

ROUTLEDGE STUDIES IN ENVIRONMENTAL MIGRATION,
DISPLACEMENT AND RESETTLEMENT

Climate Change, Migration and Human Rights

Law and Policy Perspectives

Edited by
Dimitra Manou, Andrew Baldwin,
Dug Cubie, Anja Mihr and
Teresa Thorp

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ROUTLEDGE


Climate Change, Migration and Human Rights

Climate change is already having serious impacts on the lives of millions of people across the world. These impacts are not only ecological, but also social, economic and legal. Among the most significant of such impacts is climate change-induced migration. The implications of this on human rights raise pressing questions, which require serious scholarly reflection.

Drawing together experts in this field, *Climate Change, Migration and Human Rights* offers a fresh perspective on human rights law and policy issues in the climate change regime by examining the interrelationships between various aspects of human rights, climate change and migration. Three key themes are explored: understanding the concepts of human dignity, human rights and human security; the theoretical nexus between human rights, climate change and migration or displacement; and the practical implications and challenges for lawyers and policy-makers of protecting human dignity in the face of climate change and displacement. The book also includes a series of case studies from Alaska, Bangladesh, Kenya and the Pacific islands which aim to improve our understanding of the theoretical and practical implications of climate change for human rights and migration.

This book will be of great interest to scholars of environmental law and policy, human rights law, climate change, and migration and refugee studies.

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Foreword

Koko Warner

At the time this volume was being written and going to press, profound mismatches between the governance of economic interests, resource management, and social cohesion were rocketing migration and asylum to the top of the international agenda. Human mobility has taken center stage in the first two decades of the twenty-first century as a defining issue linked with a suite of interrelated challenges, including conflict, climate change, and international cooperation. Headlines routinely note how flooding, extreme storms, and drought drive people away from their homes and livelihoods in search of shelter. As civil war in Syria erupted, co-mingling forces of a significant drought and agricultural poverty drove many people¹ from the countryside into conflict-ripe urban areas like Aleppo and Damascus.

By 2015, escalating violence drove as many or more of these people out of Syria as refugees. At the same time as stressors like unexpected weather or conflict deteriorate living conditions and drive large numbers of people from their areas of origin, places that potentially could offer a safe haven to affected people manifest decreased appetite to receive newcomers. Anti-immigration sentiment has fueled widespread debate in national and subnational elections across a number of countries in recent years. In 2016, a slight majority of citizens who cast their votes in the United Kingdom carried the Brexit referendum to leave the European Union, in part over immigration and mobility issues. Immigration also played a significant role in the outcome of the 2016 US presidential election.

Since 2010, I have had the privilege to be part of COST Action programme IS1101: “Climate Change and Migration: Knowledge, Law and Policy, and Theory” – the scholarly network that has produced this volume. A topic we frequently discussed was that while these megatrends typify this new century, the institutions we have to manage migration and refugees, on the one hand, and the policy processes that shape them, on the other, remain rooted in past centuries. Members of the COST network and a blossoming research community around it have produced an impressive body of empirical research in which we are seeing four broad patterns of human mobility linked to climatic stressors beginning to emerge: so-called “disaster displacement,” complex patterns of movements in conflict-affected areas, livelihood-related mobility,

and longer-term movement related to issues of habitability. Each of these patterns has different implications for human rights, law, and policy that are not always matched to current governance structures for human mobility. **Understanding these different patterns of climate-related human mobility requires multiple perspectives.**

First, disasters such as floods and storms displace four times as many people worldwide today than conflicts, displacing around 20 million people each year in recent years.² Governance and institutions are currently dominated by crisis management paradigms. For example, the Nansen Initiative found that, worldwide, country approaches to manage displacement related to hazards focused on humanitarian assistance and protection measures. In the future, humanitarian efforts will need to be blended with future-oriented resilience measures that strive to move people, not least the most vulnerable, into a state of safety and well-being. This shift will require substantial rethinking of the management of extreme events.

Second, droughts, floods, and storms worsen the situation for people in conflict-torn areas and make it hard for them to access food, water, and humanitarian help. Current laws and norms for people on the move within and away from conflict-torn areas are guided by agreements such as the Geneva Convention, the asylum regulations of individual receiving states, and international refugee law. Yet the aforementioned drought in Syria as well as drought in the Horn of Africa and other areas of heightened political tension or war reveal complex roots of human movement that require new thinking about fragile states and managing exacerbating factors like climate stressors.

