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**Religion and Environmentally-Induced Displacement in Latin America and the Caribbean**

# Legal Protections for Environmental Migrants: Expanding Possibilities and Redefining Success

*by Jayesh Rathod*

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## Table of Contents

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## Introduction

Environmentally-induced migration has emerged as a significant concern for national governments and for the international system. Over the last few decades, scholars and policy makers have detailed the links between different environmental phenomena and displacement, noting the complex web of factors that can culminate in either internal or cross-border migration. This working paper describes those factors, while acknowledging the need for additional data to better understand the problem and to more accurately predict its future scale. While the precise contours of "environmental migration" as a category remain contested, there is growing consensus around the need for a coordinated response, and for the establishment of normative frameworks that assign rights and responsibilities.

This working paper describes efforts undertaken at the international and domestic levels to enact legal protections for environmental migrants, with attention to Latin America, and details the ongoing difficulty of crafting a comprehensive international instrument that addresses this phenomenon. Following that description, the working paper describes some factors that have led to this impasse, including: the lack of an easily adaptable, existing framework; the inherent complexity and variability of environmental migration; the trend towards generally restrictive migration policies; and the lack of a clear institutional leader at the international level. In light of these challenges, the working paper suggests that the normative aspirations for environmental migrants need not be focused exclusively on the creation of a new international instrument but should be spread across a broader range of response strategies. In this regard, it recommends five analytical shifts which recalibrate our understanding of normative success as it relates to environmental migrants. These shifts, as described more fully below, embrace principles of responsiveness, flexibility, creativity, and ongoing information-gathering. They also call for interventions at the local, national, regional, and international levels. Above all, any successful normative framework must involve meaningful, informed participation by affected migrants, and must reflect their goals and agentic capacity in a way that transcends reductionist victimhood.

The normative aspirations for environmental migrants need not be focused exclusively on the creation of a new international instrument but should be spread across a broader range of response strategies.

## I. Environmental Migration: Understanding the Phenomenon and Its Impact

### *The Scope of the Problem*

For several decades, scholars and policymakers have sought to distill the complex relationship between environmental phenomena and migration. This process has generated an exceptionally broad and contested category of "environmental migration," which encompasses various drivers of human mobility. While the academic terrain relating to the topic has been fertile, yielding

productive scholarly discussions, fissures persist regarding the class of individuals who are most worthy of international protection. Accordingly, normative consensus regarding individual rights and state responsibilities has been elusive.

In the public consciousness, environmental migration is often associated with rapid-onset environmental "emergencies" or "disasters," which trigger both internal displacement and sudden cross-border migration flows. Included under this rubric are earthquakes, volcanic eruptions, hurricanes, and wildfires. The migration that results from these natural disasters, sometimes termed "distress migration," frequently involves abandoning one's residence on short notice (McLeman & Brown 2011: 171). Latin America and the Caribbean have experienced numerous episodes of distress migration in recent memory: prominent examples include the waves of Haitians who fled the island after the debilitating 2010 earthquake, Puerto Ricans forced to relocate after the 2017 hurricane season, as well as Central Americans from the Northern Triangle displaced by hurricanes and floods over the last few decades.

The broad umbrella of environmental migration also encompasses slow-onset phenomena, often linked to climate change and the warming of the earth's atmosphere. This includes droughts, which can worsen over a period of years to render land unfarmable or unlivable, sometimes leading to processes of desertification; as well as rising sea levels that contribute to flooding and shoreline erosion. As with disaster-related migration, the mobility induced can range from temporary displacement to a longer-term cross-border move. Environmental migration may have causes that are natural, anthropogenic, or mixed. Large-scale development projects, such as the construction of dams for hydroelectric power, may contribute to environmental degradation, rendering territories unlivable and requiring thousands of people to move (Pires Ramos 2013: 742).

Migration spurred by disasters and slow-onset phenomena are not mutually exclusive, and can co-occur, particularly when a natural disaster is layered upon gradually worsening conditions, resulting in landslides, flooding, or other occurrences that require residents to relocate. Additionally, biological conditions, such as blights that afflict crops, can be exacerbated by climate change or environmental disasters to propel migration.

In light of this complexity, the United Nations has endeavored to create a typology for environmental migration, identifying five scenarios it understands as requiring distinct approaches. This exercise in categorization, led by Walter Kalin and the Inter-Agency Standing Committee Working Group on Migration/Displacement and Climate Change, includes the following:

Extreme weather events and flooding are among the many environmental forces that contribute to migration.
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1. Hydro-meteorological disasters (e.g., flooding, hurricanes) leading to displacement
2. Zones designated by government authorities for planned evacuation, given risk levels
3. Environmental degradation and slow onset disasters
4. Sea-level rise and small island states
5. Armed conflicts provoked by a reduction in natural resources (Egea Jimenez & Soledad Suescún 2011: 207; McAdam 2009: 9-10).

Although subsequent initiatives have built upon the efforts of this working group, the categories remain useful, as they underscore the varied (and often overlapping) causes of environmental migration, including rapid- and slow-onset phenomena, as well as intersections with other social forces. Notably, the typology contemplates both reactive and proactive approaches by government authorities. Other migration scholars have offered similar categorizations of the drivers of environmental migration.[1]

[1] *See, e.g.*, Perry (2011: 2), listing the push factors as "territorial loss due to sea-level rise, decreased ability of land to sustain life through drought and desertification, displacement due to natural disasters, and conflict over scarce resources."; Martin (2010: 398), naming the categories as "Intensification of natural disasters, such as hurricanes and cyclones that destroy housing and livelihoods and require people to relocate for shorter or longer periods; Increased warming and drought that affects agricul-

Latin America and the Caribbean provides an optimal setting for exploring the intersection between migration and environmental change, as the region is particularly vulnerable to certain climate-related phenomena. Droughts have particularly afflicted the region's "Dry Corridor," which includes much of Central America, and have contributed to an epidemic of malnutrition in some countries. The same region often experiences extreme hydrometeorological events, in the form of flash floods that trigger landslides and destroy arable land, and devastating hurricanes. Across parts of Central and South America, deforestation has exacerbated both droughts and flooding. And for many Caribbean islands, sea level rise is a grave concern (Wennersten & Robbins 2017: 105-06).

Latin America and the Caribbean provides an optimal setting for exploring the intersection between migration and environmental change, as the region is particularly vulnerable to certain climate-related phenomena.

### *Settling on Terminology*

Given the diffuse factors underlying environmental migration, and its inherently varied nature, stakeholders have had difficulty in building consensus around a singular term to describe persons affected by these forces.[2] Various monikers have emerged, including "environmental migrant," "environmental emergency migrant," "environmentally motivated migrant," "environmentally forced migrant," "environmentally induced migrant," "environmentally displaced migrant," "climate migrant," "eco migrant," "climate refugee" and "environmental refugee." (Warner et al. 2010: 697; Claro 2020: 222). This proliferation of terms reflects not only technical disagreements among experts, but also divergent views about who should ultimately receive legal protection – views that are shaped by complex geopolitical considerations and the politics accompanying the development of international law. It is unsurprising, therefore, that "definitions, typologies and estimates of environmental migrants remain highly contested" (Gemenne 2012: 238). The following definition of "environmental migrant," offered by the International Organization for Migration (IOM), has gained some traction in scholarly and advocacy communities:

> Environmental migrants are persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect 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.

(IOM 2011: 33). Claro offers a comparable definition linked to the term "environmental refugee," which emphasizes the underlying "situations of vulnerability" in which many of these migrants find themselves, the presence of both natural and anthropogenic forces, and the fact that the migrant flows fall outside the scope of existing international protections (Claro 2016: 216).

tural production, reducing people's livelihoods and access to clean water; Rising sea levels that render coastal areas uninhabitable; and Competition over natural resources that may lead to conflict, which in turn precipitates displacement."

