

Human Displacement and Climate Change

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Part 1. Introduction

1. Each year over 32 million people are forced to leave their homes to seek permanent or temporary residence in other parts of their own countries or in new countries in response to political, social, economic and environmental forces.ⁱ Some of these people will meet criteria agreed to by the international community and will be given refugee status. Others will receive humanitarian assistance from organizations such as the United Nations (UN) or complementary protection from other States. Many will go through formal, legal channels to achieve temporary or permanent migrant status and some will arrive in a new country seeking asylum. International law has developed to respond to these different circumstances. International law has not, however, fully developed to respond to some of the new triggers that are driving displacement, such as environmental degradation and climate change-related events.
2. The United Nations University claims that, by 2010, as many as 50 million people will be seeking to escape the effects of environmental degradation.ⁱⁱ Norman Myersⁱⁱⁱ and major environmental groups, such as Friends of the Earth, note that climate change, in particular the likelihood of increased extreme weather events and sea level rise, is likely to lead to significant increases in the number of environmentally displaced people, or so called 'environmental or climate change refugees', citing figures in the hundreds of millions of people.^{iv} Whilst these figures must be treated with caution, bearing in mind that the links between environmental degradation and unregulated population movements are not well-established,^v they nevertheless highlight the fact that many people, and in some instances whole communities, may be displaced as a result of environmental change.
3. There is no well-established legal basis upon which States are obliged to assist people displaced by climate change under international law. By exploring the application of traditional refugee and migration laws, a number of legal and non-legal scholars have demonstrated that these areas of law are not well suited to respond to the particular circumstances of global warming.^{vi} Despite calls from some developing countries, Parties to the United Nations Framework Convention on Climate Change (UNFCCC)^{vii} have also shied away from considering human displacement under their mandate.
4. This paper explores the international legal frameworks that touch upon the rights and obligations of countries and citizens affected by climate change-induced displacement and migration and considers (i) whether the concept of an 'environmental or climate refugee' is appropriate; (ii) whether new legal regimes to afford protection to those persons should be developed under international law; and (iii) if so, what is the most appropriate forum to develop such regimes.

Part 2. 'Environmental Refugees' and International Refugee Law

A. International Refugee Law

(i) Definitions & Status

5. The term 'environmental refugee' or 'climate refugee' has been coined by the media and some academics.^{viii} However, for many reasons, traditional definitions and descriptions of refugees do not sit well with persons displaced by the impacts of climate change.
6. The 1951 Convention relating to the Status of Refugees^x (1951 Convention) is the principal international instrument addressing refugees. The 1951 Convention contains a formal definition of the term 'refugee' that ties a person's refugee status to the reasons for flight. The 1951 Convention was drafted with the specific situation of the Second World War as its backdrop, hence its focus on forms of persecution associated with that event and its aftermath. In 1967 a Protocol to the Convention^x was adopted to extend the Convention's temporal and geographic scope to other circumstances where people may be seeking asylum from persecution.
7. Under the 1951 Convention a refugee is defined as any person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'^{xi}
8. This definition provides two cumulative prerequisites: an objective element (the fact of being outside of the country and the inability to return) and a subjective element (the fear of persecution, for one of the reasons listed in the Convention). The Convention also distinguishes between refugees who have a nationality and are unable or unwilling to avail themselves of State protection, and those who are stateless, or in other words, are unable or unwilling to return to their State of origin.^{xii}
9. The Office of the UN High Commissioner for Refugees (UNHCR) was established in 1950 by the UN General Assembly with the aim of providing international protection and seeking permanent solutions to the problem of refugees.^{xiii} The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute) brings into the institution's competence refugees falling within the 1951 Convention definition. This narrow concept has, however, been enlarged in order to accommodate a larger number of people in circumstances where a State dealing with a humanitarian crisis request humanitarian assistance.^{xiv} Refugees within the mandate of the UNHCR, and therefore eligible for protection and assistance by the international community, include not only those who can, on a case-by-case basis, be determined to have a well-founded fear of persecution on certain grounds (so called statutory refugees), but also other often large groups of persons who can be, or are presumed to be without, or unable to avail themselves of, the protection of their State of origin, namely persons of concern or displaced persons. Despite the reality that the UNHCR does provide humanitarian assistance to persons of concern and displaced persons, whether it has a legal mandate to do so in circumstances other than those that involve conflict is far from certain.^{xv}