Third, drought, heatwaves, and changing rainfall patterns are making it increasingly hard for people like farmers and herders to make a living and feed their families. Current laws about cross-border migration focus on regular, documented labor migration. A handful of countries have policies addressing in-country moves, such as from one rural area to another, or from rural to urban areas. Already today, regional-scale shifts in weather patterns require a rethinking of institutions so that they are better suited to address future livelihoods under climate change in both areas of origin and potential areas of destination.

A fourth and final pattern emerging from the literature suggests that sea-level rise, glacial melt, desertification, and other global-scale climate-related changes this century could render large areas of the world less habitable than they are today. Changes in habitability such as shifts in coastlines or water availability linked to glacial melt, soil moisture, or salinization of groundwater may drive new types of border management and translocality, which may transcend current ways of thinking and governing in different regions of the world.

A look ahead

From a personal perspective, being part of the COST network convinced me of the importance of fostering multi- and interdisciplinary dialogue about the

forces shaping human mobility as a vehicle of transformation. For example, the thousands of interviews from our research at the United Nations University as part of research consortia and part of the COST network helped us better understand the forces that already stress livelihood systems and how these may interact with weather-dependent livelihoods and food security. The critical analyses of political scientists, geographers, and legal scholars have elucidated further systemic ties between these stressors, such as trade agreements and agricultural policies. These system dynamics dramatically affect livelihoods in areas of origin, as well as attempts to manage risk through mobility to other places in search of work, a decent life, and safety.

Understanding and addressing the different needs of people on the move, those left behind, and receiving communities holds the key to actions that will shape and transport us into a climate-resilient future. With support from the European Commission, COST Action programme IS1101: “Climate Change and Migration: Knowledge, Law and Policy, and Theory” has explored the nuanced aspects of these debates, resulting in the current volume, which examines legal and policy perspectives across human rights theory and practice. Informed management of human mobility decisions will make the difference between a chaotic, “dangerous” future with fewer opportunities and a more resilient, sustainable future with expanding opportunities for the well-being of all people.

Across these emerging patterns of human mobility and climate change, different perspectives and approaches like those facilitated by the COST network are required to address the needs of people on the move, people in receiving communities, and people that stay behind. The rich exchange stemming from the COST network as well as the chapters presented in this volume suggest that effective laws, policies, and norms related to climate change and human mobility will share the following guiding notions:

- **Patterns:** Emerging rules should fit the majority of mobility patterns, particularly complex, multi-causal mobility that may include elements of migration (such as related to diminished livelihood possibilities), displacement related to extreme events, and seeking refuge from conflict.
- **People:** New ways of managing human mobility in the face of climate stressors should be better suited to address the needs of people on the move. This may require better empirical understanding of household profiles and needs, taking into account a variety of development characteristics including gender, age, and other household characteristics that affect the process and outcomes of human mobility. Similarly, empirical and theoretical research should play a role in supporting policy and actions that target underlying causes of mobility in ways that accentuate opportunity and innovation, and provide safe fallback options to prevent or avoid poverty traps that can be associated with people moving in highly vulnerable circumstances. Policies should ideally

ensure safe, dignified, resilience-building options for communities as they transition into and adapt to climate change.

- **Practice/institutions:** New rules will need to be aligned with institutions designed to manage the reality and processes of mobility, including preemptive measures and contingency plans. This will require innovation and shifts over time from current “divided” thinking about the management of development processes, humanitarian affairs, risk reduction, and other processes related to inter-border and cross-border adaptation measures. Substantial new thinking that reaches beyond and integrates issues like human mobility will be characteristic of new practices in the face of managing climate change and other significant trends shaping the twenty-first century.
- **Political realities:** Finally, new ways of governing the interrelationships between different patterns of human mobility linked with climatic stressors will require alignment with the realities of twenty-first-century geopolitical dynamics. As early as we are in this new century, these trends may include peaking world population around midcentury and redistribution of demographics and these populations, corresponding pressures of large populations in the Global South, and other megatrends like urbanization in areas prone to climatic hazards.

For me, participating in the COST network was a highly rewarding experience that helped put policy makers into dialogue with academic research. We all have much to learn from one another. Looking ahead to midcentury, the governance of human mobility will be a yardstick of progress against the aspirations of the Sustainable Development Goals, the Sendai Framework on disaster risk reduction, and the Paris Agreement towards climate-resilient sustainable development. The ideas presented in this volume point the way towards a new period of innovation and rethinking the governance of climate, migration, and human well-being.