[2] This report uses the term "environmental migrant," given the level of acceptance it has achieved, but acknowledges that the question of terminology remains highly contested.

While the IOM definition captures much of the variability within the category, some have echoed the approach of Kalin's UN working group, and have argued for more refined terminology, tailored to the specific subtypes of environmental migration. Pires Ramos (2013: 746) suggests that settling on a singular term may elide the complexity of the phenomenon and will ultimately hinder the development of responses that meet community and individual needs. She suggests the development of a taxonomy that not only includes specific terms and definitions, but also delineates the nature of the phenomenon (including whether it is natural or anthropogenic), its relationship to economic, social, and political factors, as well as other forms of vulnerability, and the corresponding needs of those affected (2013: 747).

The varied phenomena and contexts within environmental migration, along with its uncertain scope, have led to a patchwork of policy responses, which necessarily vary depending on the cause, urgency, and impact of the environmental driver or drivers. Global attention has also shifted towards developing institutionalized norms that offer protection to affected individuals. Yet, as explored more fully below, crafting a legal regime – with corresponding rights and obligations of both individuals and states – that acknowledges and accounts for the inherent complexity of environmental migration, is necessarily difficult.

The varied phenomena and contexts within environmental migration, along with its uncertain scope, have led to a patchwork of policy responses.

### *Uncertain Scale and Insufficient Data*

In the same way that consensus around terminology is elusive, commentators vehemently disagree about the scale of current and future flows of environmental migrants. When the topic pierced the public consciousness in the 1990s, some forewarned of massive waves of migrants. For example, the organization Christian Aid predicted that environmental factors could lead to the displacement of up to one billion people by 2050 (Christian Aid 2007: 5). This "maximalist" or "alarmist" view, as the literature now describes it, was countered by a "minimalist" or "skeptical" view (Bettini 2014: 180; Martin 2010: 397). Minimalists have emphasized the need for more extensive empirical research to more fully understand the environmental drivers of migration and the decisions that affected households make in the face of environmental forces (McLeman & Brown 2011: 169). Somewhere along the continuum of these opposing views, an often-cited figure was offered by Norman Myers, who projected that 200 million people would be displaced by 2050 (Myers 1997: 168).[3]

Although the precise volume of environmental migration remains contested, it is unquestionably a significant global concern. The UN High Commissioner for Refugees (UNHCR) has named environmentally-induced migration as a factor that will continue to shape human movement in the decades to come (Guterres 2011). Additionally, the International Federation of Red Cross and Red Crescent Societies

[3] In a 2009 interview with *Mother Jones*, Myers himself acknowledged that this estimate is based on "heroic extrapolations," suggesting that the numbers may be significantly smaller (Morris 2009).

reported that, of the emergencies it handled in 2017, 50 percent were in countries that were considered "environmentally vulnerable" or "both fragile and environmentally vulnerable" (IFRC 2018: 186).

Some consensus around both the categories and the scope of environmental migration is critical, so that both national governments and intergovernmental agencies can collect and maintain accurate data. In both domestic and international legal regimes, categories define what is tracked for purpose of data collection. Absent some agreed-upon definitions or categories, it is difficult to identify the communities that objectively require support, to tally the number of persons affected, and to push for legal and policy reforms that offer longer-term protection. Apart from the ambiguity surrounding definitions, a practical challenge for data collection in this context is that much of the displacement is internal, and therefore unlikely to be recorded by the authorities (Gemenne 2012: 246). Additionally, given the precarity and geographic dispersal of many environmental migrants, simply reaching them can be difficult (McMichael et al. 2012: 652).

In addition to developing acceptable definitions and collecting accurate data, any governance regime must contend with the broader impact of environmental migration on affected individuals and communities.

### *The Difficulty of Measuring Losses Linked to Environmental Migration*

In addition to developing acceptable definitions and collecting accurate data, any governance regime must contend with the broader impact of environmental migration on affected individuals and communities. In particular, for those households that are compelled to migrate (whether temporarily or permanently, internally or across borders), what is the nature and extent of loss and damage suffered as a result of the environmental migration? Most legal regimes endeavor to make an individual whole for losses suffered when that individual held a right or expectation based in law or contract. When applying this principle to environmental migration, several questions emerge: What are the underlying rights of persons who are forced to migrate due to environmental causes? What legal obligations do states have to prevent the need for such migration? Or to facilitate such migration when it becomes necessary?

In crafting remedies, policymakers must determine which types of loss and damage, if any, are compensable under existing legal frameworks. Assuming some compensation is possible in cases of environmentally-induced displacement, would it be limited to tangible loss – such as lost property or economic opportunity – or does it include the myriad forms of intangible loss that accompany the displacement? Some losses incurred are multi-faceted and can include both tangible and intangible dimensions. For example, displacement often results in disconnection from a religious community, including its physical worship structures and sacred landscapes. Yet there are equally important aspects of that community which are intangible, including a collective identity or belief system linked to the community. Other intangible losses might include disruption of social networks, severed access to opportunities, and even dignitary harms (Thomas & Benjamin 2020: 717-18).

The questions and challenges outlined above have shaped efforts to establish concrete legal norms to protect environmental migrants. As explored in Section III below, stakeholders have invested significant time in developing an international protection regime – in the form of a convention or other instrument – tailored to the needs of environmental migrants. This has included recommendations to adapt existing normative frameworks and to create entirely new ones. Section III briefly recounts this history, focused primarily on developments at the international level. In light of that history and the challenges described above, the remainder of the report recommends a shift away from a singular normative goal for environmental migrants. Instead, the report recommends a flexible, multi-level approach that embraces both on-the-ground and formal legal approaches, and which anchors norm development in the experiences and perspectives of the migrants themselves.

## II. Efforts to Develop a Legal Normative Framework for Environmental Migrants: A Brief History[4]

Given that environmental migration involves flight from harm, a logical starting point for any normative development is international refugee law – specifically, the 1951 Convention Relating to the Status of Refugees. This landmark instrument, developed in the aftermath of World War II, sets forth key definitions, the rights of refugees, and the obligations of states. Critical among these is the definition of "refugee" itself, identified as a person seeking protection outside their country of origin, given a well-founded "fear of persecution" for reasons of "race, religion, nationality" or "membership of a particular social group or political opinion."[5] A 1967 Protocol Relating to the Status of Refugees updated the 1951 Convention, removing some temporal and geographic restrictions.[6] To this day, the requirements relating to persecution, as well as the specific basis for the persecution (referred to as the "nexus"), remain critical determinants for receiving refugee status and the accompanying legal and humanitarian benefits.

In the decades that have followed, the signatories to these two instruments have carefully distinguished "refugee" flows from other types of cross-border mobility, characterizing the latter as economic or voluntary migration, and not deserving of the heightened protection offered to refugees. Accordingly, even in life-threatening scenarios, national governments have resisted efforts over the years to extend the normative reach of the "refugee" category to include distinct forms of human mobility. Nevertheless, as deliberations continued regarding which displaced populations should receive legal protection, international norms governing the status of refugees have evolved.

Even in life-threatening scenarios, national governments have resisted efforts over the years to extend the normative reach of the "refugee" category to include distinct forms of human mobility.

[4] For this section I have drawn upon Albro's (2019) review of the history of normative engagement with environmental migration, with attention to Latin America.
[5] Convention Relating to the Status of Refugees, Article 1, 189 U.N.T.S. 137 (Jul. 28, 1951).
[6] Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (Jan. 31 1967).