10. The 1951 Convention definition of a refugee has been adopted in a number of regional agreements. These agreements establish legal frameworks for the treatment of refugees having regard to the specific circumstances of the countries that constitute the region. Some of these regional initiatives have indeed extended the definition of a refugee, introducing additional criteria to accommodate the evolving nature of human flows in recent decades.^{xvi} For example, the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention)^{xvii} extended the definition of refugee to include persons who were compelled to leave their country not only as a result of persecution, but also 'owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.'^{xviii} A similar definition is adopted in the 1984 Cartagena Declaration on Refugees (Cartagena Declaration)^{xix} and is widely used in Latin America.

(ii) Protection and rights of refugees and forced migrants

11. The rights that attach to formal refugee status include both external elements relating to diplomatic protection and internal elements relating to protection of individual rights.^{xx} The 1951 Convention and the 1967 Protocol set standards for the treatment of refugees, including their legal status, employment and welfare. Most favoured nation treatment is to be provided in respect of certain rights, including the right of association, and the right to engage in wage-earning employment. National treatment is accorded with respect to some rights, such as freedom of religion, elementary education, access to courts and legal assistance, rationing, public relief, labour legislation and social security.^{xxi} In addition to the protection of certain rights, host countries are obliged to provide certain services and facilities, such as providing assistance with identity papers, travel documents, transference of assets and naturalization.^{xxii}
12. There are some circumstances where legal protection may be afforded to persons who do not meet the definition of a refugee under the 1951 Convention, through the provision of complementary protection. However, the circumstances where such protection will be provided are very narrowly confined and the protection afforded is rarely equivalent.

B. Environmental Refugees

(i) Definitions

13. Bearing in mind the legal framework for refugees set out above, can those persons displaced by climate change really be called "climate refugees"? One of the first definitions of an 'environmental refugee' was provided by Essam El-Hinnawi in 1985 who described them as 'those people who have been forced to leave their traditional habitat...because of a marked environmental disruption...that jeopardized their existence and/or seriously affected the quality of their life.' He identified three categories of 'environmental refugees' that might exist:
- i. those temporarily displaced because of an environmental stress such as an earthquake or cyclone;
 - ii. those permanently displaced because of permanent changes to their habitat, such as dams or lakes; and

- iii. those permanently displaced because their original habitat can no longer provide for their basic needs.
14. Similarly, Myers, approaching the issue as a social scientist, has defined environmental refugees as 'people who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems, together with associated problems of population pressures and profound poverty.'^{xxiii} Under both these definitions, environmental refugees may be either internally displaced within their country, or pushed into external exile and hence become asylum seekers in other countries. In order to respond to the particular circumstances of climate change-induced migration, Biermann and Boas propose defining 'climate refugees' as 'people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations to their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity'.^{xxiv}
 15. Looking at the definitions posed above, none of the elements of the legal definition of a refugee under the 1951 Convention are met. Instead, the definitions merely identify factors that may trigger temporary and permanent displacement. Whilst some of these environmental factors are recognised in the context of internal displacement under the Guiding Principles on Internal Displacement,^{xxv} they are not recognised in the 1951 Convention. At best, the definitions of 'environmental and climate change refugees' are useful in identifying circumstances for flight. However, they are not linked back to the fundamental notion of an obligation to protect which derives from clearly recognized sources of international law such as treaties or custom.

(ii) Should there be a new category of 'environmental refugee'?

