

Human rights context of climate change - adaptation as a way to prevent migration

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&

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Who are environmental migrants/refugees?

Categorisation according to Robert Stojanov:

1. Environmentally motivated migrants
2. Environmentally displaced persons
3. Planned relocation and resettlement

Which category corresponds to **El-Hinnawi's environmental refugees** (UNEP, 1985)?

Environmental refugees are “people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”.

Who are environmental migrants/refugees?

1. **Environmentally motivated migrants** (want to leave, can choose whether and when)
2. **Environmentally displaced persons** (must leave...)
 - a) slow onset events → “hesitant” EDPs (...cannot choose whether, can choose when)
 - b) rapid onset events → “immediate” EDPs (...cannot choose whether, cannot choose when)= "true" environmental migrants, forced environmental migrants
3. **Planned relocation and resettlement** (have to leave on the basis of planned external causes associated with a fundamental deterioration in the ability of the environment to sustain life)
x may be also used as a last strategy to avoid forced environmental displacement



What is the primary duty of States in relation to forced migration due to environmental changes as a result of climate change?

To prevent it.

How?

First, through mitigation.

Second, through adaptation.

Prevention of climate related migration through mitigation

Essential importance!

Mitigation

= reducing emissions of and stabilizing the levels of heat-trapping greenhouse gases in the atmosphere

Who is responsible for taking mitigation measures and what legal norms does this obligation stem from?

How can this obligation be enforced? Who can sue a State for its failure to comply with its mitigation obligations (individuals – from the same/other State, NGOs, other States?).

(Will be discussed more during the lecture dedicated to climate change liability.)

Why can't states rely solely on mitigation?

Other possibilities?

Prevention of climate related migration through adaptation

Essential importance!

Adaptation (*stricto sensu*)

= adjustments in ecological, social, or economic systems in response to actual or expected climatic stimuli and their effects or impacts (both slow and rapid onset events)

Examples? (Have you seen the video? 😊)

Is **disaster prevention/response** (rapid onset events) part of adaptation?

→ adaptation *largo sensu*

Who is responsible for taking adaptation, incl. disaster prevention/response, measures? What legal norms does this obligation stem from?

Adaptation obligations under international climate law

UNFCCC, 1992

x adaptation is not part of
the objective

Commitment of all country Parties:

→ "mainstreaming" climate change
mitigation and adaptation

Article 4

COMMITMENTS

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

Adaptation obligations under **international climate law**

Commitments of developed country Parties:

Article 4

COMMITMENTS

4. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

Adaptation obligations under **international climate law**

Does the precautionary principle/approach apply to adaptation measures?

Article 3

PRINCIPLES

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

Adaptation obligations under international climate law

Kyoto Protocol, 1997:

Article 10

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

- (i) Such programmes would, *inter alia*, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and
- (ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

Adaptation obligations under **international climate law**

Article 12

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

→ **Adaptation Fund**

- financed with a share of proceeds from so-called *Clean Development Mechanism* (CDM) project activities (one of the Kyoto Protocol Mechanisms) and some other sources of funding
- the share of proceeds amounts to 2 % of certified emission reductions (CERs) issued for a CDM project activity

Adaptation obligations under **international climate law**

Paris Agreement, 2015:

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

Adaptation obligations under **international climate law**

Specific attention paid to adaptation and response preparedness:

Article 7

1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.
2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.

Adaptation obligations under **international climate law**

5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.

.....

(other very detailed provisions)

Adaptation obligations under international climate law

Article 8

1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.
3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.
4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:
 - (a) Early warning systems;
 - (b) Emergency preparedness;
 - (c) Slow onset events;
 - (d) Events that may involve irreversible and permanent loss and damage;
 - (e) Comprehensive risk assessment and management;
 - (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
 - (g) Non-economic losses; and
 - (h) Resilience of communities, livelihoods and ecosystems.

Adaptation obligations under **international climate law**

Article 9

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.

4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.

Limits of adaptation-related obligations in international climate law

Discussion.

Enforceability of provisions relating to

- the **implementation** of adaptation measures
- the **financing of the implementation** of adaptation measures

What other legal frameworks exist to enforce the implementation of adaptation measures, incl. disaster prevention/response?

Adaptation obligations under **human rights law**

What human rights may be affected in case of insufficient (or lack of) adaptation, incl. disaster prevention/response?

What human rights frameworks are available to protect these rights at the global/regional/national level?

What is the effectiveness of these tools?

Adaptation obligations under **human rights law**



Example:

ECtHR judgement in case *Budayeva and others v. Russia* (2008)

Principal facts: mudslide in Tyrnauz (Tyrnyauz) on 18-25 July 2000 killing Ms Budayeva husband , injuring her son and destroying her home and all her possessions (+ damages tto other applicants)

Alleged failure of Russian authorities: to heed warnings about the likelihood of a large-scale mudslide, to warn the local population, to implement evacuation and emergency relief policies or, after the disaster, to carry out a judicial enquiry

Decision of the Court:

- a **violation of Article 2** (right to life) of the ECHR on account of Russia's failure to protect the life of Vladimir Budayev, and, the applicants and the residents of Tyrnauz from mudslides which devastated their town in July 2000
- a **violation of Article 2** of the Convention on account of the lack of an adequate judicial enquiry into the disaster

Is it possible to apply the court's conclusions to other manifestations of climate change? Is there is difference between slow and rapid onset events in this regard?

Limits of adaptation-related obligations under human rights law

Adaptation, incl. disaster prevention/response, measures could in some cases be **difficult or even impossible to implement**, especially if mitigation is insufficient (ex. low lying island States).

See Paris Agreement, art. 7 para. 4 :

“Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.”

Migration as the only option (forced/planned; internal/external)

Problems linked to planned relocation → example of the Carteret Islands.

The Carteret Islands case study

<https://youtu.be/Hgw4HTtokgk>

<https://www.resilience.org/stories/2019-06-11/understanding-the-human-side-of-climate-change-relocation/>

Thank you for your attention.

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