Latin America has played a central role in this regard. Most notably, the influential 1984 Cartagena Declaration on Refugees sought to "enlarg[e] the concept of a refugee" by including within the definition people "who have fled their country because their lives, safety or freedom have been threatened by generalized violence, aggression by a foreign power, internal conflicts, widespread systematic violations of human rights or comparable circumstances which have seriously disturbed public order."[7] With this expansive language, the Declaration recognized other drivers of refugee flows beyond the traditional nexus categories, including life-endangering violence from wars and other destabilizing circumstances. Most Latin American countries have subsequently enshrined the Cartagena Declaration into law.[8]

Commemorating the ten-year anniversary of the Cartagena Declaration, the 1994 San José Declaration on Refugees and Displaced Persons[9] prioritized the goal of more durable solutions to the region's refugee crisis, even as it contemplated the eventual voluntary repatriation of refugees. The Declaration, importantly, called for refugee law to be more integrated with international humanitarian law and international human rights law, in order to establish a "common legal framework."[10] The San José Declaration also began to describe the varieties of human mobility, recognizing both refugees (as defined in the Cartagena Declaration) as well as "persons who migrate for other reasons, including economic ones."[11]

Ten years after the San José Declaration, a series of sub-regional meetings culminated in the 2004 Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America.[12] This document emphasized the importance of regional solidarity in addressing the significant outflows of displaced persons from Colombia at the time. Under the agreement, most of Colombia's neighbors agreed not only to accept asylum-seekers but to collaborate in accepting Colombian refugees for resettlement. This regional commitment to sharing of responsibility re-centered resettlement as a durable solution. Building on these various instruments, the 2014 Brazil Declaration and Plan of Action[13] sought to identify "new humanitarian challenges" with regard to the protection of refugees and displaced persons. Notably, the Brazil Declaration made explicit mention of "the

[7] Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Section 3(3) (Nov. 22, 1984).
[8] As of 2013, only Costa Rica, Panama and Venezuela had not incorporated the Cartagena Declaration's regional definition of a refugee into their legal frameworks in any way (Reed-Hurtado 2013: 16).
[9] The full text can be found here: https://biblioteca.iidh-jurisprudencia.ac.cr/index.php/in-english/universal-system-of-human-rights/nationality-statelessness-asylum-and-refugees/2183-san-jose-declaration-on-refugees-and-displaced-persons-san-jose-1994/file, accessed August 8, 2020.
[10] San José Declaration on Refugees and Displaced Persons, adopted by the International Colloquium in Commemoration of the "Tenth Anniversary of the Cartagena Declaration on Refugees" Conclusion Nos. 3-5 (Dec. 5-7, 1994).
[11] Ibid., Conclusion No. 10.
[12] The full text can be found here: https://www.oas.org/dil/mexico_declaration_plan_of_action_16nov2004.pdf, accessed August 8, 2020.
[13] The full text can be found here: https://www.unhcr.org/brazil-declaration.html.

challenges posed by climate change and natural disasters," including the "displacement of persons across borders"[14] caused by both. Beyond calling for further study, however, the Declaration offered no guidance about how such human mobility should be addressed at the international level.

At the level of domestic law, multiple South American countries offer legal protections to people displaced by environmental forces. Bolivia's 2013 Migration Law introduces legal protections for the category of "climate migrants," that is, "groups of people displaced from one country to another for climate reasons, when there exists a risk to life, as a result of nature, environmental, nuclear or chemical disaster, or famine."[15] Ecuador's 2017 Organic Law of Human Mobility treats "victims of environmental or natural disasters" as humanitarian migrants,[16] while Peru's 2017 Migration Law likewise identifies victims of natural or environmental disasters as humanitarian migrants.[17] In several other countries, environmental migrants can be issued humanitarian visas, though not as refugees. Notably, most of these legal protections assume rapid, life-threatening natural disasters, where displacement is temporary. Protections relating to slow-onset displacement and permanent resettlement are less common.

At the level of domestic law, multiple South American countries offer legal protections to people displaced by environmental forces.

At the international level, a series of developments have signaled some forward movement towards an international normative framework. Although extensively debated among scholars, the idea that a "climate refugee" would merit protection by the 1951 Convention has not gained traction. But the UN has had more success in its Framework Convention on Climate Change (UNFCCC). Again, Latin America has played a prominent role in these developments. The most influential precedent was the so-called 2010 "Cancún Agreements,"[18] the result of the sixteenth session of the Conference of Parties convened under the umbrella of the UNFCCC.

The Cancún Agreements emphasized the need for more data about climate change, including the need for a greater understanding of "climate change induced displacement, migration and planned relocation."[19] While lacking in some respects, the Cancún meeting had a "catalytic effect" in efforts to extend normative legal protections to environmental migrants (McAdam 2014: 12). With impetus from the leadership of the UNHCR, Cancún was the first time that such an international forum formally recognized displacement, migration and planned relocation as parts of any framework for climate change adaptation.

[14] Brazil Declaration and Plan of Action, Preamble (Dec. 3, 2014).
[15] Estado Plurinacional de Bolivia, Ley de Migración. No. 370, Article 4, Section 16 (2013).
[16] Presidencia de la República de Ecuador, Ley Orgánica de Movilidad Humana, Ley VP1- E211-17, Section 3, Article 58 (2017).
[17] El Presidente de la República, Ley de Migraciones, Decreto Legislativo No. 1350, Article 29.2(k).
[18] The full text can be found here: https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf, accessed August 8, 2020.
[19] United Nations Framework Convention on Climate Change (UNFCCC), Report of the Conference of the Parties of the Sixteenth Session, Article 14(f) (2010).

Furthermore, discussions in Cancún led directly to the creation of the 2012 Nansen Initiative, which was primarily a bottom-up and state-led effort to innovate a new international consensus governing cross-border displacement in the emerging context of climate change.[20] While ultimately unsuccessful in bringing about an international normative framework, the Nansen deliberations did lead, however, to the 2015 Agenda for the Protection of Cross-Border Displaced Persons. The 2015 Agenda, like many of its predecessor efforts, focuses on displacement linked to rapid-onset disasters.[21] This choice to emphasize "disasters" over slow-onset environmental change reflects the hesitation of states to assign rights in the context of more amorphous drivers of migration.

The 2015 United Nations Climate Change Conference meeting formally designated the Warsaw International Mechanism for Loss and Damage associated with Climate Change (WIM) as the primary venue to work through the consequences of climate-induced human mobility, understood to include "migration, displacement and planned relocation."[22] The Task Force on Displacement, operating under the umbrella of the WIM, seeks to identify policies and institutional frameworks which might be needed in order to "avert, minimize and address displacement related to the adverse effects of climate change."[23]

In the face of little progress and persistent resistance from states, in 2016 the New York Declaration for Refugees and Migrants[24] inaugurated a new international approach, which now features two parallel but distinct processes for refugees and migrants respectively. These parallel processes led to the adoption in 2018 of the Global Compact on Refugees,[25] which has little to offer about climate change. On the contrary, it establishes that "climate, environmental degradation and natural disasters" are "not in themselves causes of refugee movements."[26]

The Global Compact for Safe, Orderly and Regular Migration[27] foregrounds the relationship of climate change to migration. It recognizes the UNFCCC framework, recognizes climate change as a driver of migration, and dedicates an entire section to sudden-onset as well as slow-onset "natural disasters, the adverse effects of climate change, and environmental degradation,"[28] as these contribute to migration flows.

