

BACKGROUND PAPER

Best Practices for Addressing the Legal and Policy Challenges of Climate Mobility

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Climate Mobility and Children: A Virtual Symposium

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INTRODUCTION

This paper considers some of the best practices for addressing legal and policy challenges in governing climate mobility and migration. It briefly discusses the global-scale context before focusing on the Pacific Islands region, where some of the world's first substantive regional and national policy frameworks are being developed to directly address climate mobilities.

Climate Mobility and Children: A Virtual Symposium

In order to shine a light on the plight of children on the move and to better understand how children and young people are affected by climate-related migration and displacement, UNICEF and the International Organization for Migration hosted a virtual symposium in November 2020. Over two days, experts, policymakers and young people from around the world met to discuss and debate pertinent questions, unpack key concepts, propose actions and outline an agenda to ensure that children's rights and needs are part of the wider debate on climate change.

It should be noted that there is no 'silver-bullet' policy framework to address the complexities of climate mobility. Climate change does not cause people to move on its own; other factors are also at play, particularly socioeconomic vulnerabilities. Climate mobility can be both rapid and slow-onset, can range from local movement away from sites of risk to international migration, and is significantly shaped by the economic, social, political, historical and cultural contexts in which it takes place. In some instances, people with access to greater resources can move out of harm's way, while the more vulnerable are left behind, but such patterns are also complicated by gender norms, insecure tenure arrangements, changing economic conditions, social networks, political forces, and attachments to place, amid other factors.

Given this complexity, climate mobility has different implications for different people, depending on the context and circumstances in which they move. It is thus difficult to predict and govern. Policy needs to address the multiple ways in which people experience mobilities and climate change, by reducing involuntary mobilities, protecting those who do move, and creating new opportunities for those who want to move themselves out of harm's way.

WHAT EXISTING POLICIES AND LEGAL FRAMEWORKS EXIST TO PROTECT THOSE AFFECTED AND DISPLACED BY CLIMATE AND ENVIRONMENTAL HAZARDS? ARE THERE EXAMPLES OF GOOD POLICY AND PRACTICE?

Internationally, climate change and mobility is being incorporated into diverse legal and policy frameworks, in different domains including climate change (*United Nations Framework Convention on Climate Change Task Force For Displacement*¹), migration (*Global Compact for Safe, Orderly and Regular Migration*²), and disaster risk reduction (*Sendai Framework for Disaster Risk Reduction*³). Other instruments are also highly relevant including the *Guiding Principles on Internal Displacement*, *Inter-Agency Standing Committee Operational Guidelines for Protection in Disasters*, and *Guidance on Protecting People from Disasters and Environmental Change Through Planned Relocation*.⁴

With different aspects covered in different instruments, as well as cross-referencing between them in some instances, the complexity of climate mobility is indeed reflected in the policy space, perhaps arguably rightly so. The *Global Compact for Safe, Orderly and Regular Migration*, for example focuses on two types of climate mobility. The first is sudden-onset mobility due to natural disasters, with recommended responses being humanitarian visas, private sponsorships, access to education for children and temporary work permits (paragraph 21(g)). The second results from slow-onset natural disasters, the adverse effects of climate change and environmental degradation, such as desertification, land degradation, drought and sea level rise, the recommended responses being planned relocation and visa options (paragraph 21(h)). Other important international frameworks however, such as *2030 Agenda for Sustainable Development*,⁵ do not explicitly specify climate change and human mobility as a policy category, although climate change and migration both appear separately in the Sustainable Development Goals (SDGs). The *Global Compact for Safe, Orderly and Regular Migration* does, on the other hand, highlight that the SDGs and irregular migration associated with climate change are an area for greater international and regional cooperation.

A recent landmark ruling by the UN Human Rights Committee indicated that forcibly returning a person to a place where their life would be at risk due to the adverse effects of climate change may constitute a violation of the right to life under article 6 of the International Covenant on Civil and Political Rights, which requires a high threshold of proof, including that the risk be imminent and personal, rather than general.⁶

The case involved an applicant, Mr Teitiota, from Kiribati, one of the low-lying island nation States in the Pacific Islands that is highly exposed to sea level rise. The case indicates both challenges and opportunities within international law to provide solutions for people who experience climate mobility, particularly a tension between individual rights and collective protection.⁷ While it was decided that climate migrants could not be lawfully returned to their home states where their right to life is threatened, this would also be difficult to establish in the case of slow-onset events such as sea level rise, particularly if the government in question was taking measures to protect the population generally.

POLICY FRAMEWORKS IN THE PACIFIC ISLANDS

Moving from the global to the regional scale, the Pacific Islands region is at the forefront of climate change and human mobility policy development, including regional human security frameworks specifically addressing climate mobility, international labour mobility programmes for climate vulnerability reduction, and national-level policies on the integration of disaster and climate displacement into broader policy. The Pacific Islands, although well-known for their climate change vulnerabilities, have other attributes that are relevant to an understanding of the region's climate mobility policies. These include small populations (so absolute numbers of migrants are low); ocean rather than land borders between states; relatively peaceful relations within and among states; and various existing regular migration channels to New Zealand and to a lesser extent, Australia.

