

environment, its natural resources or ancestral lands are deliberately destroyed to persecute particular populations.

Paragraph 11 also claims:

People may also have a valid claim for refugee status where the adverse effects of climate change or disasters interact with conflict and violence. These adverse effects may exacerbate violence, or vice versa, and render the State incapable of protecting the victims of such violence, resulting in a well-founded fear of being persecuted for reasons of one or more Convention grounds.

These are things to keep in mind that try to find room for maneuvering within the Convention. It demonstrates that UNHCR is trying in earnest to engage on this issue. In the past, it has been hesitant to engage on the issue of climate change, so this constitutes some progress.

The legal considerations paper also notes that regional refugee definitions are important. Both the 1969 OAU Convention and 1984 Cartagena Declaration provide a more generous approach to defining refugee protection to, *inter alia*, “every person who, owing to . . . events seriously disturbing public order.” There are many refugee scholars who have made reference to these regional frameworks to contextualize or add a dimension under more expansive definition.

These are small gains that may come to fruition in a variety of ways—through the courts potentially, but also through administrative application. It remains to be seen if we will see some movement on these fronts.

REMARKS BY CECILIA JIMENEZ-DAMARY*

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As the panel title provides, climate change is the defining crisis of our times, and this is manifested by the intense effects of climate change on mobility within countries themselves. The numbers are increasing yearly. In 2020, the available data from the Internal Displacement Monitoring Center (IDMC)¹ provide that there were 9.8 new displacements due to armed conflict and violence, compared to 30.7 new displacements due to “disasters,” a number of which may be linked to climate change.

In this short presentation, I would like to articulate international human rights law in discussion of human mobility in the context of climate change, with the United States as an example. While we all realize the dramatic effects of sudden-onset hazards on populations—such as those of Hurricane Ida in Louisiana last August 2021, not many of us are fully aware of the tremendous effects of slow-onset hazards—such as on the coastal regions of Alaska. Disaster risk reduction and mitigation efforts are usually focused on sudden onset hazards and these efforts are now only starting to include slow onset hazards. I therefore would like to focus on the latter, as this is not much discussed in human rights terms as related to internally displaced persons.

Indeed, human mobility in the context of the slow-onset adverse effects of climate change can take many forms, including displacement, migration, and planned relocation, and this may be internal or cross-border. In most cases, movement is not entirely voluntary or forced, but rather falls somewhere on a continuum between the two, with different degrees of voluntariness and constraint. However, where such voluntariness is absent, such mobility would fall squarely in the notion of forced displacement.

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¹ Internal Displacement Monitoring Center 2021 Grid. These have now been replaced by higher numbers for 2021.

Where internal displacement is concerned, my report to the UN General Assembly² in 2020 focuses on internal displacement in the context of the slow-onset adverse effects of climate change, where I emphasized the necessity of both adopting a human rights-based approach and mainstreaming this approach in discussions and all responses. In fact, there is now extensive evidence of the widespread impacts of climate change on the enjoyment of human rights, such as the rights to life, health, housing, food, water, and education, cultural rights, and collective rights, including the rights of Indigenous peoples and the right to self-determination. In short, those impacts contribute to displacement, and displacement further impacts the enjoyment of human rights. Under the 1998 Guiding Principles on Internal Displacement, the human rights guarantees of internally displaced persons are re-stated comprehensively, from the contexts of prevention, protection, and durable solutions.

Just prior to that report, in September 2020, as the Special Rapporteur on the Human Rights of Internally Displaced Persons, I issued, joined by eight other special rapporteurs,³ a communication addressed to the United States concerning information we received alleging the failure of the United States to protect Indigenous tribes who live along the coastal regions of Louisiana and Alaska from the impacts of natural hazards and the adverse effects of climate change, affecting the rights to life, health, food, water, housing, a safe, clean, healthy, and sustainable environment, self-determination, cultural and religious rights, and leading to the displacement of Indigenous peoples from their traditional lands.