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[20] Further details about the goals, scope of work and accomplishments of the Nansen Initiative are available here: https://www.nanseninitiative.org/.
[21] The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, p. 6 (2015).
[22] See: https://unfccc.int/process/bodies/constituted-bodies/executive-committee-of-the-warsaw-international-mechanism-for-loss-and-damage-wim-excom/areas-of-work/migration--displacement-and-human-mobility, accessed August 8, 2020.
[23] See: https://unfccc.int/wim-excom/sub-groups/TFD, accessed August 8, 2020.
[24] The full text can be found here: https://undocs.org/a/res/71/1, accessed August 8, 2020.
[25] The full text is available here: https://www.unhcr.org/gcr/GCR_English.pdf, accessed August 8, 2020.
[26] UNHCR, Global Compact on Refugees, Part 1, Section D, Number 8 (2018).
[27] The complete text is found here: https://undocs.org/en/A/CONF.231/3, accessed August 8, 2020.
[28] Global Compact for Safe, Orderly and Regular Migration, "Objectives and Commitments," Objec-


Efforts by the United Nations system to address environmental migration have not yet yielded a comprehensive international instrument.
Credit: Mat Reding/ Unsplash/ Unsplash License

A January 2020 ruling from the UN Human Rights Committee has opened additional legal pathways to protecting migrants who are facing life-threatening environmental changes. The case involved Ioane Teitota, a national of Kiribati, who appealed to the Human Rights Committee after his asylum application in New Zealand had been denied. Before the UN, Teitota argued that the rising sea level and other environmental changes have rendered Kiribati uninhabitable. Although the Committee determined that Teitota's life was not in danger at the time of his application, it broadly ruled that, pursuant to the principle of non-refoulement, countries may not deport individuals to countries where they will face environmental conditions that would violate the right to life. This ruling, albeit outside a formal refugee determination process, may be applied to future cases where international protection is sought for environmental migrants (UN 2020). Many scholars have encouraged the use of human rights law to protect environmental migrants, and this decision is likely to catalyze further interest in that possibility.

Countries may not deport individuals to countries where they will face environmental conditions that would violate the right to life.

tive 2: Minimize the adverse drivers and structural factors that compel people to leave their country of origin, Sections 18(h)-(l) (2018).

## III. Utility and Potential of a Comprehensive Framework: A Critical Assessment

The history recounted above suggests that the global community has endeavored, albeit unsuccessfully, to develop an international legal framework suitable for environmental migration. The traditional approach for stakeholders engaged in international governance – including international and regional bodies, national governments, and civil society – has been to push for the establishment of legal instruments that confer rights and responsibilities. To a significant extent, the efforts on behalf of environmental migrants have adhered to this mold. International instruments are seen as valuable, as they telegraph concrete legal norms that can be replicated in domestic legislation, and which can support efforts at justiciability through the courts or via United Nations bodies. International efforts are often accompanied by simultaneous efforts in domestic law, given the emphasis on complementarity between international and domestic legal regimes.

Nevertheless, today these efforts are at an impasse. As various scholars have noted, existing legal categories and frameworks are ill-suited for environmental migration and fail to account for its complex etiology. Along these lines, it is challenging for a singular normative framework to account for the highly variable geographic, temporal, and situational dimensions of environmental migration. Moreover, the lack of a coherent global governance structure for international migration will hamper the effectiveness of any norms that are ultimately established, as will the general problem of non-enforcement of legal standards. Finally, the political will for a new agreement will be difficult to muster, particularly in a global climate where migration-related restrictions are increasingly prevalent. These obstacles are detailed below.

### *A. Insufficiency of Existing Legal Frameworks*

Currently, there is no international instrument dedicated to addressing international migration that is propelled by environmental factors. While numerous commentators have noted the possible applicability of international refugee law, international human rights law, international humanitarian law, and international environmental law, none is a perfect match. On the contrary, most are plainly insufficient and fail to capture the complexity of environmental migrant flows.

Environmental migration is often assimilated under the rubric of international refugee law, particularly when it is framed as a type of involuntary migration. As noted above, the Refugee Convention and 1967 Protocol confer protection for individuals who have experienced persecution (or fear persecution) on specific grounds. When invoking this framework on behalf of environmental migrants, several core challenges emerge: equating the displacement to "persecution," identifying the perpetrator of the harm, and linking the cause for the migration to one of the existing categories in international refugee law.

In general, it can be difficult to characterize environmental degradation that occurs over a long period of time as "persecution." The same challenge applies to longer-term changes in the climate generally. Additionally, in most cases of environmental migration, it can be difficult to identify a specific "persecutor." To be sure, in some instances, where anthropogenic factors (including development projects) drive the displacement, a specific persecutor might be identified. Likewise, given the frequent overlap between environmental and racial injustice, invidious discrimination might underlie the environmental harm suffered. But as Keyes notes, the relationship between discrimination and persecution is itself contested (Keyes 2019: 468-69). Given these various challenges, only a sliver of environmental migrants is likely to meet the definition of a "refugee" under international law.

Additionally, many scholars have challenged the concept of an "environmental refugee" because environmental drivers can rarely be isolated as a singular cause for migration. Bettini aptly summarized this scholarly conversation, noting that, "given the multiple factors determining migration, it is almost impossible to single out individuals or populations whose mobility is determined solely by climatic changes" (2014: 182). International refugee law, while partly acknowledging the complex factors that drive migration, tends to elide the web of personal and positional factors that propel an individual to flee. In the literature on environmental migration, however, scholars have emphasized the underlying economic, social, cultural, and political factors that operate in tandem with environmental forces. Environmental change often intersects with pre-existing vulnerabilities (such as poverty, limited economic opportunities, weak governmental infrastructure, and armed conflict, inter alia) to trigger the need to migrate. McLeman and Hunter (2010: 451) appropriately note that even this underlying vulnerability falls along a continuum; the sensitivity to the environmental change, as well as the population's ability to adapt, are critical determinants of whether migration will be a necessary result.

Individual positional factors must also be considered vis-à-vis these broader structural forces. Factors such as advanced age, indigenous or ethnic minority status, and disability can all shape susceptibility to environmental forces, and ultimately, the need to migrate (Borràs 2015: 358). Gender, as shaped by expectations and roles in a particular culture or community, can also inform the migration decision (Tacoli 2009: 517). Other factors include social class, education level, work experience, risk aversion, and risk perception (Burkett 2011: 3; Warner et al. 2010: 708). Given the numerous factors at play, some scholars have called for a more expansive term – "survival migration" – that captures the interrelated reasons why people are forced to leave their habitual residences (McAdam 2011: 14).

In Latin America and the Caribbean, numerous underlying vulnerabilities can lay the groundwork for environmental forces, and ultimately lead to displacement. For example, in Central America the lengthy civil conflicts contributed to the creation of large numbers of vulnerable people who occupied marginal lands that were

Only a sliver of environmental migrants is likely to meet the definition of a "refugee" under international law.

susceptible to natural forces such as hurricanes and other forms of extreme weather. These conditions, along with deforestation, land degradation, and the state's inability to address the underlying conditions, all heightened the vulnerability of affected households (McLeman & Hunter 2010: 452). Additionally, drought-induced resource scarcity might lead to ethnic or political tensions, contributing to conflict, weakened governments, and in turn, migration (Perry 2011: 3-4). In light of the complex interplay among these causal factors, terms like "environmental refugee" have faced significant criticism for being "simplistic, one-sided, and misleading" (Castles 2002: 8).

