

Environmental migration as a consequence of insufficient or impossible adaptation

Karolina Žáková, Věra Honusková



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Defining climate/environmental migration

Different authorities (eg. Robert Stojanov) generally distinguish:

- **environmentally motivated migrants** (choose to leave)
- **environmentally-displaced persons** (are forced to leave)
 - a) **hesitant** (slow-onset events), also called *environmental forced migrants*
 - b) **immediate** (sudden/rapid-onset events), also called *environmental emergency migrants*

+ **relocated people**

→ corresponds to the **types of human movement in the context of climate change according to the Cancun Agreements** (UNFCCC, 2010): displacement, migration, relocation

BUT no official, legally binding definition(s) and/or generally recognized categorization exist.



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Discussion

Think of environment/climate-related events when adaptation could be insufficient or impossible. How will the situation differ for slow-onset and rapid-onset events?

People migrating for environmental reasons are not refugees, but their situation could be similar – when?



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Is (mass) climate/environmental migration real?

Climate Change 2014: Impacts, Adaptation and Vulnerability. IPCC's 5th AR

„Climate change over the 21st century is projected to increase displacement of people (medium evidence, high agreement).

...Changes in migration patterns can be responses to both extreme weather events and longer-term climate variability and change, and migration can also be an effective adaptation strategy. There is low confidence in quantitative projections of changes in mobility, due to its complex, multi-causal nature.“

Estimates of high numbers of environmental/climate migrants within this century (up to 1,5 billion migrants by 2050)

BUT the concept has been criticized recently as not being based on solid evidence (e.g. Hein de Haas, International Migration Institute, University of Amsterdam).



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Is (mass) climate/environmental migration real?

Climate change – or more precisely its effects (sea-level rise, extreme weather events, water scarcity) – certainly have **the potential to be one of the drivers of migration....**

- Carteret Islands (sea-level rise) https://www.youtube.com/watch?v=Hgw4HTtokgk&ab_channel=UNUniversity
- drought in Madagascar <https://edition.cnn.com/2021/06/23/africa/madagascar-food-crisis-climate-change-famine-intl/index.html>
- Canada's Northern Arctic communities (permafrost thawing) <https://www.nrcan.gc.ca/simply-science/permafrost-thaw-brings-major-problems-canadas-northern-arctic-communities/23233>
- 2019 tropical cyclone Idai in Mozambique <https://www.unhcr.org/news/stories/2020/3/5e6a6e50b/year-people-displaced-cyclone-idai-struggle-rebuild.html>

...but **more research is needed** on the nexus between climate change and human movement.



Legally relevant characteristics of environmental/climate migration

- **Possibility of choice:** voluntary (motivated) vs **forced**
- **State assistance:** planned (organized) vs spontaneous (unorganized)
- **Border crossing:** internal x external
- **Duration:** temporary x permanent
- **Number of migrating people:** individual/small scale x mass

The character of migration **determines the challenges it poses as well as the applicable legal instruments.**

As far as protection of migrating persons is concerned, the forced environmental migration (**environmentally/climate-induced displacement**) poses the major challenge.



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Give examples and think of legal consequences of different combinations.

Which combination presents the most significant legal challenges?

Are there any applicable supranational legal instruments?



Climate change and environmental displacement: Relevant legal frameworks

Related to:

- **prevention** of environmental migration, i.e. preventing environmental degradation, deterioration or destruction of such a nature that makes a dignified human existence impossible
- **displacement** itself, i.e. movement from the place of habitual residence to a new place, including **establishment of a new residence**, temporary or permanent



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Relevant legal frameworks: Climate-induced displacement

No specific legal regulation, generally internal displacement.

I. Internal displacement

→ applicability of norms regarding the **internally-displaced persons (IDPs)**, i.e. the *Guiding principles on Internal Displacement* (1998) and the *AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention, 2009/2012)

According to both instruments IDPs are „persons or groups of persons who **have been forced or obliged to flee or to leave** their homes or places of habitual residence, **in particular** as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or **natural or human-made disasters**, and who have not crossed an internationally recognized State border“ .



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Relevant legal frameworks: Climate-induced displacement

Protection of IDPs according to the GPID and the Kampala Convention:

- general principles (prohibition of discrimination, primary responsibility of national authorities to provide protection and assistance)
*„States Parties shall take **measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.**“ (Kampala Convention, art.V al. 4)*
- protection from displacement (preventive measures)
- protection during displacement (protection against cruel, inhuman and degrading treatment, adequate humanitarian assistance, adequate standard of living etc.)
- promoting lasting solutions of the IDPs situation: voluntary return, local integration or relocation (free and informed choice)

What is their legal nature? Are they binding?

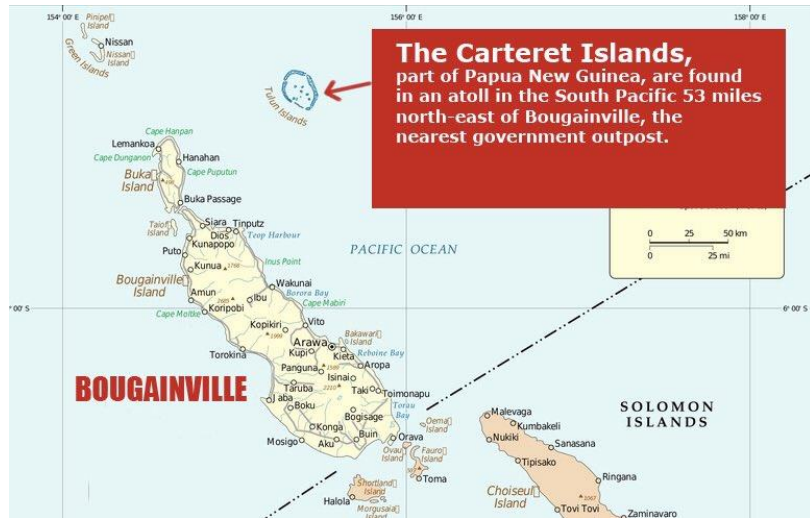


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Carteret Islands - an example of a not-so-successful and not-so-organized relocation of not-so-climate refugees



Relevant legal frameworks: Climate-induced displacement

II. External displacement

Inapplicability (difficult applicability?) of international refugee law, i.e. the *Convention Relating to the Status of Refugees* (1951) and its *Protocol* (1967) due to the definition of the term „refugee“.

