. There is a significant challenge in creating synergy between these two levels.

III.3 Ways forward

The challenge of developing protection norms and legal instruments for people displaced by environmental change requires action at both the national and international level. The role of national governments is central to this task since they are the principal guardians of human rights. International actors and intergovernmental agencies can play a supporting role through advocacy, developing the knowledge base and strengthening the capacity of governments and civil society organisations.

III.3.1 National governments

At the national level, developing and enhancing protection norms and legal instruments for environmentally displaced people will be mediated by many country-specific structural and operational factors including:

- government resources and capacity;
- the current scope and status of the protection apparatus;
- the extent to which policy making engages issues of environmental migration and displacement;
- the role played by civil society and how it is engaged by government;
- the alignment of political will with human rights concerns.

With these constraints in mind a number of recommendations emerge from the study.

A core recommendation is that national governments should give greater priority to developing policies and norms for protecting IDPs, ensuring that the needs of people displaced by slow-onset environmental change are embedded in these responses. Where appropriate these initiatives should be backed by legislation. The 1998 *Guiding Principles on Internal Displacement* provide the foundation for developing normative frameworks to fill this protection gap, although there is little evidence that these Principles currently inform policy responses in the four countries.

In developing normative frameworks, particular attention is needed to ensure that the apparatus fully encompasses all three stages of displacement identified in the *Guiding*

Principles – before, during, and after displacement including resettlement. Property restitution and compensation demand special attention.

National governments can strengthen their policy development in a number of ways. For example, protection of environmentally displaced people should be mainstreamed into government plans, strategies and the roles of agencies dealing with environmental change, climate change and migration. Enhancing co-ordination and collaboration between government ministries and agencies is also essential to ensure that rights based policies are developed and operationalised more effectively. Developing professional expertise – legal and operational – in human rights protection and environmental law is also essential if national government are to make progress.

The engagement and empowerment of civil society actors to provide rights-based awareness and advocacy on behalf of communities vulnerable to environmental displacement should be a priority for national governments. At the same time, national governments should explore ways of strengthening the independent monitoring and reporting of its compliance with human rights protection which would also include the rights of environmentally displaced people. An independent national human rights institution could be one model.

Given the potential of environmental and climate change to precipitate international displacement, there is a pressing need for national governments to develop regional agreements for managing cross border movement including protection for those who will be both temporarily or permanently displaced. Complementary and temporary measures are needed to strengthen protection norms. Regional protocols and the ‘Security in Mobility’ programme (East Africa/Horn of Africa) are potential models for strengthening such a response. In addition, national governments should be more proactive in implementing extant regional and international instruments which provide for normative protection for displaced people, for example the *Regional Pact on Security Stability and Development in the Great Lakes Region* and the *2009 Convention for the Protection and Assistance of Internally Displaced People in Africa*.

III.3.2 Intergovernmental level

The main focus of the study has been to provide a national level analysis. However, as the study has demonstrated, national governments of the countries under study have neither sufficient resources nor the capacity to enhance protection for environmentally displaced people. Intergovernmental agencies and humanitarian actors have a key role to play in supporting and encouraging national governments by: developing the knowledge base on environmental displacement and normative protection; by ensuring that international policies and frameworks provide an effective backcloth for national action; and by facilitating international and regional agreements.

International actors are well placed to broaden and deepen the knowledge base about environmental displacement and protection and to transfer this knowledge and expertise to national governments by, for example:

- conducting and transferring the findings of comparative studies of different approaches and tools, operational challenges and capacities, standard setting and lessons learned;
- undertaking studies to specify in more detail the rights which the environmentally displaced might expect, and the extent to which adherence to rights and rights protection might be monitored;
- elaborating in more detail the ways in which the norms might apply to people displaced by slow-onset environmental change as well as disaster situations; and/or
- ensuring that the protection apparatus fully encompasses all three stages of displacement identified in the *Guiding Principles* – before, during, and after displacement including resettlement.

Intergovernmental and international organisations – UNHCR, OHCHR, IOM, OCHA, IASC/Protection Cluster, ICRC, and IDMC – should encourage and facilitate national governments to adopt policies and norms for protecting and assisting IDPs, ensuring that environmental displacement is embedded in these policies. Kenya provides a model of how intergovernmental agencies can interact with a national government to develop such a response.

The *Guiding Principles* and related normative frameworks provide a way forward for addressing the needs of environmentally displaced people within their own countries. However, as we have seen, the national governments of the countries studied have been, as yet, unwilling or unable to promote these Principles within their own jurisdictions. By exploring ways of promoting national level commitment to the Principles and by strengthening the international machinery for ensuring national level accountability, compliance, monitoring and reporting, intergovernmental and international agencies – UNHCR, UNHCHR, ICRC – could play a key role in facilitating the adoption and implementation of the *Guiding Principles*.

Intergovernmental agencies could also work with regional bodies and sub-regional entities – particularly the AU and ECOWAS – to explore ways of developing appropriate guidelines and policies for temporary and complementary protection measures. This would help to address the significant protection gap in international environmental displacement.

A parallel activity by intergovernmental organisations and humanitarian actors should be to encourage and support civil society actors in affected countries to develop rights based awareness and advocacy on behalf of communities vulnerable to environmental displacement.

International actors, especially development agencies like UNDP can also help to integrate climate change responses and disaster risk reduction policies (including displacement and relocation) into national development plans.

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Refugee Studies Centre
Oxford Department of International Development
University of Oxford

3 Mansfield Road, Oxford OX1 3TB, UK

Tel: +44 (0)1865 281720
Fax: +44 (0)1865 281730
Email: rsc@qeh.ox.ac.uk
www.rsc.ox.ac.uk