### *B. Temporal, Geographic, and Situational Complexity*

Another transcendent challenge in crafting legal categories (and corresponding protections) for environmental migrants is the question of temporality versus permanence. As in any migration scenario, a receiving region or country must assess whether the migrant intends to remain indefinitely or plans to return to their place of habitual residence. When contemplating the environmental scenarios outlined above, some are truly temporary and could allow migrants to return. And indeed, most scholarly work reveals that environmentally-induced displacement tends to be temporary, given a desire to return to familiar areas, and to rebuild one's home and life in a familiar place (McMichael et al. 2012: 647). As Tacoli (2009: 519) notes, environmentally-induced movement "is predominantly short term, as in the case of extreme weather events and natural disasters, and short distance, as in the case of drought and land degradation." In many cases, therefore, a temporary move may be the optimal adaptation strategy in the face of environmental change.

Other types of environmental forces, however, constitute a fundamental disruption which makes return impossible. And even when return might be possible, as migrants develop ties to the area where they have resettled, they may choose to remain permanently. In between the two extremes are various scenarios, including seasonal and cyclical migration patterns necessitated by weather patterns (McLeman & Hunter 2010: 455). Naturally, the policy responses to temporary versus permanent migration vary significantly, in terms of the nature of rights and benefits afforded. Because environmental migration scenarios are so variable, and the decisions around migration and resettlement are so individualized, developing appropriate norms can be quite challenging.

A related variable that affects the evolution of legal norms is whether the migration is internal or international in character. Scholarship on this matter suggests that when environmental factors induce migration, those obligated to migrate tend to remain close to their prior residences. Many individuals and communities affected by environmental change simply do not have the resources or pre-existing relationships needed to relocate, particularly across borders (Tacoli 2009: 516). Along these lines, several studies confirm that most individuals who are affected by a natural disaster do not even contemplate the possibility of leaving their community (Perch-Nielsen

et. al 2008: 381). A good example of this is Bangladesh, which despite significant flooding each year, has not generated massive cross-border movements; instead, temporary or circular migration is the norm (McAdam 2019: 8-9). Given that poor people often live in environmentally precarious locations, affected households are often "trapped" and unable to permanently relocate to a more secure environment (Adams 2016: 430).

Finally, a critical question to be answered before developing a normative structure is whether environmentally-induced displacement is an undesirable harm to be avoided at all costs, or whether the state should facilitate migration in some circumstances. Given connections to local communities and lands, this kind of disruption is unwanted by most. Yet a move to a new location can yield positive benefits for affected individuals. Apart from no longer facing the environmental threat, they may have access to greater economic opportunities, better infrastructure, and even superior health outcomes (McMichael et al. 2012: 648). Moreover, this type of intentional mobility, even when short-term or cyclical, can strengthen the resilience of affected households and allows them to accumulate assets (Tacoli 2009: 514). In short, while migration might be seen as a "problem" it can also be understood as a positive adaptation. The inherent situational complexity is a challenge for international instruments that are accustomed to clearly delineated goals and to protecting persons from harm.

While migration might be seen as a "problem" it can also be understood as a positive adaptation.

### *C. Lack of Institutional Leadership and Tendencies Towards Non-Enforcement*

A fundamental obstacle to the project of developing a comprehensive normative framework is the fact that there is not a singular international institution with jurisdiction over the types of migration occasioned by environmental harm. Although UNHCR has acknowledged the importance of the phenomenon, and has advocating for assisting environmental migrants, it has not assumed general responsibility for protecting these individuals, nor has it formally adjusted its mandate (Borràs 2015: 355; Claro 2020: 230).

In addition to UNHCR, several other agencies have some jurisdictional competence relating to environmental migrants, including the International Organization for Migration (IOM), the International Labor Organization (ILO), the United Nations Environment Programme (UNEP), and the United Nations Development Programme (UNDP). Although all of these entities collaborate under the umbrella of the Global Migration Group, that space may be ineffective in addressing the particular needs of environmental migrants, given the numerous participants and exceptionally broad mandate (Martin 2010: 409). McAdam (2009: 24) has suggested that a more tailored, collaborative structure, akin to the Joint United Nations Programme on HIV/AIDS (UNAIDS), may be more effective in crafting and implementing a global response.

Apart from the inadequate governance structure, non-compliance with codified norms is a major challenge to the global legal order, and for the domestic legal regimes of Latin America. One might appropriately question the value of codified norms, particularly in legal systems where rights and standards are difficult to enforce and to implement. Although international law is often criticized for its lack of "teeth," domestic laws are often deserving of the same critique. In several Latin American countries, for example, progressive law reform efforts have been successful, in part because they have been positioned as a way to remedy injustices occasioned during periods of dictatorship. Although advocates and progressive legislators have been able to secure forward-looking legislation, implementation is often a challenge. For example, agencies may lack the resources to effectuate these laws, or the regulations needed to bring life to aspirational norms are never passed. Access to justice is also a critical roadblock that prevents rights-holders from invoking protective norms.

In the context of environmental migration, concerns about non-enforcement are not merely theoretical.

In the context of environmental migration, concerns about non-enforcement are not merely theoretical. Examining the protective norms already implemented for environmental migrants at the domestic level, there is growing concern about their actual implementation. Scholars have begun to more closely scrutinize these local laws and have developed indicators to measure their efficacy. A first step has been to examine gaps between domestic laws and international instruments (Cavedon-Capdeville 2018), and future work might involve the development of indicators regarding the conditions that are conducive to meaningful implementation. Such projects, while critical, will take time to develop.

### *D. Insufficient Political Will in a Restrictive Climate*

The current political moment is defined by a general constriction of borders, and migrant flows are often framed as a threat to national security, public health, and societal order. Since the 9/11 attacks, many countries have securitized their immigration processes, leading to heightened scrutiny of foreign-born persons. This development was, in some ways, a natural extension of decades of policy-making that had framed noncitizens as a source of criminality and therefore a threat to domestic order. Additionally, noncitizens are often excluded for health-related reasons, as evidenced by the proliferation of entry restrictions in the context of the COVID-19 pandemic. In many cases, migrants are saddled with multiple counts of unworthiness – often automatically imposed, depending on country of origin, gender, and age of the migrant. In an era where border control is on the rise, these categories are frequently deployed to justify broad-based exclusions. As recent history has shown, even traditional refugee flows may be hampered with these labels. In such a context, securing comprehensive legal protections for environmental migrants will be a formidable challenge. States are simply not disposed to sign onto an instrument that commits them to additional rights and obligations to new categories of people (McAdam 2012: 435).

Securing legal protections for environmental migrants will be a challenge given the growth of migration-related restrictions.
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Environmental migrants are highly susceptible to a critical framing, given past and present discourses relating to migrant populations. When climate-related migration first captured the public attention in the late 1980s and 1990s, many commentators portended a massive wave of migration, and warned of security implications and the exacerbation of conflicts (Gemenne 2012: 240). Although this alarmist perspective was countered by a more skeptical approach, the link between environmentally-induced migration and security continues to be debated, particularly given the ongoing uncertainty regarding the size of the anticipated migrant flows. In this context of fear and indeterminacy, the possibility of large-scale environmental migration could easily "legitimize the closed-border policies of Western governments that are already hostile to refugees" (Piguet 2013: 155).

Despite this challenge, security-related concerns can be overcome, and perhaps used as leverage to secure support for addressing environmental migration. Pacheco Pacífico and Barboza Gaudêncio (2014: 144) advocate for the application of Betts's model of cross-issue persuasion. Under this model, states across the Global North and Global South can be persuaded to take interest in, and respond to an issue, by establishing linkages between areas of interest to the respective parties. For example, although states in the Global North might be reluctant to engage this topic for fear that they will be seen as the agents of environmental change, framing migratory flows in security-related terms could capture their interest and persuade them to come to the table to support a solution.

Security-related concerns can be overcome, and perhaps used as leverage to secure support for addressing environmental migration.

