





Securing the rights and protection of children on the move

This short background paper is intended to address the question: how do children moving because of the effects of climate change fit into existing international laws and frameworks? The paper also briefly considers the intersection of COVID-19, climate change and migration, with a focus on the particular effects on children.

WHY IS THERE A NEED FOR FURTHER WORK ON CHILDREN AND CLIMATE CHANGE-RELATED MOBILITY?

There is considerable (though still insufficient) literature on the impacts of climate change on children.1 Compared with adults, children are physically more vulnerable to the direct effects of extreme heat, drought, and natural disasters.² For example, a World Health Organization study of mortality linked to climatic events globally over three decades ago found that environmental factors accounted for a quarter of the deaths in the general population but for more than a third of deaths among children under 14.3 In addition to the physical impacts and risks they face due to environmental factors, climate-driven mobility of children, whether displacement, voluntary or forced migration, is another area where more research and data are needed. According to Ruppel-Schlichting, Human, and Ruppel, "Risks associated with climate-induced migration include traumatisation, sexual abuse and child trafficking, maltreatment and neglect, discontinuation of school, child labor, and relocation to informal settlements with insufficient infrastructure and high (environmental) risks, among others."4

When it comes to displacement and disasters, there seems to be a general consensus that, "Children are inherently more vulnerable than adults when exposed to the risks associated with displacement due to their physical, psychological, and emotional immaturity, and reliance on adults for their personal security both at the time of moving and in its aftermath." While there is increasing recognition of children's needs for protection, particularly for unaccompanied children, there is also recognition that there are many unmet protection needs in emergency situations. As the International Federation of Red Cross and Red Crescent Societies observes, "Among the most neglected forms of child protection in emergencies include child-focused gender-based violence, trafficking and migration, and child labour, and violence against children with disabilities."

Climate Mobility and Children: A Virtual Symposium

In order to shine a light on the plight of children on the move and to better understand how children and young people are affected by climate-related migration and displacement, UNICEF and the International Organization for Migration hosted a virtual symposium in November 2020. Over two days, experts, policymakers and young people from around the world met to discuss and debate pertinent questions, unpack key concepts, propose actions and outline an agenda to ensure that children's rights and needs are part of the wider debate on climate change.

Existing frameworks for protecting children on the move

International human rights law continues to apply to people on the move, whether they travel within the borders of their countries or cross into other countries, whether they are displaced by conflicts, disasters, or climate change, whether they are children or adults.

What is the Convention on the Rights of the Child?

It is an international treaty that recognizes the human rights of children, defined as persons up to the age of 18 years. The Convention establishes in international law that States Parties must ensure that all children - without discrimination in any form - benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in the achievement of their rights in an accessible and active manner.

People, including children, do not lose their fundamental human rights when they migrate or are displaced. International human rights law continues to apply to people on the move, whether they travel within the borders of their countries or cross into other countries, whether they are displaced by conflicts, disasters, or climate change, whether they are children or adults. These basic rights are included in, for example, the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of all Forms of Racial Discrimination; Convention on the Elimination of all Forms of Discrimination against Women; and Convention on the Rights of Persons with Disabilities.

In addition, three human rights instruments are particularly relevant to this discussion: the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, the Convention Relating to the Status of Refugees, and the Convention on the Rights of the Child.

Children who cross an international border because of the effects of climate change, like adults, are generally not considered to be refugees, under the Refugee Convention (although there may be cases where they can prove that persecution on the basis of one of the five protected grounds contributed to their displacement). The Migrant Workers convention (which has yet to be ratified by a major migrantreceiving country) applies to dependent children of migrant workers and is less relevant to people who move because of the effects of climate change. The Convention on the Rights of the Child applies to all children (article 2) including visitors, refugees, children of migrant workers and irregular migrants. The basic rights assured to children include the right to a nationality, the right to physical integrity, the highest attainable standards of health and education and the right to be free of discrimination, exploitation and abuse. Article 10 upholds the right of children to family reunification and article 12 the right to participation. The Convention specifies that the best interests of the child should be a primary factor in decisions about the child's future.¹¹