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Notes

- 1 The actual numbers remain unclear. While the IRIN noted, “The drought also forced 250,000–300,000 families” (at least 1.25–1.5 million people) to leave their villages and they are now concentrated in the suburbs of Damascus and other cities like Aleppo and Daa’ra, according to Mohamad Alloush, director of the environment department at the State Planning Commission (SPC), “There was nothing left for these people in their villages and they are living now in very poor conditions” IRIN, ‘Drought Response Faces Funding Shortfall’ (2009) www.irin.org

- news.org/news/2009/11/24/drought-response-faces-funding-shortfall accessed 1 February 2017). The UNOCHA Consolidated Appeals Process in 2009 reported: “A third consecutive year of drought has hit north-eastern Syria. According to Government and UN estimates, 1.3 million inhabitants are affected and 800,000 severely affected, over 95% of whom live in the three governorates of Al-Hassake, Dayr az Zawr and Ar-Raqqqa. The effects of the drought are being exacerbated by the impact of high food and fuel prices, and the global financial crisis. The result is a dramatic decrease in communities’ resilience and coping capacity. The rural population directly affected by the drought has lost almost all sources of livelihood and faces extreme hardship” (United Nations, Office for the Coordination of Humanitarian Affairs (UNOCHA), ‘Syria Drought Response Plan 2009–2010’ www.unocha.org/cap/appeals/syria-drought-response-plan-2009-2010 accessed 1 February 2017).
- 2 Internal Displacement Monitoring Centre (IDMC), “Global Report on Internal Displacement 2016” (2016) www.internal-displacement.org/globalreport2016/#home accessed 1 February 2017.

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Part I

Introduction

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1 Climate change, migration and human rights

Dimitra Manou¹ and Anja Mihr²

Global warming and environmental change are already having serious impacts on the lives of millions of people all across the world. Changes to our climatic system, such as floods, droughts, rising sea levels, glacial melting, deserts shrinking or expanding, and rainfall patterns changing, to name but a few, impose huge stresses on livelihoods. Scientists raise their voices to warn that parts of the world may become completely uninhabitable not only due to severe environmental degradation but due to climate change as well. Consequently, the impacts on livelihoods are not only ecological but also social, economic and legal. Overall, they are man- and woman-made and, thus, the anticipated global and local solution to decrease the negative impact of climate change on our livelihoods will depend on how men and women agree legally and politically binding agreements, and develop instruments, mechanisms and procedures to safeguard and protect human rights standards for climate change-affected people.

The potential climate change-induced migration of millions of people is currently one of the most disputed impacts of climate change and is increasingly becoming an issue of great concern for governments and policy makers. Whether as so-called 'climate refugees', 'economic migrants' or 'displaced people', climate change-induced migration has many faces. Climate change affects everyone in the world in different ways. For example, disputes over scarce natural resources such as water or fertile ground can cause violent conflicts; droughts can cause displacement and prompt people to seek refuge; and the seepage of cliffs and fertile grounds and the flooding of coastal areas force or encourage people to move and migrate. Some do so through legal channels, but many more do so outwith a specific legal framework. Human rights and the concept of climate justice aim to fill the legal and political gap for millions of migrants who do not benefit from international legal protection as the cause of their migration is not yet fully enshrined in either international or regional law.

However, both migrants and those who decide to remain in environmentally degraded areas face a range of humanitarian challenges and the potential deprivation of basic human rights, such as the rights to health, property and adequate housing. Despite extensive discussions and analysis of international

and internal human mobility, the issue of protecting the rights of people who decide to stay and those who are left behind has not been sufficiently analysed in the academic literature. This is where this volume aims to make a difference. Our prime concern in this book is that the implications of climate change-induced migration affect or violate basic international human rights norms and standards and thus raise pressing questions requiring serious scholarly reflection about both those who move and those who stay. Such civil, political, social, economic and cultural human rights include the right for all to live a dignified life, the right to self-determination and participation of those most affected, the right to livelihoods that are threatened when livestock and farms vanish or are destroyed, the right to adequate housing and the right to seek education and professional development if one is forced to migrate.

Furthermore, climate change-induced migration interacts in complex ways with human rights protection. People's ability to enjoy their rights is severely affected by climate change, which has been recognised by the UN Office of the High Commissioner for Human Rights as one of the greatest human rights challenges of our generation.³ Citizens not only lose assets, but rights. Discrimination in gender and ethnic relations may be triggered by climate change-induced migration. Economic and social balance/relations are also affected, leading to new patterns of inequality. All these diverse challenges create increased pressure on human rights. In fact, all human rights may be undermined as a result of the impacts of climate change.

