## SHEET 12 DISPLACEMENT, CLIMATE AND THE LAW



### Climate Training





For key concepts and terms please refer to Fact Sheets 1, 2 & 3

#### **Key messages:**

- The legal framework for climate displacement comprises both international and national law.
- ▶ International law instruments include hard law (such as international human rights and climate change treaties), soft law (such as those adopted by resolutions of the UN and the RCRC International Conference) and other international guidance, which are non-legal in nature but are based on international legal principles. There are also a number of regional arrangements which facilitate cross-border movement as a result of disasters and climate change.
- ▶ National law and policies are essential for the implementation of international laws and to ensure their effective application in situations of displacement.
- ▶ The IFRC has been supporting governments and National Red Cross and Red Crescent Societies to improve their national legal frameworks, based on existing principles, standards and good practice, including key issues for preventing and responding to climate displacement.

#### International law

The international legal framework for **climate-related displacement** comprises a number of different instruments, including **hard law** international treaties and **soft law** instruments such as resolutions of the UN General Assembly and the International Conference of the Red Cross and Red Crescent. There are also a number of **international guidance** documents based on the existing legal framework which have been recognised internationally but are not themselves legal instruments. Notably, many of the binding international instruments addressing displacement apply only to cross-border displacement, whereas the instruments concerning internal displacement tend to be soft law or guidance instruments.

The table on page 2 provides an overview of this legal framework, also in the context of other displacement and migration contexts.

# Human rights underpinning climate and displacement

Human rights are the fundamental rights and freedoms of all persons at all times, irrespective of nationality, legal status or other circumstance. In this way, they are directly applicable to people who have been displaced as a result of climate change and related disasters. These rights have been codified in international treaties which have since become customary and are binding on all States:

- ► International Covenant on Civil and Political Rights (ICCPR) (1966).
- ► International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).

These are supplemented by a proliferation of other treaties at the international and regional level aimed at protecting human rights in a range of specific contexts. Some examples include:

- ► Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979).
- ► African Charter on Human and Peoples' Rights (1981).



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### International law

- ► Convention on the Rights of the Child (CRC) (1989).
- ► Convention on the Rights of Persons with Disabilities (CRPD) (2006).

Although not all States have ratified these treaties, they nevertheless form part of the broader international legal framework that applies to people who have been displaced as a result of climate change and related disasters.

The Office of the High Commissioner of Human Rights (OCHCR) has actively engaged in issues of climate change and displacement, identifying the human rights implications and recommendations in a range of contexts, including:

- ► The slow onset effects of climate change and human rights protection for cross-border migrants (March 2018) A/HRC/37/35.
- ► Human rights, climate change and migration (April 2018) A/HRC/38/21.

#### Overview of the international legal framework for displacement caused by climate change and related disasters

	Climate displacement	Displacement and armed conflict	Displacement and human rights violations	Migration
Hard law (binding)	International human rights law eg. ICCPR, ICESCR, Convention on the Rights of the Child, CEDAW	International human rights law	International human rights law	International human rights law
	Climate change treaties eg. UNFCCC, Paris Agreement Regional agreements eg. Free Movement Agreements	International humanitarian law eg. Geneva Conventions and Additional Protocols	Refugee law eg. Refugee Convention	Regular migration eg. Migrant Workers Convention Irregular migration eg. Protocols on human trafficking and people smuggling
Soft law (non-binding)	UN resolutions and other soft law instruments on disasters (including climate change) and displacement eg. Sendai Framework, Guiding Principles on Internal Displacement, Resolutions of the RCRC International Conference	UN resolutions and other soft law instruments eg. Guiding Principles on Internal Displacement	UN resolutions and other soft law instruments eg. Guiding Principles on Internal Displacement	UN resolutions and other soft law instruments eg. UN Global Compact for Safe, Orderly and Regular Migration (includes climate change); Global Compact on Refugees
International guidance (non-legal)	Guidance documents, checklists and other materials eg. IFRC Checklist on Law and Disaster Risk Reduction, IASC Operational Guidelines on Protection of Persons in Natural Disasters			

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#### International law

There have also been other initiatives to examine the application of human rights in different contexts. Of particular relevance is the establishment of a **Special Rapporteur on human rights and the environment** by the United Nations Human Rights Council in 2012, with a mandate to:

- examine the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
- promote best practices of the use of human rights in environmental policymaking;
- identify challenges and obstacles to the full realization of human rights relating to the enjoyment of a healthy environment; and
- conduct country visits and respond to human rights violations.

The Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment presents, among other things, 16 framework principles on human rights and the environment. It notes that 'natural disasters and other types of environmental harm often cause internal displacement and transboundary migration, which can exacerbate vulnerabilities and lead to additional human rights violations and abuses.'

Similarly, the **UN Guiding Principles on Internal Displacement**, largely represents a restatement of existing international human rights law as applicable to the different stages of internal displacement (discussed further on the following page).



### Claiming asylum from climate change? New UN Human Rights Committee ruling

In 2015, Ione Teitiota and his family were deported from New Zealand after his application for asylum was denied. He lodged a complaint with the UN Human Rights Committee, arguing that his home country of Kiribati had been rendered uninhabitable as a result of rising sea levels and other impacts of climate change, including environmental degradation, salt water contamination of fresh water sources and violent disputes over the remaining land.

In January 2020, the UN Human Rights Committee issued its first ruling on a complaint by an individual seeking asylum from the effects of climate change. While the situation in Kiribati was deemed serious, it did not meet the grounds for asylum. However, the ruling opened up the possibility for the extreme effects of climate change—both sudden and slow onset events and impacts—to trigger the 'non-refoulement' obligations of receiving states, preventing them from returning people to countries where the situation may become incompatible with the right to life with dignity, even before it occurs.

Source: OHCHR (2020) <u>Historic UN Human Rights case opens door to climate change asylum claims</u>. Image: IFRC/Benoit Matsha-Carpentier

#### Climate Training



#### International law

In 2020, the Special Rapporteur on the Rights of Internally Displaced Persons issued a report on internal displacement in the context of the slow-onset adverse effects of climate change which provides an overview of the applicable framework, and notes the many impacts of climate change on human mobility and the rights and responsibilities of different stakeholders. The report includes a number of recommendations and calls on States and other stakeholders to uphold their existing commitments and strengthen data collection to fully understand the scale and nature of displacement issues.

## Displacement and climate change treaties

Recognising the global urgency of climate change, governments have adopted a number of treaties designed to limit global warming and manage the effects of the changing climate.

The <u>United Nations</u>
<u>Framework Convention</u>
<u>on Climate Change</u>
(UNFCCC) entered into force in 1994 and is the primary international, intergovernmental forum



for negotiating the global response to climate change. The ultimate goal of the Convention is to stabilize greenhouse gas concentrations 'at a level that would prevent dangerous anthropogenic [human induced] interference with the climate system.' The Convention acknowledges the 'common concern of humankind' in changes in the Earth's climate and its adverse effects, and that the 'global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response.'

The UNFCCC established a **Conference of the Parties (COP)** to review the implementation of the UNFCCC and adopt other legal instruments to promote its effective implementation. While mitigation was the focus of the early years, adaptation has since gained ascendancy. Currently there are several international agreements in place which specifically recognise the links between **climate change** and **displacement**:

- ▶ The **UNFCC Cancun Agreements** (2010) called on the international community, among other things, to take '[m]easures to enhance understanding, coordination and cooperation with regards to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.' Progress by the international community to this call to action included two initiatives adopted in 2015:
  - Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (see below).
  - Guidance on Protecting People From Disasters and Environmental Change Through Planned Relocation (see below).
- ➤ The Paris Agreement on Climate Change (2015) established 'the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change,' recognised the need to 'develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change' and operationalize such recommendations to address loss and damage.





#### Soft law instruments

#### **Task Force on Displacement**

In 2015 the COP established a Task Force on Displacement to develop recommendations to prevent and mitigate displacement as a result of the adverse impacts of climate change. The **IFRC** is currently one of its 14 members. The first phase of work included global consultations and the development of a comprehensive assessment and recommendations on issues of climate displacement.