These legal standards all apply to people living outside their countries of origin. But the fact is that most of those who move because of the effects of climate change will remain within the borders of their countries. There is less hard international law applicable to this much

larger group of people who are forced to move internally because of the effects of climate change. The *Guiding Principles on Internal Displacement*, based on binding international law, is applicable to those displaced internally because of conflict or disasters. In particular, the *Guiding Principles* highlight the rights of children to protection and assistance (article 4), to not being recruited by armed groups (article 13), to family life (article 17) and to education (article 23).¹² The Kampala Convention is a binding legal convention for ratifying parties in the African Union and includes similar provisions for children (Article VII, paragraphs 5e and 5f; Article IX, paragraphs 1d and 2c).¹³ It also explicitly recognizes climate change as a driver of displacement.

In addition to these instruments, there are other examples of soft law which apply to children who move because of the effects of climate change, including the Global Compact on Safe, Orderly and Regular Migration,¹⁴ the Inter-Agency Standing Committee (IASC) Operational Guidelines for Protection in Disasters¹⁵ and the Sendai Framework on Disaster Risk Reduction.¹⁶ The Platform on Disaster Displacement has done remarkable work in highlighting provisions of national laws and policies related to cross-border disaster displacement.¹⁷ The UN Framework Convention on Climate Change's Task Force on Displacement has also worked on the issue of those who move because of the effects of climate change.¹⁸ Similarly, there are Guidelines and a Toolbox on Planned Relocations.¹⁹ UNHCR and IASC have also published specific guidelines on how to respond to unaccompanied children.²⁰

Unfortunately, there have been few systematic efforts to evaluate the effectiveness of these examples of international soft law and operational frameworks – much less their effects on children. Phil Orchard examined the 40 countries which have adopted laws or policies on internally displaced persons and finds that less than half have implemented these laws, even partially.²¹ The many soft laws and operational frameworks for migrant and refugee children have not been systematically evaluated,²² but there are a number of studies attesting to their utility in specific settings.²³

To sum up: there is no international framework specifically focused on children who move because of the effects of climate change but there is a large body of existing law – both binding and soft law – which is applicable to children in this situation.

As is the case with all human rights law – and probably all law generally – there is a significant gap between the good intentions of these documents and how they are applied in practice. As noted above, although there have been efforts to evaluate the

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implementation of the Guiding Principles on Internal Displacement, and multiple studies exist on the use of child protection frameworks for refugee and migrant children - particularly unaccompanied children – there have been few efforts to analyze the utility of these frameworks for children moving because of the effects of climate change.24 A recent study by OHCHR includes a number of good practices which governments have implemented to uphold the rights of children affected by climate change but notes the lack of coherence in these policies.²⁵ Although there are undoubtedly many factors which come into play, it is most likely that governments implement policies to protect migrant and refugee children only when the issue comes to the fore, when a government has the political commitment to act and when it has the capacity to do so.²⁶ There are difficulties in defining groups of children who move precisely because of the effects of climate change. Some may be displaced because of natural disaster; some may accompany their parents who leave their homes because of lack of economic opportunities, perhaps exacerbated by a changing climate; some may move not because of an immediate threat to life but because they see the 'writing on the wall' and decide to use existing migration routes (work, study, for example) while they can. While many scholars and policymakers have recognized that there is a substantial legal gap for people moving to other countries because of the impact of climate change, there is little political will internationally to draft a new convention or binding international agreement.

COVID-19, climate change and migration: effects on children

The World Bank has identified the triple shock posed by COVID-19: the health effects of the virus itself, the effects of measures to control its spread and the subsequent global recession.²⁷ All of these affect migrants and refugees.

There are several ways in which climate change and COVID-19 intersect. Perhaps most broadly, these are both threats to humanity which are affecting people in all regions of the world, including children. Many governments, UN agencies, academics and civil society are highlighting the serious – often disastrous – effects of COVID-19 on mobility patterns around the world.²⁸ Asylum-seekers are finding it more difficult to access other countries to ask for asylum. When Cyclone Harold hit the Pacific Islands in April 2020, international aid workers could not enter the country of Vanuatu because the borders were closed to prevent the spread of the virus.²⁹ We know that

sudden-onset weather-related disasters have severe effects on children, including domestic violence, family separation, trauma, and overcrowding in evacuation centres which are now likely to increase the spread of the virus. In the longer term, children's well-being will suffer from the economic impact of COVID-19 on countries with long traditions of economic migration and intersections with environmental drivers (e.g. the dry corridor of Central America, the long dependence of some Asia Pacific countries on migrants and their remittances). The deadly trifecta of climate change, economic despair and COVID-19 likely to increase smuggling, trafficking, child labour, early marriage, and a diminished role for child protection advocates. As countries implement policies to stop the spread of COVID-19, the effect on vulnerable migrant, refugee and displaced people, including children, should not be overlooked.