16. A number of people and organizations have been calling for 'environmental refugees' to be recognized and dealt with under international law. The debate has, however, largely been among non-legal scholars and has attracted very divergent views.
17. From a legal perspective, there would be a number of problems associated with trying to extend the 1951 Convention. First, without a broad consensus to negotiate and adopt a Protocol, it is highly unlikely that any document that is prepared would gain the necessary number of ratifications to enter into force. Second, an issue that goes to the heart of the matter is the fact that current protection regimes are designed around the need to protect people from violations of fundamental human rights orchestrated by the State in which they are ordinarily domiciled. Climate change impacts, particularly those impacts on vulnerable developing countries, are not wrought by their State governments. Any attempting to protect people from the impacts of climate change through the 1951 Convention would require this underlying premise to be rewritten, undermining completely the original intent of the Convention and rendering it meaningless.
18. Existing refugee law is unlikely to be an appropriate framework in which to deal with people being permanently forced to relocate over a longer period of time as a result of environmental or climatic factors. Thus, there is a need to look to other and potentially new legal regimes to coordinate and manage what may be a slower and more long-term process. Refugee law does, however, highlight a number of important issues to consider when looking at how to address displaced people, in particular, the need to provide a clear definition of the people that will

qualify for protected status, and further, the need to clarify the extent of protection and rights that are to be afforded to persons who meet that status.

Part 3. Climate Change & International Law

A. Guiding Principles

19. The UNFCCC contains a number of important principles to guide its implementation. These include the principle of intergenerational equity; the principle of 'common but differentiated responsibilities and respective capabilities', which implicitly recognizes that developed countries have made the greatest historical contribution to GHGs in the atmosphere and are most capable of responding to climate change and its adverse effects (and hence 'the developed country Parties should take the lead in combating climate change and the adverse effects thereof'); the precautionary principle; and the right to promote sustainable development and economic growth.^{xxvi} These principles are broadly consistent with the principles in the Rio Declaration on Environment and Development (Rio Declaration)^{xxvii} which are commonly referred to as principles of sustainable development.

B. Adaptation and Migration

20. Although the term adaptation is not defined in the UNFCCC, it is widely understood to mean 'the adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates, harms or exploits beneficial opportunities'.^{xxviii} For many developing countries, adaptation is the main priority with respect to climate change. However, one of the main criticisms of the UNFCCC process, particularly from developing countries, has been that the international negotiations have focussed on mitigation, with adaptation being somewhat marginalised.
21. Bearing in mind that significant populations live within 1.5 kilometres of the coast and most critical infrastructure is also situated in this zone, there are a number of adaptive measures that are necessary to safeguard people and livelihoods. Initially these measures can include securing water and food supplies and using natural and artificial measures to buffer and protect coastal areas. However, as the IPCC notes, emigration is a potentially effective adaptation strategy.^{xxix}
22. Whilst some commentators have argued that migration should be considered as part of the debates around adaptation,^{xxx} there are others who see migration as representing the complete failure of adaptation policies and planning. Furthermore, by treating migration as a means of adapting to climate change, the discourse on urgent and immediate adaptation actions is silenced and the funding for such actions does not materialise.^{xxxi} In other words, the focus of adaptation planning and funding should be on ensuring effective action takes place on the ground, without delay, as it will be significantly more expensive to address the impacts of climate change in the future.
23. With these sensitivities in mind, it is understandable to see why migration has not been formally considered under the UNFCCC or Kyoto Protocol in the context of adaptation or elsewhere. Nevertheless, in the high level segment of COP 13, COP/MOP 3 in Bali in December 2007, the President of the Maldives H.E. Mr. Maumoon Abddul Gayoom, stressed the need for parties to seriously consider the impacts of climate change on the populations of island countries like the

Maldives to protect climate refugees in the future.^{xxxii} This statement was built upon the Malé Declaration on the Human Dimensions of Climate Change (Malé Declaration), which was adopted by representatives of SIDS on 14 November 2007.^{xxxiii} The Malé Declaration called upon the UNFCCC COP to seek the cooperation of the UN High Commissioner for Human Rights and the Human Rights Council in assessing the human rights implications of climate change and to convene a debate on this subject.^{xxxiv}

