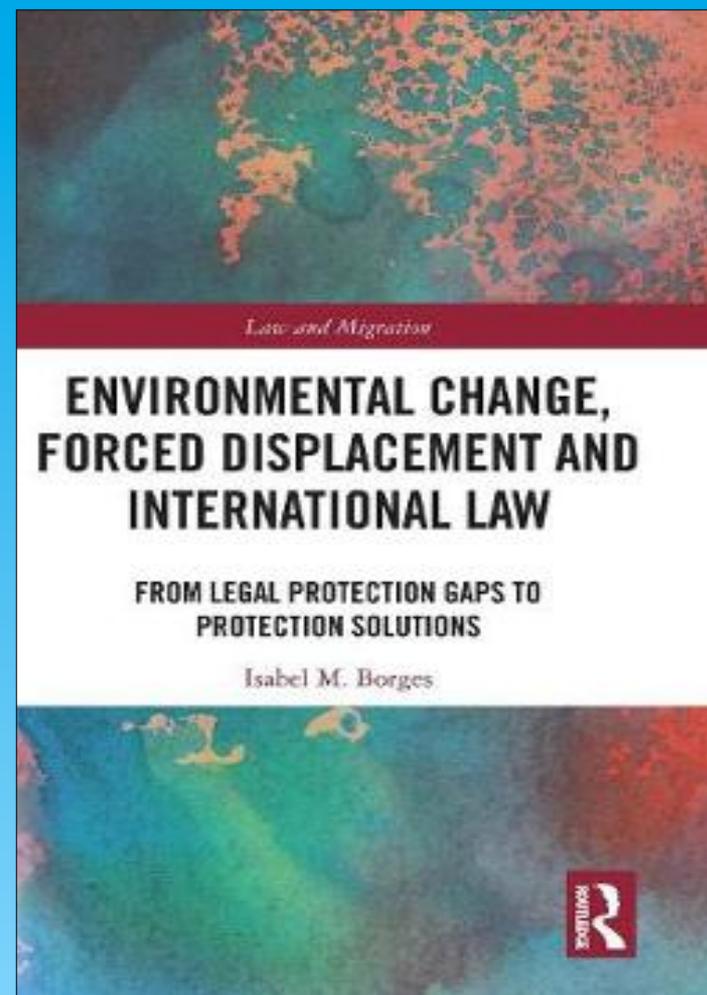


Climate refugees – from understanding to addressing this challenging phenomenon
EESC, Van Maerlant building,
room VMA3
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The Starting Point:

- Cross-border displacement stemming from environmental change has been identified as a **“legal protection gap”** in the international protection regime (UNHCR 2011)

- OHCHR

“irrespective of whether or not CC affects can be construed as a HR violation, HR obligations provide important protection to the individuals whose rights are affected by CC or by measures taken to respond to CC”

UN DOC A/HRC/10/61/para.71 (15 January 2009)

Presentation Outline

- 1) Research Objectives
- 2) Guiding Threads
- 3) Main Findings
- 4) Conclusion

1. Research Objectives

- 1) Whether and to what extent existing international law protects cross-border environmental displacement?
- 2) Whether and how existing formalised regional complementary protection standards can interpretively solidify and (re)conceptualise protection for cross-border environmental displacement?