## IV. Relocating Normative Aspirations for Environmental Migrants: Five Analytical Shifts

As detailed above, efforts have stalled to achieve legal normative consensus regarding rights and protections for environmental migrants. Given the limitations of existing legal frameworks, the very complexity of the environmental migration phenomenon, as well as the global trend towards restrictive migration controls, among other factors, it will be challenging to formulate categories and protections that will be accepted universally.

The current impasse invites a reconceptualization of the normative aspirations for addressing environmental migration. I will suggest five potential shifts in thinking, which are designed to productively complicate the debate around normative objectives. These analytical shifts aspire to de-center international treaties as the normative ideal and emphasize instead that legal standards can emerge and operate on multiple levels, while allowing for dynamic change as our understanding of environmental migration evolves. Perhaps most importantly, these shifts emphasize the agency of environmental migrants as actors whose needs, experiences, and perspectives should anchor the decision-making processes around norm development. One can see examples of a similar and successful process in the context of the rights of indigenous peoples, where advocates embraced a broad range of approaches, rather than limiting their quest to the formal recognition of rights. Responding to the questions and tensions outlined above as a result of international efforts to formalize the status and rights of this population, these analytical shifts allow for a reimagining of the protections afforded to environmental migrants.

Formal legal categories and the conferral of status may have little significance for affected communities that are struggling in their day-to-day lives.

### *A. Responding to Concrete Needs with Actionable Solutions*

As a threshold matter, some have questioned whether the quest for formal legal status, undergirded by a set of rights, should be the priority for environmental migrants and their advocates. Given the aforementioned challenges, including the inadequacy of existing legal categories, perhaps the focus should instead be on addressing the urgent on-the-ground needs of migrants and on agitating for the resources to meet those needs. Environmental migrants often have immediate needs relating to food, shelter, and medicine, and may require assistance in reconstructing their living environment or planning for a move (Pires Ramos 2013: 740).

Of course, defenders of the normative approach would argue that formal legal status, and corresponding rights, are a necessary precursor to securing resources and implementing solutions. But a number of creative strategies – including emergency resource allocations and interventions by civil society – can surface to respond to migration-related needs, even in the absence of formal state protection. Indeed, this is already happening, in the form of a broad range of humanitarian services offered to migrants who are in transit and recently arrived to new communities. The tension between formal legal "victories" on the one hand, and just solutions, on the other, is ubiquitous in the legal literature. Indeed, formal legal categories and the conferral

of status may have little significance for affected communities that are struggling in their day-to-day lives. The Nansen Initiative, which has focused in part on concrete solutions, is consistent with this approach (McAdam 2017: 1524).

Although a comprehensive international instrument is a laudable goal, the process of getting there is extraordinarily lengthy, and may detract from addressing the more immediate needs of environmental migrants, or from implementing adaptive strategies that might prevent the need to migrate. Various steps are needed for an international treaty to go into effect – negotiation, signature, ratification, and implementation. This span of time, which can last many years, could instead be spent focusing on the urgent humanitarian concerns of environmental migrants (Claro 2020: 233) and in planning for their safe return, should that be feasible and desirable. Likewise, government officials within each country could devote resources to planning for migration in slow-onset situations (McAdam 2012: 435) or to implementing public policies that allow communities to adapt to environmental change through changes to infrastructure, diversification of income streams, and more. The promise of an international treaty might justify inaction by states on these important measures (McAdam 2017: 1542-43).

The site for creating lasting norms need not be at the international level.

### *B. Investment in Local, National, and Regional Legal Approaches*

The site for creating lasting norms need not be at the international level. Indeed, local actors, including civil society and grassroots organizers, are often able to deploy the energy and out-of-the-box thinking needed to formulate effective responses to the needs of environmental migrants (Hetland & Evans 2016: 86), and may achieve success in enacting local norms. There is substantial potential for this work, given the strength of both the migrants' rights and environmental movements in many localities. As the two coalesce around the issue of environmental migrants, successful interventions are likely. This approach purposefully de-links "norms" from the sphere of international relations and international law, and instead underscores the possibility of their provenance from the local level. In a context where states and localities assert more sovereignty in their responses to external challenges, this approach may gain traction.

As recounted in Section III above, national legislation designed to protect environmental migrants is increasingly common. In Latin America, several countries – including Argentina, Bolivia, Costa Rica, and Cuba – recognize the category of "environmental refugee" or "climate migrant" (Claro 2016: 217), and Ecuador and Peru offer distinct forms of protection. Outside of the region, Finland and Sweden explicitly incorporate environmental migrants in their immigration policies, and other states will stay removals to countries that have experienced environmental disasters (Martin 2010: 406-07). Given that most environmental migration is time-limited and/or cyclical, national frameworks for time-limited protection can be an effective intervention (Keyes 2019: 484).


Efforts undertaken at the local level may produce effective and scalable solutions for environmental migrants.
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Regional agreements are a particularly fertile ground for innovation and action, especially in Latin America. Such approaches can be adapted to the particular needs of the region and can be aligned with existing regional norms. As Pires Ramos et al. (2017) explain, the South American Conference on Migration (CSM) – a regional consultative process – has incorporated migration and environmental change into its mandate. The Common Market of the South (MERCOSUR) also has migration-related agreements (including free movement provisions) that can be adapted to address the needs of environmental migrants. At a minimum, these regional entities provide a forum for deliberating both "hard" and "soft" law approaches (Pires Ramos et al. 2017: 65; Cristani et al. 2020: 138, 140).

### *C. Fluidity and Dynamism Across Local, National, and International Approaches*

A third analytical shift disrupts the rigid distinctions between the local, national, and international, and instead recognizes these as categories that are available simultaneously and that can reinforce each other in unique ways. As Hetland & Evans (2016: 86) explain, "the relationship between the different scales – the global, the national, the local – is not linear or one-way. It is interactive and synergistic."

Fomenting dialogue across these different spheres can be productive, as it allows norms to migrate, sparking opportunities for encounter and translation by intermediaries (Merry 2006). Although the needs in a narrower context may be distinct from a broad-based normative agenda, the approaches can align and allow each other to flourish. For example, norms that gain traction and prove their effectiveness

at the local level can then be implemented internationally (McAdam 2017: 1540). This type of "scaling up" is often possible when local approaches are positioned as a viable alternative to a criticized dominant approach, and where influential social movements can support advocacy for this alternative (Kauffman & Martin 2014: 53-56). This "upward" trajectory might also occur when the norm originates in an urban locale that already exerts considerable global influence (Zwingel 2012: 122).

Conversely, local actors may select existing or emerging norms from national or international fora and re-deploy them locally. Along these lines, Pacheco Pacífico (2013: 178) specifically recommends "regime stretching," as articulated by Alexander Betts, for extending protections to environmental migrants. Under this approach, local actors can extend, or "stretch" aspects of international norms to address local situations, in the absence of specifically applicable standards. In his work, Betts cites as an example Kenya's decision to offer prima facie refugee status to all Somali nationals – a broad protective measure rooted in domestic law, but which drew upon principles from international and regional instruments (Betts 2010: 372-73).

### *D. A Commitment to Multiplicity, Flexibility, and Information-Gathering*

The inherent variability of the climate migration phenomenon calls for a fluid and multi-pronged approach – an approach that is at odds with traditional normative aspirations. As Burkett (2011: 2) accurately notes, while the law "strives for consistency, universality, and predictability," the phenomenon of environmental migration "requires flexibility, customizable applications, and responsiveness." In the current context, policymakers accustomed to finality and consistency must pivot from the common trajectory towards established universal norms, and instead embrace multiple approaches with a spirit of flexibility and experimentation.[29]

The inherent variability of the climate migration phenomenon calls for a fluid and multi-pronged approach – an approach that is at odds with traditional normative aspirations.

