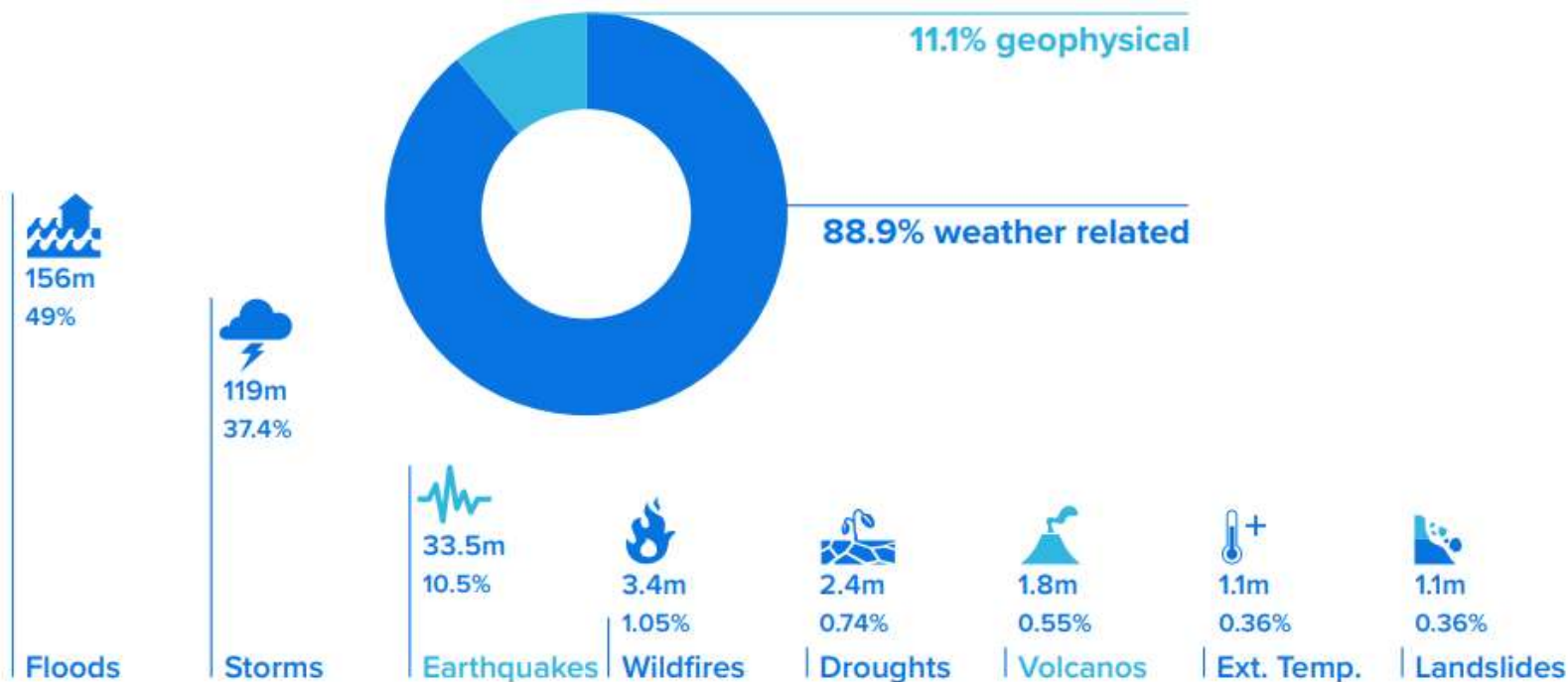


Climate refugees: the borderlands of climate justice and law

Presentation by Boldizsár Nagy
at the CEU World Wide Climate Justice Teach-In
31 March 2022

DISPLACEMENT DUE TO DISASTERS 2008 - 2020

318,3 million displaced persons in 13 years



Due to rounding, some totals may not correspond with the sum of the separate figures.

Figure 49: New displacements by disasters: breakdown by hazards (2008-2020)

Source: IDMC: Internal displacement in a changing climate, 2021, p 88
[grid2021_idmc.pdf](https://www.internal-displacement.org/grid2021_idmc.pdf) (internal-displacement.org) (20220327)

UN SPECIAL RAPPORTEUR ON MIGRATION, 2017

„...**we need to** go further and to **reach** a strong international **consensus** on **what kind of protections States owe to migrants when their Governments are unable or unwilling to protect them from** crises and life-threatening circumstances, including State failure, generalized violence that has not risen to the level of armed conflict or **the effects of climate change**”

Report of the Special Representative of the Secretary-General on Migration, [Peter Sutherland], A/71/728 3 February 2017, para 21.

THE MISSING DEFINITION – THE BLURRED CONCEPT

Environmental

Climate

Ecological

?

refugee

migrant

mobile person

A CONCEPTUAL QUESTION

Is environment-induced migration really the consequence of the degradation of the environment

or

can it be argued, that environmental change is only a multiplier of social inequities, so it is not the environmental change, but the disaster which really hits

and

disasters occur because not adequate resources are devoted to increase the resilience of human settlements etc. that are already vulnerable?

See Matthew Scott: Climate change, disaster and the Refugee Convention, CUP, 2020

THOMAS FAIST

„...it is necessary to liberate the relationship between climate degradation and migration from the climate ghetto **and place it squarely in the context of social transformation brought about by the exploitation of workers and the subjugation of nature,** that is to emphasize the nexus between society and ecology. In other words, climate degradation and its consequences, such as migration, need to be seen in the context of the social question.”