2. Guiding Threads

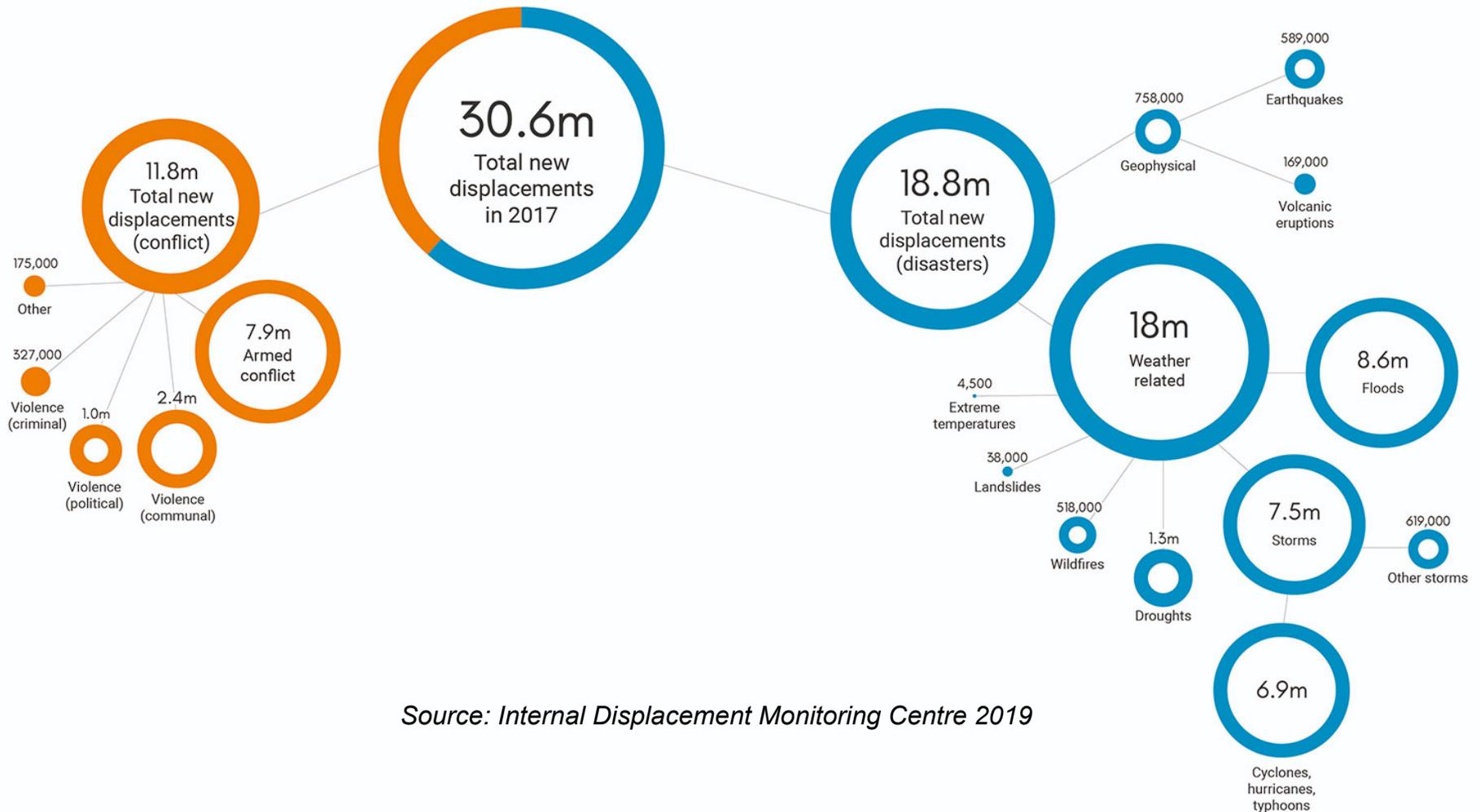
- Environment as an autonomous factor that leads to displacement
- *Vulnerability layers*
- Protection Paradox - between «guesstimates» and realities
- Environmental Displacement as a Human Rights Issue:
 - A Rights-Based Approach to Environmental Displacement
 - Holistic Approach to Protection (Pre - In- Post Displacement)
- Environmentally Displaced Person (EDPs):

those individuals of a country who for compelling reasons of sudden disasters (in particular cyclones, storms surges and floods) or progressive environmental degradation (in particular drought, desertification, soil erosion, water shortages and other climate change related conditions) natural and/or human made, impacting in their livelihoods are obliged to leave their country of origin temporarily or permanently to another state.