Recommendations

IN THE SHORT TERM:

Governments should begin planning now not only for more people moving for environmental reasons but also for large numbers of children moving. This includes reviewing disaster response and risk reduction prevention efforts as well as beginning to anticipate and plan for those moving because of the slow-onset effects of climate change. These are issues that challenge not only national authorities but particularly municipal and provincial-level governments.

International and regional organizations can do more to raise awareness of the particular needs of children who move because of the effects of climate change. In addition to training activities, conference papers and meeting reports, advocates and practitioners could be encouraged to write blogs and short articles highlighting the issues raised in discussions.



IN THE MEDIUM AND LONGER TERM:

More research is needed on the relationship between children, climate change and migration, particularly children who move because of the effects of drought and other slow-onset effects of climate change. While there is a growing academic literature on climate change and mobility, it would be useful to have a synthesis of this documentation as it pertains to children and young people. It is difficult to develop policies and implement existing relevant normative frameworks without having basic information about, for example, how many children are moving because of climate change and the particular protection needs of children displaced by different effects of climate change. For example, are children more likely to be displaced without their families in hurricanes than in droughts?

On the regional level, regional organizations such as the African Union, the Association of Southeast Asian Nations and the Pacific Islands Forum, should consider the applicability of their regional frameworks to both movement of people (such as the Kampala Convention) and climate change adaptation (such as the Pacific Islands Forum's Boe Declaration) to the particular needs of children. International organizations, such as UNICEF could build on their expertise in child protection by identifying and promoting the legal and operational standards applicable to children moving because of the effects of climate change. Rather than developing new international law, the question is rather: how can we use existing frameworks to protect children on the move because of climate change, and uphold their rights?

One possible follow-up from this Symposium might be to **compile** a listing of basic principles applicable to children who move, both internally and across borders because of the effects of climate change – similar to the process used in *Guiding Principles on Internal Displacement*. These basic principles could draw on existing international law and operational frameworks. This compilation could be spearheaded by UNICEF or another international organization but to guarantee maximum ownership, it should incorporate the perspectives of different regions. A draft set of principles would include input from representatives of different types of organizations working on these issues (e.g. experts in climate change, child rights, migration, internal displacement, legal aspects and, in particular, children/young people).

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A second area where further work would be useful would be to analyze the ways in which Best Interests Determination (BID) could incorporate assessment of the effects of environmental change on children who migrate due to climate change. The BID process is widely used in many different settings and has been incorporated into policy mechanisms in many countries. In the case of children in the refugee context, for example, UNHCR has issued guidelines for BID which include several references to the broader 'environment' and to 'environmental risks'.30 But these references seem to refer to the overall context rather than to the specific risks posed by climate-related events. An interesting project would be to develop suggestions for incorporating climate and environmental risks into BID guidelines. For example, a child may well become separated from parents or caregivers because of a sudden-onset disaster or the longerterm effects of climate change and these factors should be taken into consideration in determining the best interests of the child.

Since it is likely that most of those who move because of the effects of climate change will move internally, it would be appropriate to examine particularly the ways in which the Guiding Principles on Internal Displacement are incorporated into national laws and policies with a particular focus on children. As the recent report of the Special Rapporteur on the Human Rights of Internally Displaced Children notes, children and young people are most likely to suffer the impacts of climate change and have also been among the most vocal actors in calling for climate change mitigation efforts.31 Possible directions for pursuing this could include engaging with the Guiding Principles Cluster³² and/or the UN High Level Panel on Internal Displacement³³ to consider the ways in which the concerns of children displaced because of climate change are being addressed in these forums. Another promising avenue would be to examine how children's issues have been incorporated into African laws and policies developed to implement the Kampala Convention. Lastly, it would be helpful to compile evidence of the ways that community-based protection mechanisms have supported children displaced by both sudden and slow-onset disasters.34