Regional frameworks that guide climate mobility policy development in the Pacific Islands include the *Framework for Pacific Regionalism*,⁸ the *Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management*,⁹ the *Samoa Pathway*¹⁰ and the *UN Pacific Strategy*.¹¹ Regional initiatives in the Pacific Islands include the recent *Pacific Climate Change and Migration Project*¹² and the current *Pacific Climate Change Migration and Human Security Programme*.¹³

These are centred on principles of human security and protection of displaced people, but also have a focus on voluntary migration as a climate change adaptation pathway, particularly international labour mobility.

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National-level policies in the Pacific Islands are further ahead in advancing the rights of young people.

The *Pacific Climate Change and Migration* project, for example, resulted in the development of new labour migration policies in Tuvalu and Kiribati, both highly exposed to sea level rise. Tuvalu's National Labour Migration Policy positioned international labour mobility as a broad climate change adaptation measure. It is explicitly "not a comprehensive document on climate change induced migration", but it does "tie together our plans for educating our population [aiding] a better understanding of what opportunities exist abroad helps to ensure that we have a cohesive plan for how to create work for our people. We can also help to ensure growing and engaged diaspora communities in other countries, which can participate in integrating future migrants into different countries and contribute to development back in Tuvalu."¹⁴ There is little, however, in these regional policies and programmes that integrates the specific needs of children and families, despite the existence of regional child-focused frameworks in related areas such as the UN Office for Disaster Risk Reduction and the Global Alliance for Disaster Risk Reduction and Resilience in the Education Sector Comprehensive School Safety Framework¹⁵ and UNICEF's Child Protection in Emergencies Toolkit for Practitioners in Pacific Island Countries.¹⁶

National-level policies in the Pacific Islands are further ahead in advancing the rights of young people. The former Kiribati *Migration with Dignity* policy adopted a long-term, planned migration strategy based on upskilling, increasing participation in international labour markets, and expansion of diaspora communities, through new permanent migration pathways. One of the ways adopted to operationalise this policy was through the Kiribati-Australia Nursing Initiative (2006–2014), involving nursing students undertaking study in Australia, with a choice of either returning to Kiribati or applying for permanent residency in Australia upon graduation. The programme was a success, and remains an exemplar of climate mobility policy, not least because it valued the agency of, and promoted capacity-building among, climate vulnerable populations, most of whom were young adults. Many hoped to stay in Australia, and furthermore, aspired to assist younger siblings to also migrate.¹⁷

The model has not been replicated or expanded, however, due to the financial cost of the programme to the Australian government. Other similarly successful past programmes for Pacific Island young people, such as scholarships to attend boarding school in Australia at high school level, might also be revisited and reintroduced.

Relatedly, there is significant scope for advancing human security and climate adaptation that responds more directly to the capabilities and needs of children and families in Australia's current Seasonal Worker Programme¹⁸ and Pacific Labour Scheme¹⁹ programmes, which currently have no option for permanent migration, do not recognize the role of labour mobility in responding to climate change risks, and whose participants often bear significant social costs, such as family separation.²⁰ There is also scope for expanding other permanent migration pathways such as New Zealand's Pacific Access Category,²¹ a labour programme which could be replicated, for example, in Australia. Current regional policy development, such as the *Pacific Climate Change Migration and Security Programme*, is likely to address some of these issues.

Fiji and Vanuatu offer national exemplars of climate change mobility policy frameworks. Both prioritise human security and integrate climate change mobility with development, climate change and disaster policies, drawing on international principles. For example, the Fiji National Climate Change Policy states:

Human mobility is established as a priority human security and national security issue. Legal frameworks, policies and strategies to manage climate and disaster-induced displacement are used to protect human rights and reduce long term risks. Planned relocation is supported through relevant resourcing and national policies and strategies as a form of adaptation. Cross-border migration issues and policy development is supported through the United Nations and the Global Compact for Safe, Orderly and Regular Migration. The role of climate change in human displacement is articulated and international responsibilities defined.²²

The National Climate Change Policy considers children and other vulnerable groups to the extent that it complies with the UN Conventions related specifically to the rights of children, persons with disability and older persons.

Fiji has specific instruments on: *Planned Relocation Guidelines: A framework to undertake climate change related relocation*,²³ *Displacement Guidelines in the Context of Climate Change and Disasters*,²⁴ and *Climate Relocation and Displaced People's Trust Fund*,²⁵ with others under development.

