



POLICY BRIEF

Tackling Climate Migration and Human Rights in Tandem: A Policy Agenda

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D6.1

A. POLICY BRIEF CONTEXT

I. Background

1. Climate change represents an increasing driver of displacement and migration within nations and across international borders, as it interacts with poverty, conflicts, food insecurity, and access to essential services (UNSRHRE, 2019).
2. According to the World Bank, by 2050, more than 200 million people will move due to extreme weather, slow-onset events such as rising sea levels and desertification, relocation from high-risk areas, and conflicts over scarce resources (WB, 2021).
3. The *HABITABLE Project* aims to significantly advance understanding of the links between climate change effects and human mobility to anticipate their future evolution. To this end, the Project relies on the concepts of habitability, socio-ecological system (SES), and social tipping points.

II. Habitability and human rights-based approach to climate change

a. Meaning of habitability for human rights

4. Habitability refers to the capacity of an SES to sustain and support the lives and livelihoods of its community. Such capacity represents an essential condition to enjoy fundamental rights and its lack “*may become incompatible with the right to life with dignity*” (*Billy and Others v. Australia*, 2022, para. 8.7).
5. National courts and international monitoring bodies have highlighted the link between habitability and human rights. In *Teitiota v. New Zealand*, the HRC recognized that climate change would likely render a specific area uninhabitable. Therefore, the State must take positive measures to protect its population from adverse climate consequences.

b. A human rights-based approach to climate change

6. So far, climate actions have been inadequate, and the lack of appropriate measures to respond to the impacts of global warming has been leading to a human rights catastrophe (UNSRHRCC, 2022).
7. UN bodies have explored the link between human rights and climate change. Since 2008, UNHRC has expressed concern about its immediate and far-reaching threat to people and communities worldwide (UNHRC, 2008).

8. UNGA Resolution 76/300 on the human right to a clean, healthy, and sustainable environment, adopted in 2022, affirmed that climate change interferes with the effective exercise of all fundamental rights (UNGA, 2022).

9. On the other perspective, the Preamble of the 2015 Paris Agreement provides that the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, and people in vulnerable situations, as well as gender equality, empowerment of women, and intergenerational equity, should guide States' response to climate change.

c. Climate litigation and fundamental rights

10. Citizens and associations have challenged the inaction of the States, filing judicial applications against national and regional tribunals as well as treaty-monitoring bodies.

11. Historical decisions, starting from the *Urgenda Foundation v. Netherlands*, have recognized the governments' negligence in tackling climate change and related human rights violations.

12. On a regional level, human rights are at the core of three climate cases pending before the ECtHR (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*; *Carême v. France*; *Duarte Agostinho and Others v. Portugal and 32 Others*) and an opinion on *Climate Emergency and Human Rights* requested on 9 January 2023, by Chile and Colombia, to the IACTHR.

13. In March 2023, UNGA adopted Resolution 77/276 asking the ICJ to issue an advisory opinion for clarifying States' climate obligations under international and human rights law and the legal consequences for States deriving from their omissions, causing significant harm for present and future generations.

14. Litigation is fundamental to test options and provide remedies for breaches of the law by compensating victims and making States adopt measures to secure persons' safe existence (Marchisio, 2021). Studies have reported over 2000 concluded and ongoing judicial cases to enforce or enhance climate obligations, most adopting a human rights-based approach (Setzer et al., 2022; UNEP, 2022).

III. Methodology

a. Objectives of the Policy Brief

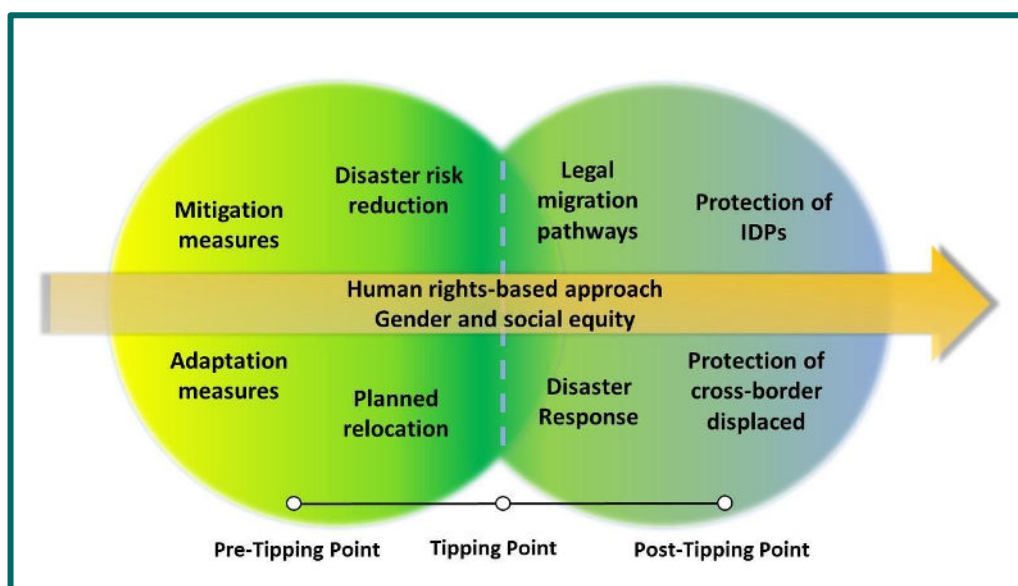
15. Within the HABITABLE Project, research conducted by WP6, led by Sapienza University of Rome, aims at assessing policy options and delivering recommendations to allow decision-makers to improve the management of migration induced by those effects and reduce displacement.