As suggested throughout this working paper, there is great variability in the nature of environmental harms and their effect on individuals and communities. Accordingly, the responses needed will likewise vary. For example, a household experiencing a truly temporary dislocation because of a weather event may need only humanitarian assistance. By contrast, if the environmental harm necessitates permanent resettlement, either internally or in another country, a more robust and nuanced legal infrastructure may be needed (McAdam 2012: 434). An advantage of a more nuanced approach is inclusivity: unlike a singular international instrument, which necessarily delineates who is (and is not) subject to protection, multiple interventions can accommodate the inherent variability of environmental migration (McAdam 2011: 5-6).

[29] In her work, Claro (2016, 2020) similarly calls for multiple approaches, including humanitarian action, complementary protection, climate justice, national legislation, judicialization of environmental migration, shared responsibility (including regional agreements for cooperation or resettlement), and international norms.

Understanding and acknowledging this variability will also allow for different subtypes of environmental migrants to be assimilated into existing normative frameworks, when appropriate. Guidelines relating to temporary labor migration, for example might be applicable to cyclical environmental migrants who relocate to avoid seasonal weather patterns and to diversify their income streams. Or, in some instances, the nature of the harm experienced, and subsequent displacement, could be analogized to the "refugee" experience as per international law (Martin 2010: 405). For example, intentional ecocidal policies, driven by ethnic or political animus, might justify a grant of protection under the 1951 Convention (Keyes 2019: 470-71). In other cases, however, no existing legal framework will be suitable to address the needs of a group of environmental migrants. In these circumstances, new legal and policy initiatives may be superior to squeezing these migrants into an existing but ill-fitting legal category (Keyes 2019: 464). Experimentation will be necessary and will hopefully produce workable solutions.

But experimentation is most effective when guided by at least some empirical knowledge of the phenomenon. Before concretizing globally applicable norms or implementing robust responses, it is helpful to better understand what is happening on the ground. Some stakeholders have offered proposals that make assumptions about the connections between environmental factors and human mobility, with little empirical support (McAdam 2012: 433). For example, further empirical study could more strongly support the operating belief that most environmental migration is internal and gradual in nature. Such a finding would have significant consequences for the global legal order, which (at least initially) was fixated on responding to urgent environmental disasters. Without more granular data, normative frameworks are likely to be unhelpfully abstract and vague, and therefore more difficult to translate into practical and applicable policy solutions (McAdam 2011: 25).

### *E. Environmental Migration as Agentic Action*

A fifth analytical shift involves the inversion of a traditional framing of migrants as victims of environmental conditions who need protection, as opposed to individuals with agency who are seeking improvement in their lives. Rights are often understood to be either positive (freedom to do a certain thing) or negative (freedom from certain types of mistreatment or harm). In the context of migration and refugee protection, many scholars have critiqued the framing of migrants as victims subjected to violations of negative rights by external forces. The very term "forced migration," which is ubiquitous in the literature on environmental migration, suggests a significant lack of agency.

Critics of this framing underscore that environmental migrants do exercise agency and have the ability to transform their lives. In reality, most instances of migration involve a combination of structural forces and individual agency. For some households facing environmental harms, "migration is an important risk management strategy" (Feng et al. 2013: 1). As environmental challenges accumulate over time,

households may reach a "tipping point" (Warner et al. 2010) and make the affirmative decision to relocate. Moreover, in many cases of environmental migration, the distinction between "voluntary" and "forced" is hazy. As Gemenne (2012: 252) notes,

> most will simply experience a progressive degradation of their habitat, and might decide to leave once a certain threshold has been reached, or once migration facilitators make it possible. Though their migration is compelled, those who migrate under these conditions retain the possibility to choose when and where they go.

Accordingly, environmental migration can be understood, at least in part, as an agentic and proactive response.[30] The experiences of these migrants transcends reductionist victimhood. Along these lines, in the aftermath of Hurricane Katrina, some of the individuals displaced by the storm criticized the label of "refugee" that had been used to describe them, given the associations with racialized disempowerment (Gemenne 2012: 244; Wennersten & Robbins 2017: 47).

Environmental migration can be understood, at least in part, as an agentic and proactive response.

In the same way that the dichotomy between "voluntary" and "forced" migration elides the complexity of individual circumstances and agentic decision-making, the discourse around environmental migration often obscures the adaptation options that allow affected persons to limit their exposure to environmental risks. As families assess their local context and sources of livelihood, they often account for environmental harms by diversifying income streams (Raleigh et al. 2008).[31] Additionally, migration patterns may evolve over time, as affected communities develop new adaptation strategies. As Bardsley and Hugo (2010: 255) note, further empirical research is needed to better understand the decisions that individuals make about possible future risk and the choice to migrate.

Maintaining the centrality of the perceptions and interests of affected communities in the response to environmental displacement allows them to give shape and voice to their own experiences and positions them in the process of creating norms. This often translates into solutions and approaches that are nimbler and which embrace the range of choices that migrants are likely to consider. And more fundamentally,

[30] Egea Jiménez & Soledad Suescún (2011: 201) pose a critical question: If environmental migration is even partly voluntary, will the international community deem the migrants worthy of protection? So much of the international legal order, as it relates to humanitarian protection, is premised on assumptions about victimhood, helplessness, and lack of agency.

[31] Although diversification of income streams is necessary and productive for many households, even this "positive" framing of agentic environmental migration can be viewed with a critical eye. To some extent, the literature positions successful adaptations strategies as those which align with labor market needs and which happen to serve the interests of temporary labor migration programs. This type of framing obscures the inherent coercion in some of these labor market pathways (Bettini 2014: 190), and accordingly deprives migrants of truly independent, agentic decision-making. Moreover, even assuming that temporary labor migration is a desirable strategy, the poorest in most countries are unable to access those programs and will require other solutions (McAdam 2011: 24).

a narrative that highlights agency avoids infantilizing environmental migrants who may hail from disadvantaged backgrounds.

One important way to bolster the agency of environmental migrants is to offer knowledge and training that enhance their resilience and decision-making ability. This could include, for example, training in adaptive technologies or other skills (Perry 2011: 4-5) and involve the affected persons in discussions around possible options. Warner and Afifi (2014: 321) term this approach one of "empowered mobility," where affected individuals and communities are at the center of decisions about "when, how, where, and who moves." Even something as simple as providing migrants with knowledge about likely environmental threats allows them to prepare for those threats and participate in policy-related discussions. The 2008 Draft Convention on International Status of Environmentally Displaced Persons, for example, positioned access to this information as a right that potential migrants should enjoy (Pires Ramos 2013: 754).

### *F. Relocating Normative Aspirations: The Example of Indigenous Rights*

The indigenous rights movement provides an example of a broad-based effort to advance the rights and dignity of a community, beyond simply aspiring for formal rights at the international level. Over many decades, indigenous communities have advocated within the international system, while also advancing their cause at the regional and national levels. These collective efforts, while far from linear, have yielded substantive measures that articulate important rights for indigenous peoples. Another notable outcome has been the development of systems and procedures that center indigenous communities in the process of norm construction.

Indigenous peoples and their advocates have, of course, lobbied for international instruments that articulate rights and protections for their communities. A significant achievement was the International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples, adopted in 1989. Convention No. 169 calls for the advancement of indigenous cultural identity, protects land and resource rights, emphasizes non-discrimination, and also recognizes the cultural rights of indigenous peoples (Anaya 2013: 1004). Another important normative development was the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007 after decades of negotiations and advocacy. The Declaration is rooted in principles of equality and self-determination (Anaya 2013: 994), and in this regard, builds upon provisions in Convention No. 169 and other human rights instruments relating to non-discrimination and cultural integrity (Anaya 2004: 16). While not a formal "treaty," the Declaration underscores indigenous peoples' rights relating to "culture, development, education, social services, and traditional territories" (Anaya 2013: 995).