24. Recently the UN Human Rights Council adopted by consensus a resolution on human rights and climate change.^{xxxv} The resolution was co-sponsored by 69 countries. The resolution recognizes that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights. The resolution requests that the Office of the United Nations High Commissioner for Human Rights conduct a detailed study on human rights and climate change.
25. The idea of addressing the human dimensions of climate change, and in particular climate change-induced migration, does not, at this stage, have widespread support among developing or developed country parties to UNFCCC. This is largely because a number of countries take the view that the mandate of the UNFCCC should be construed narrowly and, where other international agreements address certain issues, for example human rights, then the UNFCCC should not entertain those subjects. In addition, if migration is to be viewed in the context of adaptation, even then sensitivities arise in relation to the need to do as much as can possibly be done to enable people to continue to live in their traditional homes before looking to relocating people. Nevertheless, as Part 4 of this paper explains, there are some commentators who suggest that a further Protocol to the UNFCCC could be used as a legal instrument to address human displacement and climate change.

Part 4. Human Displacement and Climate Change

A. Proposals for New Measures to Provide for People Displaced by Climate Change

26. As the debate about “climate refugees” heats up, a number of proposals have been made for how they should be treated. Some social scientists have argued that the definition of a refugee in the 1951 Convention should be extended to include people displaced by environmental factors. However, as the discussion in Part 2 highlights, this approach is legally problematic and also politically unlikely to gain international support.

(i) Stand-alone instruments

27. Adopting a different approach, commentators such as Falstrom have proposed the development of a stand-alone Convention on the Protection of Environmentally Displaced Persons. This instrument would be formulated along similar lines to the *UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*,^{xxxvi} with provisions that would create obligations for States on a temporary basis to take appropriate action to protect people who arrive in their territory because of any of a list of environmentally related problems.^{xxxvii} Developing such an agreement would require widespread political consensus which is currently lacking.

(ii) Protocol to the UNFCCC

28. Recognising that climate change, and in particular sea level rise, will lead to permanent displacement of people from their homelands, Biermann and Boas have developed a blueprint for the future refugee crisis which would involve the creation of a *sui generis* regime under the framework of the UNFCCC.^{xxxviii} The regime would be guided by five principles: first, the need to provide for planned and voluntary resettlement over a long-term period;^{xxxix} secondly, the use of an institutional design that recognises the inability of people to return to their homes and thus the need to be treated as permanent immigrants rather than temporary asylum seekers;^{xl} thirdly, the need to tailor any resettlement to respect the collective rights of communities and local populations rather than just individuals;^{xli} fourthly, ensuring international assistance and funding for the domestic support and resettlement programmes of affected countries;^{xlii} and fifthly, the principle of international burden sharing which recognises that climate change is a global problem and that industrialised countries bear the moral responsibility for its victims.^{xliii}
29. Biermann and Boas suggest that this new regime could take the form of a Protocol on Recognition, Protection and Resettlement of Climate Refugees (Climate Refugee Protocol). The Climate Refugee Protocol would build upon the principles contained in the UNFCCC, in particular those of common but differentiated responsibility and reimbursement of full incremental costs. The authors also note that any new mechanism would require considerable levels of funding, and therefore a separate Climate Refugee and Resettlement Fund would be required to assist in protecting and relocating climate refugees.^{xliv}

(iii) Regional or National migration laws

30. Another somewhat pragmatic approach is to deal with displaced people under traditional migration laws at a national level. Such an approach will ultimately be premised on a host country's discretion to accept immigrants that meet certain threshold criteria, rather than any legal basis for protection. However, if people are forced to move to new countries as a result of environmental factors, recognising environmental thresholds as a basis for acceptance may assist.
31. Whilst there are many international treaties and bilateral and regional agreements which deal with migration, especially relating to humanitarian assistance, there is no comprehensive regional or multilateral institution that deals with the relations among States or tries to bring order to the myriad of conventions, agreements, best practice and guidelines on migration.^{xlv} Instead, international law affirms the authority of States to regulate the movement of persons across their borders and to develop policies on admission, residence, expulsion and naturalisation policies for non-citizens.^{xlvi}
32. The distinction between citizens and non-citizens is significant when dealing with the extent of rights afforded to each category of person. In the context of migration, ensuring that a migrant has rights to employment, to social security and health care, to affiliate with trade unions, to housing, to reunite his or her family, to educate his or her children and self, to retain and develop his or her culture and language, to engage in political activity and decision making processes and to remain in the host country without being unfairly expelled are paramount.^{xlvii} However, it is often these rights that are subject to the host States' immigration policies. By contrast, the political, cultural, economic and social rights connected with nationality are to be