Endnotes

- Jonathan Todres (2011). "Mainstreaming Children's Rights in Post-Disaster Settings," Emory International Law Review 25: 1233-1261. https://ssrn.com/abstract=2033300; Katharina Ruppel-Schlichting, Sonia Human and Oliver C. Ruppel (2013). "Climate Change and Children's Rights: An International Law Perspective," In Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility, edited by K. Ruppel-Schlichting, O.C. Ruppel and C. Roschmann, 349–78. Baden-Baden: Nomos Verlagsgesellschaft MbH. http://www.jstor.org/stable/j. ctv941w8s.17
- Janet Currie and Oliver Deschenes (2016). "Children and Climate Change: Introducing the Issue," The Future of Children, 26, no. 1. https://www.jstor.org/stable/43755227
- UNICEF, "The Challenges of Climate Change: Children on the Front Line," (April 2014). https://www.unicef.org/publications/ index_74647.html
- Katharina Ruppel-Schlichting, Sonia Human and Oliver C. Ruppel (2013). "Climate Change and Children's Rights: An International Law Perspective," In Climate Change: International Law and Global Governance: Volume I: Legal Responses and Global Responsibility, edited by K. Ruppel-Schlichting, O.C. Ruppel and C. Roschmann, 349–78. Baden-Baden: Nomos Verlagsgesellschaft MbH. http://www.jstor. org/stable/j.ctv941w8s.17
- Robert Oakes (2016). "Climate Change, Migration, and the Rights of Children," United Nations University. https://unu. edu/publications/articles/climate-change-migration-and-the-rights-of-children.html
- 6. "Child Protection," Global Protection Cluster. https://www.globalprotectioncluster.org/themes/child-protection/#:~:text=Child%20Protection%20is%20an%20Area,the%20Provider%20of%20Last%20Resort
- ICRC, IRC, Save the Children, UNICEF, UNHCR and World Vision International, "Inter-Agency Guiding Principles on Unaccompanied and Separated Children" (January 2004). https://www.unhcr.org/4098b3172.pdf
- International Federation of Red Cross and Red Crescent Societies (2016). "Briefing: Child Protection in Emergencies". https://www.ifrc.org/Global/Publications/principles/IFRC-CPiE-Briefing_EN.pdf
- 9. Under international human rights law, migrants are entitled to all the rights therein. However, most multilateral agreements and conventions do not explicitly recognize migrants as a specific group, and even if they do, they appear in different areas of the law (such as humanitarian, human rights, criminal, and labour law). For fuller discussion of international migration law, see Vincent Chetail, International Migration Law, Oxford University Press, 2019; and Kristina Touzenis, 'Human Rights of Migrant Children', International Migration Law, No. 15, International Organization for Migration, 2008. https://publications.iom.int/system/files/pdf/iml_15_en.pdf
- In addition, there are various ILO Conventions on Child Labour (ILO Conventions 138, 182, and ILO Recommendation 190) as well as the UN Protocols on Smuggling and Trafficking.
- See Office of the United Nations High Commissioner for Human Rights (OHCHR) (2017). Analytical Study of the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child. https://undocs. org/en/A/HRC/35/13
- United Nations (2004). "Guiding Principles on Internal Displacement". (October 2004). https://www.unhcr.org/ en-us/protection/idps/43ce1cff2/guiding-principles-internaldisplacement.html