The Task Force was extended with new Terms of Reference in 2019 to commence the second phase, involving the mapping of national policies and institutional frameworks, and strengthening knowledge on displacement in the context of slow onset disasters and durable solutions. It also addresses the mandates of relevant international bodies and work plans to include issues relating to migration, displacement and planned relocations in the context of climate change.

Source: UNFCC, Task Force on Displacement.

#### **Outcomes of the first phase of the Task Force**

in the context of averting, minimizing and addressing climate displacement:







Synthesizing the state of knowledge



Coordination of processes within the UN system



Mapping of data sources and methodologies



Increasing awareness



Identifying gaps



Delivering recommendations

# Acknowledging the links between displacement, climate change and disasters

A number of soft law and other instruments recognise the important links between displacement, climate change and disasters. These include:

➤ Sustainable Development Goals (SDGs):
Adopted by the UN General Assembly
in 2015 as part of the 2030 Agenda for
Sustainable Development, the SDGs
recognise that the impacts of climate change,
the increasing frequency and intensity
of natural disasters, as well as forced
displacement, are some of the immense
challenges to sustainable development.

- ▶ Sendai Framework for Disaster Risk
  Reduction 2015–2030: Adopted at the
  Third United Nations World Conference
  on Disaster Risk Reduction in 2015, the
  Framework acknowledges the impact of
  climate change on the increasing frequency
  and intensity of natural disasters as well
  as on displacement. It encourages disaster
  risk reduction and management through a
  coordinated, cross-sectorial approach with
  stakeholders at all levels and recognises
  relocation as a method of managing disaster
  risk, calling on states to develop policies
  governing relocation in disaster risk zones.
- Several resolutions of the International Conference of the Red Cross and Red Crescent also recognise the interrelationship between displacement, climate change and disasters, as described in more detail in Fact Sheet 4 of this series.



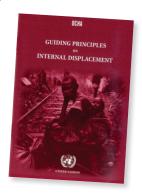
#### Soft law instruments

### Specific guidance on key topics

There have been a number of guidance documents and tools developed to help governments and humanitarian actors apply existing human rights and other international legal instruments to specific displacement contexts. Some examples of these are included below.

#### Internal displacement

The UN Guiding
Principles on Internal
Displacement (1998)
compile and elaborate
existing principles of
international law as
applicable to people who
are internally displaced.
The displacement
may be as a result of
conflict, human rights

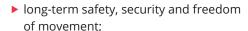


violations and disasters (which by extrapolation, would include climate-related disasters. Among the 30 principles include:

- The prohibition of arbitrary displacement, including during disasters, except for necessary evacuation.
- ► The criteria for situations when the displacement of people is required.
- ▶ Protection against forcible return.
- Recognition of the fundamental human rights of internally displaced people, including:
  - freedom of movement;
  - family unity and knowing the whereabouts of missing family members;
  - safe access to food, water, shelter and housing, clothing medical, sanitation and education; and
  - equality and participation of women.
- ► Enabling access to humanitarian assistance and ensuring such assistance is protected from attack or diversion.
- ► Ensuring full participation of internally displaced people in their own voluntary return, resettlement or reintegration.

These Guiding Principles also form the basis of the Red Cross Red Crescent Movement Policy on Internal Displacement (2009).

The IASC Framework on Durable Solutions for Internally Displaced Persons (2010) was developed to provide clarity on the concept of a durable solution (as provided in Guiding Principles 28-30 regarding return, resettlement or reintegration) and provides general guidance on how to achieve it. A durable solution is achieved when an internally displaced person can enjoy without discrimination:



- an adequate standard of living, including at a minimum access to adequate food, water, housing, health care and basic education;
- access to employment and livelihoods; and
- access to effective mechanisms that restore their housing, land and property or provide them with compensation.

The Framework describes the specific criteria and measures for achieving durable solutions, which is primarily the responsibility of the relevant national authorities, but for which humanitarian and development organisations may play complementary roles.

Durable solutions are also addressed in the IASC Operational Guidelines for the Protection of People in Situations of Natural Disasters (2011) which identifies measures to ensure their safety, freedom of movement, access to essential services, livelihoods and other support. The Guidelines reiterate that permanently preventing people from returning must only be done in accordance with a specific set of criteria. Read more about durable solutions in Fact Sheet 8 of this series.