That being said, human rights, as universally accepted in the 1948 Universal Declaration of Human Rights, can offer a normative direction for addressing climate change-induced migration. As advocated by the Mary Robinson Foundation, incorporating human rights considerations into climate policies can contribute to achieving actions that benefit both the needs of people and the planet.⁴ Throughout this book, a distinction will be made regarding the status of the people who are moving: internal migration within the borders of a state gives rise to internally displaced persons who are entitled to enjoy the full range of their human rights (as recognised by both international and domestic law) in that state; while international, cross-border migrants often face a serious protection gap, which is highlighted and explored throughout the book's chapters. For both categories of migrant, it is a necessity for states of origin, transit and/or destination to design, adopt and enforce effective policies, strategies and legislative solutions at the national level.

Development of new, more effective governance mechanisms requires a deep knowledge of existing climate- and migration-related policies and a solid understanding of the reasons why such policies may lead to more inequalities instead of mitigating them. In light of the pitfalls that accompany climate change-induced migration, the human rights-based approach provides a strong conceptual and practical framework to protect human rights in the context of climate change.

Over the past twenty years, proposals have been advanced for new legal frameworks, such as a new international convention to protect climate-displaced persons or amendments to the 1951 Refugee Convention or the 1992 UN Framework Convention on Climate Change. Yet we remain without a clear, internationally binding framework for many people who migrate due to the negative impacts of climate change. The widely endorsed 2015 Paris Agreement at the UNFCCC COP21 meeting may serve as an example of how complicated and difficult it is to include relevant clauses on population movement arising from climate change in international agreements.⁵

In 2016 in Marrakech, COP22 confirmed the goals and plans of COP21 in Paris. The COP22 Agreement identifies not only states' responsibilities, in particular the joint efforts of Global North and Global South nations, but also those of NGOs, CSOs and businesses. Marrakech focused on initiatives to reinforce existing plans, with some countries promising to review their 2020 targets. Timelines and roadmaps for reviewing states' and stakeholders' achievements were agreed. Primarily, however, the meeting secured a commitment to implementation and answered at least some technical questions. Subsequent annual meetings will reinforce the agreements and also assess, evaluate and if necessary penalise and apply pressure to those countries that do not comply.

Clearly, identifying environmental or climate migrants has not been an easy task. Therefore, it seems unlikely that proposals on population movement arising from climate change will gain the necessary political support in the near future with regard to drafting, amending, endorsing or adopting an entirely new legal framework. On the other hand, at the national level, there have been governmental and civil society efforts to respond to legal, policy and administrative gaps with regard to climate migration, as is demonstrated in the case studies within this book.

The suffering of many people in the so-called Global South who face the worst of climate change's impacts, such as inhabitants of the Marshall Islands, Bangladesh, Chile, Kenya, Sudan and many other sub-Saharan countries, has led to large-scale cross-border movements and internal displacements. However, it is now clear that the impacts of climate change are of concern not only for people in the South (who have contributed least to the root causes of climate change) but for the North as well, such as Europe, North America, China and Japan, where climate change-induced floods, hurricanes and other natural forces have led to displacement and resettlement of thousands of people and industries. As a result, injustice, adaptation and mitigation strategies, as well as reallocation decisions (individual or community), have evolved to become concerns across the globe. Thus, new challenges have arisen for national, regional and international agencies, including UN bodies, the African Union, the European Union and the Organization of American States, resulting in a need for appropriate programmes and initiatives to reduce and minimise people's vulnerability to the negative impacts of climate change and forced displacement.

Decision-making processes and the design and adoption of new policies and laws have been difficult in the contexts of global climate change and especially climate change-induced migration. Aside from the lack of an appropriate legal framework (at the national, regional or international level), uncertainty about the precise numbers of people who will eventually move and about the forms that this human movement will take put much more pressure on policy makers, international and regional agencies, and national and local authorities. The development of new legal and policy frameworks, which may address the harmful impacts of climate change as associated migration and human rights violations, still seems a long way ahead. New ways of thinking are necessary for the international community to support those most in need, recognising that the main goal remains helping existing (and future) victims of climate change by offering them adequate legal and policy tools to support their adaptation and mitigation activities. Adaptation mechanisms must therefore be created and enhanced, including supporting migration away from climate change-affected areas or providing support to those who are unable or unwilling to leave their homes.

Therefore, this book addresses issues such as:

- What theoretical frameworks will help us to understand the links between human rights, climate change and migration?
- Is the current legal framework for human rights protection adequate to address climate change-induced migration?
- Is a human rights-based approach the most appropriate method for responding to climate change-induced migration?
- What other responses might there be?
- And what lessons may be learned from countries or regions that are already obliged to address the issue of displacement due to environmental and climatic stressors?