Refugee is a 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**“.

Possibility of an extension of the definition to include environmentally-displaced persons discussed, but is highly unlikely.



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Relevant legal frameworks: Climate-induced displacement

Global Compact for Safe, Orderly and Regular Migration (2018)

- a specific **soft law instrument**
- Takes into account the climate-induced migration within its **Objective 2 (Minimize the adverse drivers and structural factors that compel people to leave their country of origin)** → provides for sharing of information, development of adaptation and resilience strategies, promoting cooperation with neighbouring and other relevant countries as well as development of and mechanisms at the subregional and regional levels, and **Objective 5 (Enhance availability and flexibility of pathways for regular migration)** → States should „cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, **including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible**“

x normative value limited



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Relevant legal frameworks: Climate-induced displacement

- Refugee protection framework
- Stateless persons framework (used less)
- Framework reacting on non-refoulement obligation/regional specifics

Do the definitions apply to environmental migrants? Which ones? And to whom?

I. Subsidiary protection in EU law

Art. 15 Qualification Directive - Serious harm

Serious harm consists of:

- (a) the death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.



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Relevant legal frameworks: Climate-induced displacement

Framework reacting on non-refoulement obligation/regional specifics

- Do the definitions apply to environmental migrants? Which ones? And to whom?
- 2. Regional African response – African Convention on refugees (1969)

The term “refugee” shall also apply to every person who, 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, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

- 3. Regional Latin American response – Cartagena Declaration (1984)

Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

Let us go back to the Stojanov’s definition of environmental migrants.



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Relevant legal frameworks: Climate-induced displacement

National solutions

a) Asylum law

→ generally linked to refugee status x certain States provide for **some form of protection due to environmental reasons**

(eg. Finland that grants „temporary protection“ to „*aliens who need international protection and who cannot return safely to their home country or country of permanent residence, because **there has been a massive displacement of people** in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or **an environmental disaster***“, Aliens Act, sec. 109,

or Sweden that grants (granted?) – under certain conditions - „other protection“ to a person who is outside his or her country of origin and „*cannot return...due to an environmental disaster*“, Aliens Act)



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Relevant legal frameworks: Climate-induced displacement

National solutions

b) *Ad hoc* humanitarian visa

E.g. Brazil after the earthquake in Haiti in 2010

c) Special immigration programmes

E.g. Pacific Access Category Resident Visa

→ New Zealand's immigration programme for citizens of Kiribati, Tuvalu, Tonga and Fiji (not directly linked to the negative effects of climate change)

x idea of an „experimental humanitarian visa“ category for Pacific Islanders displaced by the effects of climate change considered by New Zealand in 2017 has been dropped



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Climate-induced displacement *de lege ferenda*

Are environmentally-displaced persons „the unprotected and forgotten people“ as one author labelled them?

Not quite...

- obligation of States provided for in the international climate law (to mitigate/to adapt)
- protection resulting from the IDPs status
- general applicability of human rights norms

Protection of environmentally-displaced persons is however not sufficient, especially as far as cross-border (external) displacement is concerned.



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Climate-induced displacement *de lege ferenda*

Possible future developments

- **new definition of a refugee** (via a new protocol to the 1951 Refugee Convention)
„is considered a refugee a person who is outside his or her country of origin due to environmental disaster provided that his or her country of origin cannot provide him or her protection“
- **new universal international convention**
→ *Draft Convention on the International Status of Environmentally-Displaced Persons (2018 – 4th version, CIDCE), ILC Draft Articles on the Protection of Persons in the Event of Disasters with Commentaries (2016)*
- **specific regional** (Pacific, EU) **or bilateral** agreements
- **national solutions** (open immigration policy, general „environmental asylum“/humanitarian asylum accorded *ad hoc* for environmental reasons)



Climate-induced displacement *de lege ferenda*

Possible future developments:

- protection of environmentally displaced persons through human rights

Teitiota Case

- a Kiribati citizen that has been denied the refugee status in New Zealand by three court instances on the basis of not qualifying as a refugee under the international refugee law
- Mr. Teitiota filed a **complaint to the UN Human Rights Committee**, arguing that by deporting him, New Zealand had violated his right to life because the rise in sea level and other effects of climate change had rendered Kiribati uninhabitable for all its residents
- the Committee issued its decision on 24 October 2019 → while the claim to protection by Mr. Teitiota was denied on grounds that he was not at imminent risk, the committee determined that **people who flee the effects of climate change and natural disasters should not be returned to their country of origin if essential human rights would be at risk on return**



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Conclusion

- environmental/climate migration as a complex practical and legal problem
- role of preventive measures (climate change mitigation and adaptation)
- role of development aid for climate change adaptation
- role of human rights law
- question of liability – both for environmental degradation caused by climate change and for the State's failure to ensure protection of its citizens against the consequences of climate change

„A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.“ (art. 12 para. 3 Kampala Convention)



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Thank you for your attention.



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