“Guesstimates”: range from 150 million to 200 million environmental displaced persons as a result of environmental change alone by 2050

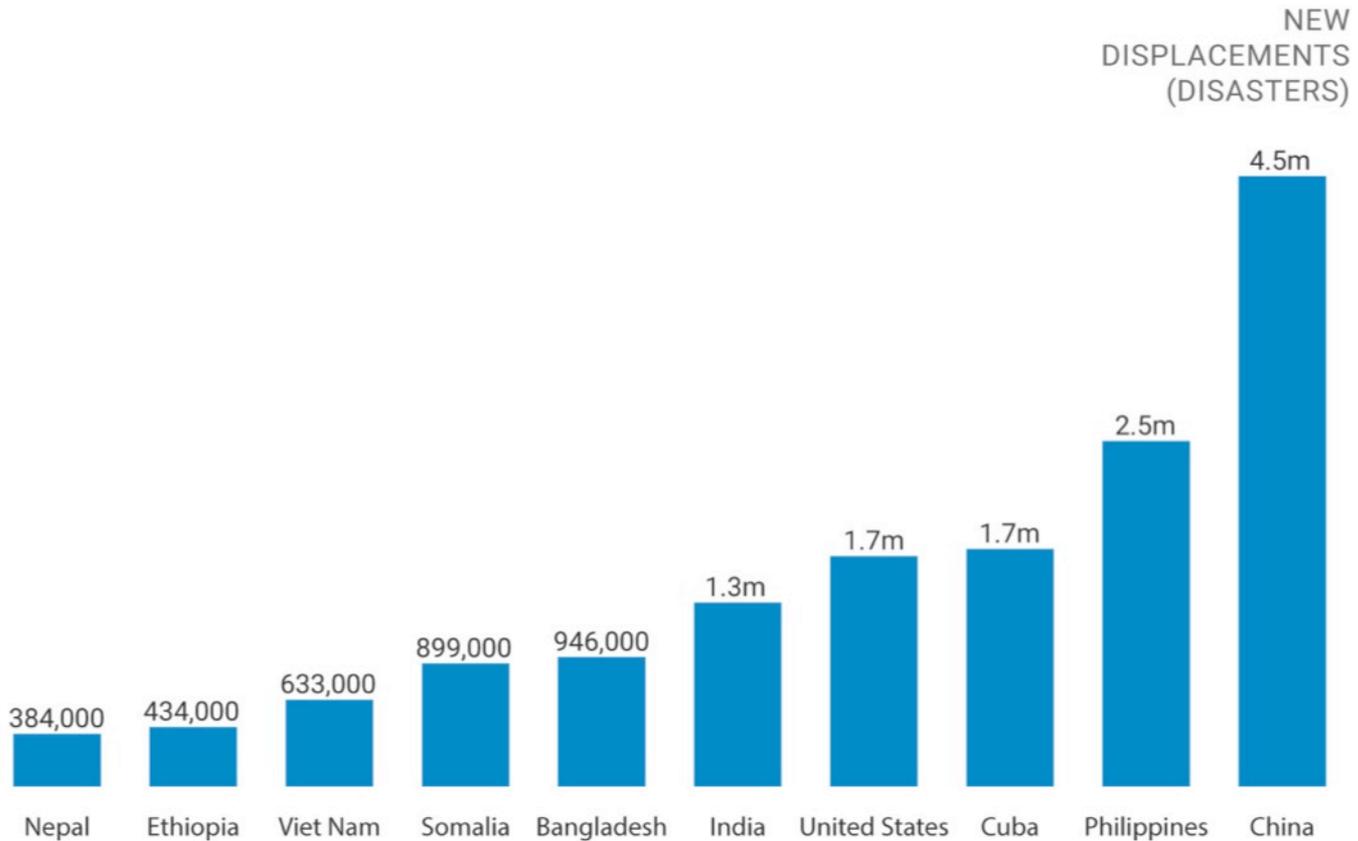


Realities: 2017 - 39% of new internal displacements were triggered by conflict and 61% by disasters