applied equally to all citizens. In order to obtain the best results for themselves and their families, in many instances migrants will be seeking naturalisation and ultimately citizenship in their host country, notwithstanding that they may still be able to retain their original nationality.^{xlviii}

Part 5. Conclusion

33. This paper has attempted to identify some of the emerging and uncharted issues associated with forced migration in response to climate change. It is clear that existing refugee law does not provide for this new class of ‘environmentally displaced persons’, ‘environmental refugees’ or ‘climate refugees’. Notwithstanding the terminology, it is also unlikely that international refugee law will be the appropriate forum in which to take the protection of these people forward, particularly when considering the likelihood that migration will be slow, permanent and over a long time frame, rather than temporary.
34. Instead, a number of concepts developed in international refugee and humanitarian law could be usefully applied either to enhance existing migration laws or aid in the development of a new international regime. Most importantly, this would involve ensuring that forced migrants are afforded every possible opportunity to avail themselves of the full gamut of economic, social, cultural and political rights within their new country.

ⁱ United Nations High Commissioner for Refugees, *2006 Global Trends: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons*

ⁱⁱ United Nations University Institute for Environment and Human Security, ‘As Ranks of “Environmental Refugees” Swell Worldwide, Calls Grow for Better Recognition, Support’ (Press Release, 11 October 2005)

ⁱⁱⁱ Norman Myers, ‘Environmental Refugees: a growing phenomenon of the 21st century’ (2002) 357; *Philosophical Transactions of the Royal Biological Sciences Society* 609-611: predicts approximately 212 million climate refugees by 2050. Christian Aid, Interview with Norman Myers (London, 14 March 2007) cited in Christian Aid, *Human Tide: the real migration crisis* (2007) this figure was recently revised up to 250 million.

^{iv} See Friends of the Earth, *A Citizen’s guide to Climate Refugees* Friends of the Earth Australia at p.7-8: citing figures from Norman Myers of up to 150 million people in the next 50 years.

^v Alan Dupont & Graeme Pearman ‘Heating up the Planet: Climate Change and Security’ (2008) Lowy Institute Paper 12 at p.56

^{vi} See for example Stephen Castles, ‘*Environmental Change and Forced Migration: Making Sense of the Debate*’, (Working Paper No 70, The United Nations High Commissioner for Refugees 2002) and Jane McAdam & Ben Saul ‘An Insecure Climate for Human Security? Climate-Induced Displacement and International Law’ (Sydney Centre for International Law, Working Paper 4, 2008)

^{vii} *United Nations Framework Convention on Climate Change* opened for signature 9 May 1992: (1992) 1771 UNTS 107; 31 ILM 849, (entered into force on 21 March 1994)

^{viii} Lester Brown of the World Watch Institute for the first use of the term “environmental refugee” in the late 1970s. Essam El-Hinnawi however seems to be the first to have attempted to draft a definition of the concept in Essam El-Hinnawi, *Environmental Refugees*, (1985) quoted by Fiona Flintan, *Environmental Refugees - A Misnomer or A Reality?* (2001)

^{ix} *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150, (entered into force 22 April 1954) (‘1951 Convention’)

^x *Protocol relating to the Status of Refugees*, opened for accession 31 January 1967, 606 UNTS 267, (entered into force 4 October, 1967) (‘1967 Protocol’)

^{xi} *1951 Convention*, Article 1(A)2

^{xii} Guy S Goodwin-Gill & Jane McAdam, *The Refugee in International Law*, (3rd ed, 2007) at 67-68

^{xiii} *Statute of the Office of the High Commissioner*, GA Res 428 (V), UNGAOR 5th sess, 325th plenary meeting, [1-2] UN Doc A/Res/428(V) (1950): “The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned,

private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.' (*UNHCR Statute*).