Let me read to you the main information we articulated to the U.S. government:

Coastal indigenous tribes in the states of Louisiana and Alaska have been severely affected by the slow-onset adverse effects of climate change such as sea level rise and saltwater intrusion and resulting coastal land erosion, and extreme weather events such as hurricanes, storms and flooding. The environmental impact of the Mississippi River levee system and the destruction of wetlands caused by oil and gas exploration and drilling have also contributed to land erosion and subsidence in the region. Such events have endangered the subsistence and cultural traditions of these indigenous peoples, affecting their health, life and livelihoods, and have led to the loss of sacred ancestral homelands and the destruction of sacred burial sites. As a result, these lands are becoming uninhabitable and many indigenous families have been forcibly displaced from their ancestral lands. Those who remain are at risk of disasters and displacement. The Government of the United States of America has allegedly failed to support the affected indigenous tribes to identify and implement community-led adaptation strategies by failing to allocate resources, provide technical assistance, engage and consult with the affected indigenous tribes, thus placing them at existential risk. The Government has also allegedly failed to protect the tribes' historic and cultural sites through the existing historic preservation mechanisms, such as listing them on the National Register Historic Places, despite the clear threats on indigenous historical and sacred sites.

The communications further requested further information from the United States, and, meanwhile, to implement interim measures to prevent the alleged violations of human rights that we raised. Unfortunately, we did not receive a response from the then U.S. government. In July 2021, I sent a letter to the U.S. government requesting to visit the United States to allow my mandate to examine, *in situ*, issues related to disaster displacement in the country. The State

² Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Cecilia Jimenez-Damary, UN Doc. A/75/207 (July 21, 2020), at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/189/85/PDF/N2018985.pdf?OpenElement>.

³ Special rapporteurs on cultural rights; human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; right to food; adequate housing; Indigenous peoples; extreme poverty and human rights; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the human rights to safe drinking water and sanitation.

Department has informed me that they cannot accommodate my request this year because of a backlog of visit requests from special rapporteurs. Given the continuing dire situation of the effects of climate change in the United States, especially insofar as Indigenous peoples are concerned, this visit has to happen sooner than later. In fact, the urgency of climate change and migration in the United States is actually shored up by the findings of the Biden report.

As slow-onset adverse effects of climate change can turn into a disaster displacement, which therefore pose direct risks to human rights, it is important to identify three essential areas for consideration:

The first is vulnerability of persons impacted in terms of human rights.

As climate change affects different areas in varied ways, human mobility patterns, including internal displacement, and impacts on human rights, are context specific where the level of vulnerability of individuals and households plays an important role in their mobility. For example, communities living in certain areas, such as low-lying coastal areas, small island states and Arctic ecosystems, are more exposed to slow-onset events and therefore at higher risk of disaster displacement. People depending on local natural resources for their livelihoods are affected more directly and at higher risk of displacement. This would include Indigenous peoples, pastoralists, fisherfolk, and farmers. Within these particular vulnerable groups are specific persons who may be more vulnerable to risks to their human rights, such as children, the elderly and people with disabilities.

The second point is the political agency of these groups.

At the same time, a human rights-based approach necessarily integrates the notion that even though specific groups are particularly vulnerable to the slow-onset adverse effects of climate change and related displacement, they also have great agency. In many contexts they display remarkable strength, resourcefulness and resilience in the face of disasters and displacement, despite the challenges, barriers, and discrimination that they face. They also have traditional knowledge and valuable perspectives that can contribute to the design of programmatic responses, disaster risk reduction strategies and durable solutions. It is therefore essential that participation of internally displaced persons be placed at the core of the responses.

The third point is state responsibility, as the state remains primarily in charge of guaranteeing human rights obligations vis-à-vis its populations, including the most vulnerable peoples among internally displaced persons. Side by side to this, however, is the essentiality of solidarity from other members of the international community, including other states. And this should not be merely in the form of humanitarian assistance complementary to the efforts of the state but likewise in their own implementation of its own protective and due diligence standards under international conventions like the Paris Agreement as part of international law.