Source: Internal Displacement Monitoring Centre 2019

Countries most affected by disasters



Source: Internal Displacement Monitoring Centre 2019

Main Findings

Increasing Legal recognition of Environmentally Displaced Persons

- *UNFCCD Preamble; Arts.3; 17 e) (1994)
- *Cancun Agreement on long term cooperative action under UNFCC Article 14 f) (2010)
- *Council of Europe «Environmentally Induced Migration and Displacement: a 21st century challenge» Parliamentary Assembly (2008)
- *European Union «Climate Change Environmental Degradation and Migration» SWD (2013)
- *Nansen Principles The Nansen Conference on Climate Change and Displacement in the 21st Century Oslo (2011)
- *The Nansen Initiative/Platform on Disaster Displacement - Launched in 2012 by Switzerland and Norway, the Nansen Initiative was a state-led consultative process to build consensus on a Protection Agenda addressing the needs of people displaced across borders in the context of disasters and climate change

States Obligations

to protect individuals against harm that affects the enjoyment of their human rights even if the state is not causing the threat

to take coordinate action regarding slow and fast onset env. changing conditions/foreseeable risk that may amount to the violation of HR (migration as adaptation)

to provide emergency relief

to ensure access to information or participation in decision making processes including access to justice regarding environmental risks

Protection Obligations from Cross-Border Displacement Arise from Legal Cummulative Effects

HRC General Comment No 31; IACtHR Sawhomaxa Indigenous Community v. Paraguay (2006); ECtHR *Budayeva v. Russia* (2008); ECtHR *Oneryildiz v. Turkey* (2004); ECtHR *Lopez Ostra v. Spain* (1994); ECtHR *Guerra and Others v. Italy* (1998)

States Obligations

to protect after cross displacement

obligation of non return: Victims flee after disaster and their government consciously withheld or obstructed assistance in order to punish or marginalize them on the five Convention grounds

Government induces famine by destroying crops or poisoning of water

Government refuses to accept aid from other states

State does not establish measures of prevention of disasters

Protection Obligations after Cross-Border Displacement Arise Contextually

1951 Refugee Convention and 1967 Additional Protocol

Other Regional Frameworks (OAU Convention on Refugees; Cartagena Declaration, Arab States Convention on Refugees)

Case law: *Teitiota v. The Chief Executive of the Ministry of Business and Employment and AD (Tuvalu) v. New Zealand Immigration and Protection Tribunal*

(Re)Conceptualise Protection

Protection from cross-border displacement

- EU legal Framework on Seasonal Workers
- Mobility Partnerships

Protection after cross-border displacement

- Subsidiary Protection
- Temporary Protection

Towards a New Protection Paradigm

EU's Overarching Normative Framework and Human Rights

Article 2 TEU -human dignity, freedom, democracy, equality, the rule of law and respect for human rights

Article 3 TEU “missionary principle” - protection of the environment; protection and promotion of human rights, the well-being of its peoples, offering its citizens an area of freedom, security and justice

Article 6 TEU - Recognition of the rights, freedoms and principles set out by the CFREU and the ratification by the EU of the ECHR and favours an increasing role of the EU in the international scene

Article 21 et seq - TEU human rights as a cross-cutting principle overarching the EU's international activities

EU's Normative “Ripple Effect”

EU's Coherence Imperative as Guidance

Article 7 TFEU “The EU shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral powers”

**European Commission Staff Working Document (2013) 138 Final
“Climate Change, Environmental Degradation and Migration”**

emphasizes that there are national and international legal instruments “*legally binding and soft-law*” that can offer some form of status and/or forms of protection depending on the context.

***A Priori* measures**

prevent environmental displacement

Labour Migration as an Adaptation Strategy:

- EU legal framework on Seasonal Workers/
Circular Migration (Directive 2014 PE-COS
113/13)
- Mobility Partnerships (GAMM)

***A Posteriori* measures**

effects of environmental change and the various modes of protection which are available and that can be adaptable to protect EDPs

- Subsidiary Protection (Directive 2004/83/EC;
Directive 2011/95/EU recast)
- Temporary Protection (Directive 2001/55/EC)

Towards a New Human Rights Based Protection Paradigm for Environmental Displacement

- * EU regional protection regime helps states consolidate an evolving Protection Paradigm of proactive and reactive measures being erected at the international level for environmental cross-border displacement
- * It helps states (re)conceptualise protection as a holistic and dynamic enterprise

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Thank you for your attention 😊