This edited volume aims to respond to some of these pressing questions and has thus encouraged interdisciplinary approaches between social, legal and political scientists to offer a fresh look at the interlinkages between climate change, migration and human rights. The nexus between human rights, climate change and migration policy has been explored and analysed. This volume has also encouraged transnational approaches, highlighting the differences and/or commonalities of people on the move. Issues covered by the chapters include, *inter alia*, planned relocation, questions of asylum, humanitarian policies, climate justice and adaptation strategies. Questions of implementing human rights standards in existing and emerging policies and governance mechanisms (i.e. for climate change adaptation and disaster risk reduction) and their relation to migration strategies have been also explored.

This book arose from the EU's COST Action programme IS1101: 'Climate Change and Migration: Knowledge; Law and Policy, and Theory', and in particular from the Working Group II on 'Law and Policy', which met on

four occasions between 2012 and 2015. All of the contributors have been members of – or have worked closely with – this COST Action to establish a network of researchers in this field, with the aim of sharing their knowledge and building upon and extending research on the legal and policy perspectives of climate change-induced migration.

The adequacy of existing legal and policy frameworks, and how they may apply to people on the move due to climate change, raises fundamental questions for policy makers and practitioners (Ferris, Thorp), as does the possibility of designing and adopting new legal frameworks that could respond to human rights and climate-induced displacement. Discussions on international legal frameworks under the European and international law regimes with regard to climate change and migration highlight the fact that soft law initiatives may play a crucial role in addressing climate change-induced migration, such as the development of guidelines to meet the needs of specific groups affected by climate change (Ferris). If existing frameworks prove inadequate for this purpose, there may be a need to modify the existing – or develop new – legal architecture to govern the rights of migrant populations displaced due to climate change, including the international and regional legal frameworks for international climate change, sustainable development and disaster risk reduction measures (Thorp).

The challenges of identifying a satisfactory legal definition of environmental or climate migrants (or refugees) seem insurmountable, due to the difficulties of isolating the causal links of environmental factors as the sole cause for migration (Mayer). Nevertheless, climate change and human rights are strongly interlinked and the concept of climate justice may offer a way to conceptualise these links (Mihir).

The necessity to ensure protection and respect of housing, land and property rights of climate change-displaced persons is underlined in the case study of Bangladesh, one of the countries that is most vulnerable to climate change, where thousands of people have been displaced internally (Simperingham). Individuals in environmentally stressed areas are faced with three stark choices: forced migration, pre-emptive migration or in-situ adaptation (Cubie). Therefore, the issue of non-migration as a coping strategy in response to climate change also needs to be addressed. Adapting or migrating with dignity should be promoted through the application of key procedural rights, such as the right to information and the right to participate (Cubie). The potential links between climate change and the social impact of migration with armed conflicts are clearly highlighted (Olsson).

The importance of policy strategies at the international and domestic level for the reallocation of resources is exemplified through case studies from Alaska and Kenya (Bronen, Schade), as well as suggestions for climate change adaptation policies (Cubie). While relocation appears to be the only durable solution to protect the inhabitants of many vulnerable communities, tribal, state and national government agencies are struggling to respond in Alaska (Bronen). In addition, environmental change, climate policies and

land regulations may lead to additional disadvantages for already vulnerable groups and prevent them from enjoying basic human rights to water, food and housing (Schade).

The methods whereby rights and resources are negotiated in transnational law-making processes through informal actors and forums is highlighted, offering another view on global law-making processes which localises respective negotiations on innovative migration strategies and new rights in the Global South (Klepp and Herbeck).

A human rights lens is essential when thinking about the injustices caused by climate change, and that the threat to human rights may also come from less acknowledged factors, like the dynamics of the political economy, which may affect people's ability to resist or overcome these threats (Ackerly *et al.*). Finally, existing avenues and tools to facilitate mobility are explored, in particular the option to consider labour mobility as an adaptation strategy to environmental change (Fornalé).

The dialogue that is presented here will hopefully generate new synergies and understanding between social scientists, legal scholars and policy makers as well as new opportunities for stronger and more effective responses to these interlinked global agendas: climate change, migration and human rights. Thus, this book offers state-of-the-art legal and policy research on climate change-induced migration and human rights as a means of adding to the international policy dialogue and to serve as a basis for expanding research capacity in the field of climate change and migration. It also provides useful guidance to legal practitioners and policy makers working at the cutting edge of the subject.

Notes

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