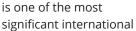


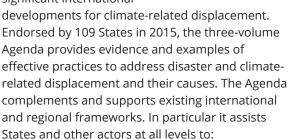


#### Soft law instruments

### Cross-border displacement

The Agenda for the
Protection of CrossBorder Displaced
Persons in the Context
of Disasters and
Climate Change (2015)





- ▶ improve preparedness and response capacities to address cross-border displacement;
- take measures to manage displacement risks in the country of origin;
- consider effective practices used by States and other actors to address cross-border displacement;
- understand the root causes and importance of inter-linking policies and collaboration;
- ▶ improve data collection and knowledge; and
- enhance humanitarian protection.

# Evacuations and housing, land and property

The IASC Operational
Guidelines for the
Protection of People in
Situations of Natural
Disasters (2011) applies
a human rights based
approach to address a



number of key protection issues for people affected by natural disasters (including, but not expressly noted, those induced by climate change). Of specific relevance to displacement contexts, the guidelines address the following:

 Evacuations: When other prevention and preparedness measures are not sufficient,

- people should be encouraged and facilitated to evacuate from a danger zone but should not be forcibly evacuated (in particular by international organisations and NGOs) unless a number of specific criteria are met. People should be supported to stay as close to their habitual residence and measures are proposed for ensuring that evacuation centres and temporary shelter zones are safe and respect dignity.
- ▶ Housing, land and property rights: For people displaced during disasters, ensuring adequate protection of their homes, land and possessions is of critical importance and measures are proposed to ensure access to ownership and identity documents, legal protections and rapid judicial and administrative procedures, in particular for women who often face greater disadvantage.
- ▶ Durable solutions: Protection of rights related to documentation; free movement for internally displaced persons; re-establishment of family ties; freedom of expression and opinion; and elections. These are civil and political rights that may become more important the longer the recovery phase lasts.

#### Planned relocation

The Guidance on Protecting People from **Disasters and Environmental Change through** Planned Relocation (2015) ('Guidance on Planned Relocation') was developed through a consultative process between states, international organisations and experts, and in reference to existing guidance documents and frameworks. It sets out general principles to assist States and other actors faced with the need to undertake planned relocation within national borders, including when formulating planned relocation laws, policies, plans and programmes. The **Toolbox** provides specific measures and examples of good practice, including a Checklist of key issues and questions to assist decision makers when developing, reviewing or amending domestic law and policy for planned relocations.

In 2020, IFRC was developing specific guidance for Asia Pacific National Societies on Planned Relocation. Read more about planned relocation in Fact Sheet 5 of this series.





### **Regional approaches**

## Regional mechanisms addressing climate-related displacement

Groupings of states at regional level have also developed mechanisms and commitments to address climate-related displacement issues in different contexts. Some examples are included below.

#### **Pacific**

Climate-related displacement is a pressing issue in the Pacific, and has resulted in the early development of a Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and



#### Disaster Risk Management (FRDP) 2017-2030.

The FRDP includes a number of recommendations for strengthening approaches to displacement in the context of climate change including:

- ➤ Strengthening the capacity of governments and administrations to protect individuals and communities that are vulnerable to climaterelated displacement and migration, through targeted national policies and actions, including relocation and labour migration policies.
- ➤ Supporting the protection of individuals and communities most vulnerable to climate-related displacement and migration through targeted national and regional policies and regional labour migration schemes where appropriate.
- Anticipating and preparing for future displacement by integrating human mobility issues within disaster preparedness, response and recovery programmes and actions.

#### **Americas**

Latin America and the Caribbean are extremely exposed to both the rapid and slow onset impacts of climate change and as result national climate policies are quite advanced in the region. However integration of migration and displacement issues has been limited.

Relevant legal frameworks are mostly focussed on the expansion of regular migration categories and existing mechanisms to include cross-border displacement from disasters. Of particular significance is the use of Free Movement Agreements (FMAs) which in normal times, liberalize migration between the member states of the Caribbean Community (CARICOM) and Organisation of Eastern Caribbean States (OECS). In 2017 these agreements were used to lift migration requirements to facilitate planned and unplanned evacuation processes during the hurricane season in the Caribbean.