^{xiv} United Nations High Commissioner for Refugees, *Partnership: An Operations Management Handbook for UNHCR's Partners*, (2nd revised ed, 2003) at p.7.

^{xv} Goodwin-Gill & McAdam, p.49. In 2005 the UNHCR identified 20.8 million people of concern. Of these 40% (8.5 million) were refugees, 32% (6.6 million) were internally displaced persons in need of humanitarian assistance and 11% were people considered stateless. See also McAdam & Saul at p.8

^{xvi} *Convention Governing the Specific Aspects of Refugee Problems in Africa*, opened for signature 10 September 1969, 1001 UNTS 45, art 1 (entered into force 20 June 1974) ('1969 OAU Convention'); and *Cartagena Declaration on Refugees*, OAS Doc OEA/Ser L/V/II 66/doc 10, rev 1/190 (1984-85) ('*Cartagena Declaration*').

^{xvii} *The 1969 OAU Convention*.

^{xviii} *Ibid*

^{xix} *The Cartagena Declaration*.

^{xx} Jane McAdam, *Complementary Protection in International Refugee Law* (2007) at p.8

^{xxi} Ian Brownlie, *Principles of Public International Law* (6th ed, 2003) 558; and Goodwin-Gill & McAdam, at p.298-299.

^{xxii} Goodwin-Gill & McAdam, at pp.509-510, referencing Articles 25, 27, 28, 30 & 34 of the 1951 Convention.

^{xxiii} Norman Myers, *Environmental Refugees: An Emergent Security Issue* (2005) <<http://www.osce.org/documents>> at 30 January 2008.

^{xxiv} Frank Biermann and Ingrid Boas, '*Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*' (Working Paper No 33, The Global Governance Project 2007) 8 <<http://www.glogov.org>> at 30 January 2008.

^{xxv} See McAdam and Saul at p.8

^{xxvi} UNFCCC Art.3

^{xxvii} Rio Declaration on Environment and Development made at the United Nations conference on Environment and Development (Rio de Janeiro, Brazil, June 1992) UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992)

^{xxviii} IPCC TAR WGII at p.982

^{xxix} IPCC AR4 Chapter 16, at p.708

^{xxx} *Ibid.* citing Agder et al. 'Adaptation to Climate Change in the Developing World' *Prog. Dev. Stud* 3 (2003a) p.179-193

^{xxxi} *Ibid.* citing Farbotko 'Tuvalu and climate change: constructions of environmental displacement in the Sydney Morning Herald *George. Ann. B* 87 (2005) p.279-283

^{xxxii} <<http://www.un.org/webcast/unfccc/2007/index.asp?go=09071212>>

^{xxxiii} Male Declaration on the Human Dimensions of Global Climate Change <http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf> 6

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^{xxxiv} *Ibid.*

^{xxxv} UN General Assembly Human Rights Council 'Human Rights and Climate Change' A/HRC/7/L.21/Rev.1 March 26, 2008

^{xxxvi} *The UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, (entered into force 26 June 1985).

^{xxxvii} Dana Zartner Falstrom at p.22.

^{xxxviii} Biermann & Boas, at p.25

^{xxxix} *Ibid.*

^{xl} *Ibid.*

^{xli} *Ibid.*

^{xlii} *Ibid.*

^{xliii} *Id* at p.26.

^{xliiii} *Ibid.*

^{xliiv} *Id* at p.29-30.

^{xliiv} T Alexander Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms* (2003) viii.

^{xlivi} *Id* at p.3. There have been attempts to formulate minimum standards for the treatment of migrants who have not obtained citizenship in their new country. For example, the 1985 *UN Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live* requires host States to ensure that certain political, economic and social, cultural and residence rights are afforded to non-citizens who have legally migrated to their territory either permanently or temporarily. However, this Declaration is not legally binding and is also heavily qualified – see Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (1997) 72.

^{xlvii} *Id* at p.1.

^{xlviii} Aleinikoff & Chetail, at p.22