Together, these form an integrated suite of climate mobility policies that pay specific attention to the rights of vulnerable groups. The *Planned Relocation Guidelines*, for example, use “A human rights based approach ... to ensure a gender-responsive, age-sensitive and child-sensitive response in line with the rule of law, as promulgated by international law.” Aiming to be highly participatory, relocation of villages in this context has commenced, with one particular village, Vunidogoloa, often regarded as a conflict-free successful relocation, although questions about the gender-inclusiveness and other power dynamics within the process have been raised.²⁶

The *Vanuatu National Policy on Climate Change and Disaster-Induced Displacement*²⁷ is comprehensive in providing an integrative framework for addressing the different ways in which climate change, disaster and mobility issues cut across all sectors and scales of government, and across all sectors of the economy. Its aims are summarized in Table 1.

TABLE 1: VANUATU NATIONAL POLICY ON CLIMATE CHANGE AND DISASTER-INDUCED DISPLACEMENT - AIMS

Minimise the drivers of displacement from sudden and slow-onset disasters, including from climate-related processes and other crises, such as displacement from evictions or from development and infrastructure projects.
Where displacement or planned relocation do occur, to minimise their negative impacts on all people affected and to ensure assistance and protection are provided at all stages, especially for vulnerable and minority groups, including women, children, the elderly, people with disability.
Work towards durable solutions for displaced populations, populations at risk of displacement, internal migrants and people living in informal settlements, enabling full social and economic recovery either through sustainable return and reintegration at the place of origin, sustainable local integration in areas where displaced persons have taken refuge, or sustainable integration in another part of the country in close consultation with host communities.
Ensure displaced people, people at risk of displacement, internal migrants and host populations, are able to make voluntary and informed choices and participate fully in planning durable solutions, including decisions relating to planned relocation.
Facilitate well-managed and safe migration with dignity, focusing on internal migration as an adaptation strategy to climate change and disasters.
Promote access to affordable, disaster-resilient housing and tenure security for all citizens of Vanuatu.
Integrate human mobility matters into key sectoral policy areas dealing with climate, disaster, environment, health, education, land, housing, infrastructure planning, food and livelihoods security.



The policy is arguably exhaustive in its effort to integrate displacement and mobility considerations across key systems including: institutions and governance, evidence, information and monitoring, safeguards and protection, and capacity building; and across sectors: safety and security, land, housing, planning and environment, health, nutrition and psycho-social well-being, education, infrastructure and connectivity, agriculture, food security and livelihoods, traditional knowledge, culture and documentation, and access to justice and public participation. The policy includes guiding principles on gender equity, protection of traditional knowledge, respect for custom and human rights. It also references the global international frameworks, including the UNFCCC, Sendai Framework, SDGs, UNHCR Guiding Principles on Internal Displacement, and Agenda for the Protection of Cross-Border Displaced Persons, among others.

And finally, it includes a provision on facilitating well-managed international labour migration as a livelihood and adaptation option. It is as yet too early to determine the efficacy of the policy in terms of measurable improved outcomes for climate vulnerable people. The rights of children are recognized throughout: their needs are required to be explicitly addressed in relocation plans, there must be harmonisation with existing child protection policies, and emphasis is placed on continuing education for children affected by displacement.

Extending permanent international migration options to families in circular labour mobility schemes remains important, as does reducing the social costs of labour mobility on children and families. The success of now-discontinued education migration programmes suggests that education-based migration opportunities for young people should be reintroduced as a part of climate mobility policy, not only for individuals, but for younger siblings, at both secondary and tertiary levels of education. Future programmes could be based on equity as well as academic merit and could increase the involvement of non-government actors such as the private sector and churches, in providing scholarships and thereby reducing the costs of such programmes for governments.

RECOMMENDATIONS AND CONCLUSION

Global and regional policy frameworks are making significant progress towards addressing the complexities of climate change and human mobility, although significant work remains to be done to address the needs, and include the perspectives, of particular groups such as climate mobile children and youth. Broad principles on climate mobilities are being translated into comprehensive national policies that draw on international norms while also being tailored to specific contexts. Although questions about safe and regular cross-border mobilities remain, national-scale policy frameworks, such as Fiji's and Vanuatu's, demonstrate that climate mobility can be comprehensively addressed at the national level, and much can be achieved within state borders. On the other hand, the case of Teitiota indicates that current international frameworks may still be insufficient to assist those in highly vulnerable environments to proactively move internationally before climate impacts become life-threatening. This indicates that there is a need for further changes to international migration frameworks in order to better address climate mobilities. Such changes could commence with expanding the reach of existing and emerging international mobility policies. For example, in the Pacific Islands, there is a trend to include upskilling in existing labour mobility programmes, as well as options based on either equity or merit, which in turn could lead to exploration of permanent migration options for workers, students and their families, potentially reducing reliance on humanitarian mobility solutions. Whether or not such policy pathways are feasible and/or efficacious beyond the Pacific Islands region is clearly a question for future research, as is the question of how protection can be achieved for those such as Teitiota who are unable to access existing voluntary international mobility pathways.

Global and regional policy frameworks are making significant progress towards addressing the complexities of climate change and human mobility, although significant work remains to be done.

Endnotes

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