- African Union (200)). "African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)" (23 October 2009). https:// au.int/sites/default/files/treaties/36846-treaty-kampala_ convention.pdf
- United Nations (2018). "Global Compact for Safe, Orderly and Regular Migration" (11 July 2018). https://refugeesmigrants. un.org/sites/default/files/180711_final_draft_0.pdf
- 15. The Brookings-Bern Project on Internal Displacement (2011). "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters," Inter-Agency Standing Committee (January 2011). https:// interagencystandingcommittee.org/system/files/legacy_files/ Operational_guidelines_nd.pdf
- United Nations (2015). "Sendai Framework for Disaster Risk Reduction 2015–2030". https://www.preventionweb.net/ files/43291_sendaiframeworkfordrren.pdf
- 17. "Platform on Disaster Displacement". https://disasterdisplacement.org/
- United Nations (2018). "Report of the Task Force on Displacement", Task Force on Displacement. (17 September 2018). https://unfccc.int/sites/default/files/resource/2018_TFD_ report_17_Sep.pdf
- Brookings, Georgetown University, and UNHCR (2015).
 "Guidance on Protecting People from Disasters and Environmental Change Through Planned Relocation" (7 October 2015). https://www.unhcr.org/en-us/protection/environment/562f798d9/planned-relocation-guidance-october-2015.html; UNHCR, Georgetown University, and IOM (2017). "A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change," https://www.unhcr.org/en-us/protection/environment/596f1bb47/planned-relocation-toolbox.html
- 20. UNHCR (1997). "Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum". https://www.unhcr.org/en-us/publications/legal/3d4f91cf4/ guidelines-policies-procedures-dealing-unaccompaniedchildren-seeking-asylum.html; Alliance for Child Protection in Humanitarian Action (2017). "Toolkit on Unaccompanied and Separated Children," Inter-Agency Working Group on Unaccompanied and Separated Children. https://www.iom. int/sites/default/files/TOOLS-WEB-2017-0322.pdf
- 21. Phil Orchard (2018). Protecting the Internally Displaced: Rhetoric and Reality, Oxford: Routledge Press.
- Kevin Byrne (2018). Toward a Child Rights-based Assessment Tool to Evaluate National Response to Migrant and Refugee Children. UNICEF-Office of Research Innocenti Discussion Paper. https://www.unicef-irc.org/publications/pdf/DP%20 2018-04%20web.pdf
- 23. See for example, Ann Laquer Estin (2018). "Child Migrants and Child Welfare: Toward a Best Interests Approach." Washington University Global Studies Law Review, 17, no. 3. https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1657&context=law_globalstudies; Carla Van Os, et al. (2018). "Recently arrived refugee children: the quality and outcomes of Best Interests of the Child Assessments." International Journal of Law and Psychiatry. 59 (July-August 2018): 20–30. https://www.sciencedirect.com/science/article/abs/pii/S0160252717302820. See also Save the Children's Resource Centre on Child Protection: https://resourcecentre.savethechildren.net/publishers/global-protection-cluster?page=3

- 24. See for example, UNICEF (2014). Children on the Front Line: The Challenges of Climate Change. UNICEF-Office of Research Innocenti. https://www.unicef-irc.org/publications/pdf/ccc_final_2014.pdf
- Office of the United Nations High Commissioner for Human Rights (OHCHR) (2017). Analytical Study of the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child. https://undocs.org/en/A/HRC/35/13
- See for example the work of the UN Secretary-General's High-Level Panel on Internal Displacement. https://www.un.org/ internal-displacement-panel/
- World Bank (2020). From Containment to Recovery: Economic Update for East Asia and the Pacific. Washington, DC: World Bank. https://www.worldbank.org/en/region/eap/publication/east-asia-pacific-economic-update
- United Nations (2020). "Policy Brief: COVID-19 and People on the Move". https://www.un.org/sites/un2.un.org/files/ sg_policy_brief_on_people_on_the_move.pdf
- Pacific Humanitarian Team (2020). "Situation Report: Tropical Cyclone Harold Update". https://reliefweb.int/sites/reliefweb.int/files/resources/PHT%20Sitrep%209_TC%20 Harold_21042020.pdf
- UNHCR (2018). "Guidelines on Assessing and Determining the Best Interests of the Child". https://www.refworld.org/ pdfid/5c18d7254.pdf

- OHCHR (2020). "Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons," United Nations General Assembly (A/75/207). https://www.undocs. org/A/75/207
- Global Protection Cluster: Guiding Principles on Internal Displacement (GP20). https://www.globalprotectioncluster.org/ gp20/
- United Nations, UN Secretary-General's High-Level Panel on Internal Displacement. https://www.un.org/internaldisplacement-panel/
- 34. See for example: OHCHR (2019). "Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons", United Nations General Assembly (A/74/261) (July 2019). https://undocs.org/en/A/74/261

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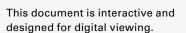
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