In the context of the above, I would conclude that international law can only be relevant to IDPs and other affected populations on the ground through implementation of the states' obligations—by the state in which the IDPs are located, but also by other states that are obligated through under international agreements. I refer particularly to those under the Paris Agreement/Sendai Framework, as an example, whose elements on loss and damages or on financing for projects in countries who suffer from the effects of climate change, including internal displacement, we have not yet used to the fullest.

My point here is to use a plethora of international legal obligations that can bring protection to IDPs in situations brought about by conditions wrought by climate change. These have to be further explored and documentation produced to provide a basis for prevention, disaster risk reduction and mitigation, protection and solutions for IDPs to obtain remedies. Moreover, aside from climate change agreements, there are potential uses of international obligations to preservation of cultural artifacts, for example. Another potential is the use of the upcoming EU Directive on Due Diligence, so that companies who may be traced to have responsibility or contributed to the cause of the

effects of climate change can be held liable. These are mostly all in the potential realm of the combined use of domestic law with international law, including through climate change justice litigation.

HUMAN MOBILITY AND SLOW ONSET CLIMATE CHANGE

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*By Jaya Ramji-Nogales**

When it comes to human mobility and slow onset climate change, international law has many gaps.¹ These lacunae are not surprising given the limitations of international law in governing migration more generally.² These weaknesses are exacerbated around climate change and human mobility; there is not much binding law on point, and that law is narrow in scope, focused on causes, and has a crisis orientation. This dearth of relevant law is particularly problematic when it comes to slow onset climate events—those that build up progressively over time rather than occurring in a single dramatic act. Contemporary international law struggles to recognize and remedy slow onset climate migration. This talk will engage with the question of how international law and institutions should address slow onset climate change.

Slow onset climate change is a form of slow violence, which is a term coined by Rob Nixon to describe harms caused by structural inequality.³ The key point that I draw from his work is that slow violence is often rendered invisible. This talk seeks to uncover the role that international law plays rendering invisible the harms that cause migrants to flee slow onset climate change. International law determines which harms will be validated and which will be overlooked. Often, harms perpetrated against the most vulnerable are rendered invisible.

Cross-border migration in the face of slow onset climate change simply does not fit into international law's categories. The reasons for movement are diffuse; this broad range of motivations creates complex causal chain. Drought and increased temperatures are one reason for migration. These factors interact with inadequate government planning and support, the vagaries of global markets, and other causes. At its heart, the key reason for slow onset climate migration is vulnerability. Many factors contribute to vulnerability and diminish resilience.

On a spectrum between voluntary and forced, slow onset climate migration can be hard to categorize. The climate change event is often not immediate but rather eventual. There is no dramatic large-scale flight. Decisions to migrate are temporary, seasonal, and individual.⁴ In the face of slow onset climate change, most people first move within their nation's borders. If they are unable to secure a sustainable existence, the next step is to move regionally. International migration is generally a last resort for those who cannot find solutions closer to home. As a result, an effective solution must be informed by a human mobility approach. Most slow onset climate migrants do not want to move; they would remain in their home country if their livelihood could be sustainable. And of course, only the strongest can undertake the dangerous migration path; the most vulnerable remain in place.⁵

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¹ Jaya Ramji-Nogales, *Slow-Onset Climate Justice and Human Mobility*, 93 *TEMPLE L. REV.* 671 (2021).

² Jaya Ramji-Nogales, *Migration Emergencies*, 68 *HASTINGS L.J.* 609 (2017).

³ ROB NIXON, *SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR* 2 (2011).

⁴ SANJULA WEERASINGHE, *INST. FOR THE STUDY OF INT'L MIGRATION, WHAT WE KNOW ABOUT CLIMATE CHANGE AND MIGRATION* 3 (2021).

⁵ Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Cecilia Jimenez-Damary, paras. 14–15, UN Doc. A/75/207 (July 21, 2020), at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/189/85/PDF/N2018985.pdf?OpenElement>.