The United Nations Permanent Forum on Indigenous Issues (PFII), established in 2000, has been an important vehicle for advancing discussions around issues affecting indigenous peoples and has sought to coordinate the work of various UN bodies as it relates to indigenous rights (Anaya 2013: 986-87). In this regard, the PFII might serve as a useful model in structuring an entity to coordinate efforts relating to environmental migrants. Another potentially relevant aspect of the PFII is its work in safeguarding intangible heritage, through its connection to the United Nations Economic, Social and Cultural Organization (UNESCO) and engagement with the 2003 Convention on Intangible Cultural Heritage. The efforts of UNESCO and PFII to catalog and protect intangible heritage offer a useful template for conceiving of the intangible losses that accompany environmentally-induced displacement.

While these substantive outcomes are noteworthy, indigenous peoples and their advocates have also secured procedural commitments that allow them to be engaged in the process of creating norms. Specifically, a requirement to consult with indigenous peoples is a generally accepted feature of relevant policy dialogues, and includes information-sharing, mechanisms for participation, and cultural sensitivity (Anaya 2005: 7, 16). This dimension of indigenous rights advocacy is a particularly valuable frame for environmental migrants, who can be sidelined from important policy conversations, and who often lack the information needed to meaningfully participate. Through their active participation in these processes, and assertion of their unique identities, approaches, and systems, indigenous peoples have contributed to the transformation of the legal landscape, in the form of growing pluralism (Anaya 2007: 5).

The indigenous rights movement has also successfully pursued strategies at the local and national level and has capitalized on the potential for dynamism between these sites. In recent decades, several Latin American countries have embraced "multicultural constitutionalism," officially recognizing indigenous languages, cultures, and legal systems (Van Genugten & Perez-Bustillo 2004: 397). Advocacy and litigation efforts at the domestic level have drawn support from international instruments, and at times, indigenous communities benefit from overlapping, if somewhat inconsistent norms at the national, regional and international levels (Van Genugten & Perez-Bustillo 2004: 391, 408). Indigenous organizations have capably advocated for domestic reforms, while also engaging global stakeholders and movements that can amplify their efforts (Martin & Wilmer 2008: 593-96). In these various ways, the indigenous rights movement reflects the virtue of a flexible, diffuse, and non-linear approach to norm development.

An important way to reconceive of responses to environmental migration is to emphasize the agency of affected communities and incorporate the needs and perspectives of the migrants themselves.

## V. Participation & Education: Critical for Agency

As noted above, an important way to reconceive of responses to environmental migration is to emphasize the agency of affected communities and incorporate the needs and perspectives of the migrants themselves. Doing so pivots the conversation away from a traditional "victimhood" narrative and instead focuses on adaptation, or even social and economic advancement of affected individuals and communities. Indeed, for some environmental migrants who are forced to relocate their post-migration lives can be materially better than what they had before suffering displacement.

A critical foundation for greater agency is community education. As a threshold matter, there is a need for education around environmental migration – its causes, consequences, and effects on communities. Indeed, some affected communities do not have a vocabulary or framework to explain their experiences or to put them into a broader pattern of global events. Along these lines, McAdam (2009: 25) provides a powerful example of affected communities who lack a full understanding of their own experience. She writes of locals in Kiribati who fail to appreciate the implications of their geographic positioning and who attribute the changes in their environment to "punishments from God." Their belief system also leads them to conclude that more significant flooding, and therefore displacement, will not happen. While one can understand and respect this perspective, it limits their ability to take the steps needed to address the environmental change.

Armstrong et al. (2018: 26-27) describe the multiple goals of climate-related education, including climate literacy, behavior change, the possibility of collective action, and the ability to shape environmental outcomes. Initiatives focused on climate literacy might include content about how climactic systems operate, the effects that humans can have on climate change (and vice-versa), and the steps individuals can take "to mitigate and adapt to climate change." Educational efforts are also poised to shape values and beliefs, including conceptions of how societies should function given the possibility of environmental change, and the belief that human behavior is in fact a central cause of climate change such as global warming. Along these lines, in their multi-country study of climate change and its relationship to migration in South America, Aruj and Priotto (2017: 152, 155) stress the need for environmental education at all levels of society, so that people understand the basics of climate change, the importance of conserving resources, and possible adaptation strategies.

Equipped with this body of knowledge, values, and beliefs, individuals and communities will be better positioned to engage in activities that mitigate climate change, or to adapt to changes in their surroundings brought about by climate change. For example, a community that possesses knowledge about patterns of increased flooding may adopt construction or engineering approaches to avoid damage to property.

Education about climate change and possible adaptation strategies is critical for the informed participation of affected communities.
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Likewise, as noted above, many communities engage in seasonal migration as an adaptation strategy designed to avoid environmental harms and diversify streams of income.

Armstrong et al. (2018: 30-31) also position community education as an important precondition for cultivating resilience in affected communities, and typologizes this resilience to include awareness of psychological, community, ecological, and social-ecological systems. Community and systems-related resilience are especially likely to be shaped by educators. While human resilient capacity is often difficult to measure, it is a key factor in determining whether environmental harms will trigger displacement.

While human resilient capacity is often difficult to measure, it is a key factor in determining whether environmental harms will trigger displacement.

## VI. Conclusion

While its precise scale remains uncertain, environmentally-induced migration presents a significant global challenge. A broad range of environmental factors have contributed to both internal and cross-border displacement, producing an assortment of migratory scenarios that each require a distinct response. The growing concern around environmental migration coincides, ironically, with a trend toward restrictive migration policies and a reluctance to assume additional normative commitments. Accordingly, while environmental migration has received substantial and thoughtful attention from both

scholars and policymakers, these efforts have not yielded a binding legal instrument that provides international protection to affected migrants.

Given its inherent complexity and variability, environmental migration will be difficult to address through a singular international instrument. The phenomenon occupies a unique space between voluntary and forced migration, and correspondingly, between agency and vulnerability. For a global legal order that favors clearly defined categories, and which privileges responses to unequivocal victimhood, environmental migration is a confounding problem. The inadequacy of existing legal frameworks adds to the challenge, particularly given the incremental and self-referential tendencies of the law and legal institutions.

This working paper recommends a realignment of the normative goals for environmental migration, with a focus on both on-the-ground and law-based solutions, along with interventions at the local, national, regional, and international levels.

In light of these obstacles, this working paper recommends a realignment of the normative goals for environmental migration, with a focus on both on-the-ground and law-based solutions, along with interventions at the local, national, regional, and international levels. Because of its inherently context-specific nature, environmental migration lends itself to bottom-up solutions which can emerge and take hold, as higher-level conversations continue. The result may be an imperfect patchwork of solutions, including some that are temporary. Yet this may be the most productive approach, given the as-yet-incomplete knowledge about environmental migration, its causes, and the most suitable responses.

Environmental migrants themselves must remain at the center of discussions around any emerging normative structures – not simply as passive subjects, but as actors whose perspectives and goals shape the trajectory of the debate. At a minimum, the structures and processes must allow for the active, informed participation of affected communities. Deference to this lived experience, along with an embrace of unconventional approaches, may yield satisfactory solutions. This type of bottom-up, participatory, and multi-faceted response might be portrayed as chaotic, incomplete, and only a stop-gap measure. But the process of shifting normative aspirations, as suggested in this working paper, may reveal this to be the superior solution.

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