Sources: IOM (2020) Policy Approaches to Climate
Migration: Lessons From Latin America and the
Caribbean and Sabin Centre for Climate Change
Law (2019) Free Movement Agreements and Climate induced Migration: A Caribbean Case Study.

#### **Africa**

FMAs are also used in different sub-regions of Africa. In eastern Africa, the Intergovernmental Authority on Development adopted the IGAD Free Movement Protocol (2020). This specifically protects the cross-border movement of people affected by disasters and climate change including:

- ► Facilitating the entry and lawful stay for those who have been displaced.
- Allowing pre-emptive movement of those at risk of displacement as a way of avoiding, or mitigating, the impacts of a disaster.
- ▶ Allowing citizens of IGAD Member States to cross borders 'in anticipation of, during or in the aftermath of disaster,' and enables disaster-affected people to remain in another country as long as return to their country of origin 'is not possible or reasonable.'

Although several other regional groups also have FMAs in place, such as the Economic Community of West African States (ECOWAS) and the East African Community (EAC), they do not yet address disaster or climate-related displacement.

Source: Platform on Disaster Displacement (2020)

New pact paves way for innovative solutions to disaster and climate change displacement in Africa.



#### **National law**

# Strengthening national laws to address climate-related displacement

National law plays an essential role in ensuring that international laws, standards and guidelines are effectively implemented. States that ratify international treaties have mechanisms in place to ensure their provisions are put into effect, although this varies from country to country. For soft law and other guidance, implementation is even less certain and often requires concerted advocacy and support from humanitarian and development organisations to ensure that commitments are fully realised.

Most countries have laws and policies relating to climate change and disasters, which establish the legal basis and institutional arrangements for addressing these risks from national to local level. Unfortunately, research has shown that many issues relating to displacement in these contexts are poorly addressed or absent.

# Climate and Disaster Displacement: The Importance of Disaster Law and Policy (2020)

This IFRC fact sheet provides an overview and recommendations on the importance of law and policy for addressing displacement in the context of disasters and climate change, including through planned relocations, based on the IFRC Disaster Law Checklist on Law and Disaster Preparedness and Response. Drawing on extensive research and international best practice and standards, the IFRC recommends a series of issues to be considered by law makers when developing and reviewing national disaster law and policy, to provide an adequate framework and practical measures to effectively mitigate risk, recover and support the realisation of durable solutions to climate displacement, with active community participation.

#### **IFRC Legal Checklists**

The IFRC has been engaged in disaster law issues for many years, including the development of international standards and guidance. Through the network of National Red Cross and Red Crescent Societies, it has played an influential role in strengthening national disaster laws and policies in many countries and more recently has developed a set of Legal Checklists to further support this process.

The Legal Checklists provide detailed guidance on how to strengthen national law and policy in the areas of disaster risk reduction, disaster preparedness and response and international disaster response, and also address a number of important aspects with regard to displacement from climate change and disaster. They were developed through an extensive review of global literature, including international laws, standards and guidelines, as well as numerous country case studies to identify examples of good practice.







The Checklist on Law and Disaster Preparedness and Response

The Checklist on Law and Disaster Risk Reduction

The Checklist on
the Facilitation
and Regulation of
International Disaster
Relief and Initial
Recovery Assistance.





#### **National law**

# Recommendations for national laws and policies

Based on the Legal Checklists and the large body of research and practice that lie behind them, the IFRC makes the following recommendations for national laws and policies:

### Disaster and climate-related displacement

- Does the law and/or policy address the reduction of the risk of disaster and climate-related displacement?
- ▶ Do the laws and/or policies relating to internal displacement include persons displaced by disasters and the effects of climate change?
- Does law and/or policy mandate contingency planning for internal displacement caused by disasters and the effects of climate change?
- ▶ Does the law include the identification, entry, stay and entitlements of cross-border disaster-displaced persons in a way which is consistent with human rights law?
- Does the law and/or policy provide for cross-border disaster-displaced persons, including vulnerable displaced groups, to receive protection and assistance to meet their basic needs during their stay?
- Does the law establish criteria for determining when and under which circumstances cross-border disaster displaced persons may be returned?
  - If yes, are those criteria consistent with international human rights law?
  - If no, is there a law or policy regulating durable solutions for cross-border disaster displaced persons?