Commentary: Getting out of the climate migration ghetto: Understanding climate degradation and migration as processes of social inequalities

International Migration, vol. 58 (2020) No. 6, December,

doi: 10.1111/imig.12794

There are no „natural disasters”

Extreme natural events become
disasters because of social
factors

- frequently reflecting injustice

Justice dimensions

Interstate

Remedial justice: (historic) responsibility of larger emitters (Common but differentiated responsibility 1992, 2015)

Distributive justice: how to allocate the remaining GHG emission compatible with the 1,5 °C (2 °C) goal?

Intra state - allocating mitigation and adaptation burdens between stakeholders and between social classes (Emission quota distribution and trading, carbon tax, development planning, compensating victims of disaster, e.g.)

Present generations – future generations (E.g. Urgenda judgment)

Can law cope with the complexity
of the climate induced mobility
and its drivers?

Hardly!

THE MATRIX OF MOVEMENTS

	Movement within country			Crossing an international border		
	Volun- tary	Forced	Planned reloca- tion	Volun- tary	Forced	Planned reloca- tion
Slow onset disaster Planned project	Domestic migrant	Internally displaced person		Regular or irregular migrant		[Unlikely]
Sudden onset disaster		Forced or evacuated		Forced		Evacua- ation
		Intrenally displaced person		Irregular (Undocumen- ted)	Tempo- rary protec- tion Exceptionally: refugee	TP or regular migrant

FOUR AVENUES OF LEGAL REACTION

Law on internal displacement	Refugee law	Human rights law	„Climate law“
<p>1998 UN Guidelines on Internal Displacement</p> <p>2009 African Union (Kampala) Convention for the protection and Assistance of Internally Displace persons in Africa</p> <p>Scope: armed conflict + „natural“ and human-made disaster + planned projects</p> <p>Human rights + displacement specific guarantees + rules on external assistance</p>	<p>Geneva Refugee Convention 1951/67</p> <p>African Convention 1969</p> <p>Cartagena Declaration 1984</p> <p>EU asylum rules</p> <p>Refugees: if the state failes to protect from climate impact for one of the five grounds</p> <p>„Events seriously disturbing public order“ (Africa, Latin-America) – conceivable ground</p>	<p>-</p> <p>HR belong to all displaced persons irrespective of the regularity of their movements</p> <p>Right to life and freedom from torture and inhuman, degrading treatment – non-refoulement</p>	<p>Right to life, right to privacy and family: grounds for litigation against states to force them to mitigate emissions advance adaptation</p> <p>Increased pressure on states to combine relief – development - peace</p> <p>UNFCCC - Warsaw Mechanism – Task force on Displacement</p> <p>Climate Change Litigation Databases - Sabin Center for Climate Change Law (climatecasechart.com) (202203309)</p>

STEPS IN THE UN AND BEYOND

2015 Paris: not in the agreement

but in a decision (49) establishing **Task Force on Displacement.** (<https://unfccc.int/wim-excom/sub-groups/TFD#eq-4>)

as part of the Warsaw International Mechanism for Loss and Damage

Goal: „avert, minimize and address displacement related to the adverse impacts of climate change on subnational, national, regional, international level”

2018 Recommendations of the Task Force on Displacement Report of the Conference of the Parties on its twenty-fourth session, held in Katowice from 3 to 14 December 2018. Addendum. (unfccc.int) pp 43-46

2019 – 2021 second phase TFD- Knowledge Products | UNFCCC

THE GLOBAL COMPACT ON REFUGEES, 2018

Reluctance

„While **not** in themselves **causes of refugee movements**, **climate, environmental degradation and natural disasters** increasingly **interact with the drivers** of refugee movements.”

Forced displacement due to sudden onset or slow onset environmental changes „**present complex challenges** for affected States, which **may seek support from the international community** to address them.”

= **Essentially excludes** environment-induced migration from its ambit

GLOBAL COMPACT ON MIGRATION, 2018

Objective 2 **Minimize the adverse drivers and structural factors that compel people to leave their country of origin :**

„18. We commit to ... ensuring that desperation and **deteriorating environments do not compel** [people] to seek a livelihood elsewhere through **irregular migration.**”

(h) **Better analysis** to predict and address migration movements....;

(i) Develop **adaptation and resilience strategies** to sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, while recognizing that **adaptation in the country of origin is a priority;**

GLOBAL COMPACT ON MIGRATION, 2018

(j) Improve disaster - **early warning, contingency planning, stockpiling, coordination** mechanisms, **evacuation** planning, reception and assistance arrangements, and public information;

Objective 5 Enhance availability and flexibility of pathways for regular migration :

(h) 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**, ... including by devising **planned relocation and visa options**, in cases where adaptation in or return to their country of origin is not possible;

LOOK OUT FOR

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- B. & F. Crépeau, eds., '*Research Handbook on Climate Change, Migration and the Law*' (Cheltenham, UK: Edward Elgar, forthcoming in September 2017)
- B. Docherty, & T. Giannini, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees', 33 HARV. ENVTL. L. REV. 349 (2009);
- J. McAdam, 'Climate Change, Forced Migration and International Law', (Oxford: Oxford University Press, 2012),
- J McAdam, Ch.46 Displacement in the Context of Climate Change and Disasters In: In: The Oxford Handbook of International Refugee Law edited by Costello, Cathryn; Foster, Michelle; McAdam, Jane (3rd June 2021) Oxford Scholarly Authorities on International Law
- M. Scott, 'Climate change, disaster and the Refugee Convention' Cambridge University Press, 2020
- S. Weearisinghe *Refugee Law in a Time of Climate Change, Disaster and Conflict*, UN High Commissioner for Refugees (UNHCR), January 2020, available at: <https://www.refworld.org/docid/5ff43e894.html>
- R. Zetter, 'Protecting People Displaced by Climate Change: some conceptual challenges', in: J. McAdam (ed.). *Climate Change and Displacement: multidisciplinary perspectives*, (Oxford: Hart Publishing, 2010), pp. 131-150

THANKS!

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