#### Planned relocation

- Does the law and/or policy establish a comprehensive framework for undertaking planned relocations?
- ▶ If so, does that framework include provisions:

- establishing that planned relocation should be used as a measure of last resort and be conducted in accordance with relevant human rights;
- entitle potentially relocated persons to legally challenge a planned relocation;
- mandate a participatory approach to planned relocation involving all affected persons, including relocated persons and host populations; require that planned relocations improve, or maintain, the livelihood opportunities and living standards of relocated persons and host populations; and
- require that planned relocation mitigates adverse impacts on persons who live in close proximity to the areas from which persons are relocated?

Source: IFRC (2020), <u>Climate and Disaster Displacement:</u> The Importance of Disaster Law and Policy.

#### **Case studies**

#### Bolivia: Protection of climate migrants

In 2013, Bolivia passed a new migration law which provides a definition of 'climate migrants' and calls on the National Migration Council to develop international agreements protecting Bolivian nationals abroad and enabling the entry of displaced persons.

Source: IOM (2020), <u>Policy Approaches to</u> <u>Climate Migration: Lessons From Latin America</u> <u>and the Caribbean</u>.

#### Legislative review in Laos and Fiji

Red Cross and Red Crescent National Societies and the IFRC are currently supporting Disaster Risk Management legislative review processes in Lao PDR and Fiji. These review processes are highlighting the importance of integrating displacement—and other human mobility considerations—into relevant disaster legislation and policy.

Source: IFRC (2018), <u>Asia Pacific Report on Disasters</u> and Displacement in a Changing Climate.

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#### **Case studies**

#### Climate related disasters: Lessons from the Pacific

An IFRC report on

Law and Policies that
Protect the Most
Vulnerable Against
Climate-Related
Disaster Risks: Findings
and Lessons Learned
from Pacific Island
Countries (2020)
was undertaken as

was undertaken as part of the Research Project with other partners 'Leave No One



Behind—Developing Climate-Smart/Disaster Risk Management Laws that Protect People in Vulnerable Situations for a Comprehensive Implementation of the UN Agenda 2030.' It addresses the regional policy framework on climate change adaptation and disaster risk reduction in the Pacific Islands context, the relevance of law and policies in adaptation and risk reduction planning and makes suggestions for improvements to legal and policy frameworks.

## Bangladesh HLP Initiative on climate displacement

Since 2011, the Bangladesh HLP Initiative— a joint partnership between <u>Displacement Solutions</u> and <u>YPSA</u>—has sought to ensure that climate-related displacement is effectively addressed in a rights-based framework. This work emphasises that climate-displaced persons in Bangladesh are especially vulnerable to violation of their housing,

land and property (HLP) rights. Equally, the Initiative emphasises that respect for HLP rights is a vital element in protecting against, responding to and resolving climate displacement.

Examples of the work of the Bangladesh HLP Initiative include:

- ▶ Engaging in comprehensive fieldwork across Bangladesh, meeting with communities displaced by climate hazards, communities at risk of climate-related displacement, local and national government representatives and officials, UN staff, civil society, academics and the media.
- ▶ Publishing a series of innovative and influential reports addressing the need to implement rights-based solutions to prevent, respond to and resolve climate-related displacement.
- Conducting training and capacity building for civil society representatives on the human rights and HLP rights of climate-related displacement persons in Bangladesh.
- ➤ Supporting the creation of the 'Lawyers Initiative for Displacement Solutions,' an association of lawyers and trainee judges committed to protecting the rights of climaterelated displaced persons in Bangladesh.
- Undertaking advocacy with key Government officials, representatives and leaders of political parties, encouraging the adoption of effective legal and policy reform on the rights of climate-related displaced persons.

Source: <u>Displacement Solutions, The Bangladesh</u> <u>Initiative</u>. Image: Brad Zerivitz/American Red Cross





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