16. Along this line, the Policy Brief represents a living document to give a non-exhausting overview of the main policy options that emerged from legally and non-legally binding instruments, reports, and literature reviews. Therefore, the findings of the Policy Brief will be updated with the results deriving from the fieldwork conducted in the primary sites under other Project WPs.

17. To ensure terminological consistency within the research, the Policy Brief has relied on working definitions and key concepts included in other Project deliverables, particularly D11.2.

b. Areas of interest

18. The notion of habitability introduces a temporal and context-based perspective to the analysis of the policy options, distinguishing acts among those adopted before and after reaching a tipping point within a specific SES, which produces an increasing and widespread perception of uninhabitability.



Credit: HABITABLE Project, WP6

19. Within the pre-tipping point phase, implementing policy options of climate response strategies could stabilize the SES, and migration generally acquires a voluntary character. After the tipping point, climate change has already led to perceived uninhabitability, SES is endangered, and migration could become forced.

c. Criteria for identification of policy options

20. There is no generally-agreed method for identifying policy options, but there are specific characteristics for testing whether a proposed measure could be effective.

21. Proposed policy options should be clear, practical, and proven, meaning that both the application and the efficacy have been demonstrated or argued by one or more actors. Secondly, implementing the proposed options should be objectively verifiable, independently or collectively. Thirdly, such measures should significantly address climate migration patterns and the human rights of the persons involved.

22. Policy options can be developed and implemented unilaterally, bilaterally, and multilaterally. Those developed in a multilateral framework would have the best chance of being generally adopted.

23. Hence, the respective elements of a proposed measure that is clear, implementable, and verifiable are crucial to its likely acceptance by the wider community and its probable success as a policy option (Marchisio et al., 2014).

24. Understanding the applicability of a measure or action involves a set of key elements:

- i. Identify who will be involved and the respective roles and responsibilities of the different actors, including monitoring the implementation of the measure.
- ii. Define what is necessary to plan and implement the measure, clearly indicating the possible outcomes.
- iii. Explain its rationale and assess the cost/benefit of the desired action.
- iv. Indicate at what point actors should develop the action to maximize its benefits.
- v. Describe how to implement a specific measure in terms of the action and its verification.

d. Research activities

25. Research has been conducted through four steps: a) a collection of almost 700 policy instruments, reports, and studies; b) an assessment of relevant documents to identify main policy options; c) a workshop to discuss relevant practices and main elements of the policies; d) a call for inputs to integrate different stances into the research, particularly from Global South countries.

26. This Policy Brief benefitted from a cross-fertilization of the research conducted under other WPs of the Project and their outputs, particularly from D1.1 (A Conceptual Model of Social Tipping Points), D7.1 (A Conceptual Model of Climate Change and Human Mobility Interactions), D8.1 (Gender and Social Equity Guidance Note for HABITABLE Researchers), D9.1 (HABITABLE Stakeholder Engagement Strategy and Handbook).

27. The analysis has integrated a double perspective related to countries of origin prone to adverse effects of climate change and those of destination. In this sense, the practices of primary and secondary research sites of the Project and EU current policies are of consideration.

28. Measures that States have considered to address the climate migration nexus have been categorized based on their legal effects (binding and not binding), objectives, areas of interest, and possible impacts on human rights, gender, and social equity. The research has further considered the proposed policy options that emerged from the literature review.

29. A set of 30 policy options has been identified, covering five areas of intervention:

- i. Mitigation of climate change (all actions aimed at limiting global warming through reducing or preventing GHG emissions to slow down or reverse the effects of climate change and protect human dignity).
- ii. Adaptation to adverse effects of global warming (measures to adjust to the impacts of climate change in order to grant effective enjoyment of human rights).
- iii. Loss and damage from climate change (economic and non-economic harms caused by the adverse effects of climate change that impact the exercise of fundamental rights).
- iv. Internal and cross-border climate mobility (voluntary movement of people within a single State or by crossing an international border for labour, family-related, or humanitarian reasons).
- v. Climate displacement (forced migration due to natural disasters, extreme weather events, or global warming exacerbations aimed at identifying new habitable places).

B. POLICY OPTIONS

I. Mitigation of climate change

a. Existing measures

30. International law regulates climate mitigation. The 1992 UNFCCC requires States to implement programs containing measures to mitigate climate change (Article 4), while the 1997 Kyoto Protocol defined a commitment period, which expired in 2012, for industrialized countries to reduce GHG emissions in accordance with defined targets.

31. Since the 2009 Copenhagen Accord, States have declared mitigation ambitions and targets unilaterally. In this line, the 2015 Paris Agreement requires Parties to communicate nationally determined targets and pursue domestic efforts to limit temperature rising well below 2 °C (Article 4). Current measures are based on the targets unilaterally declared by the States through the NDCs.

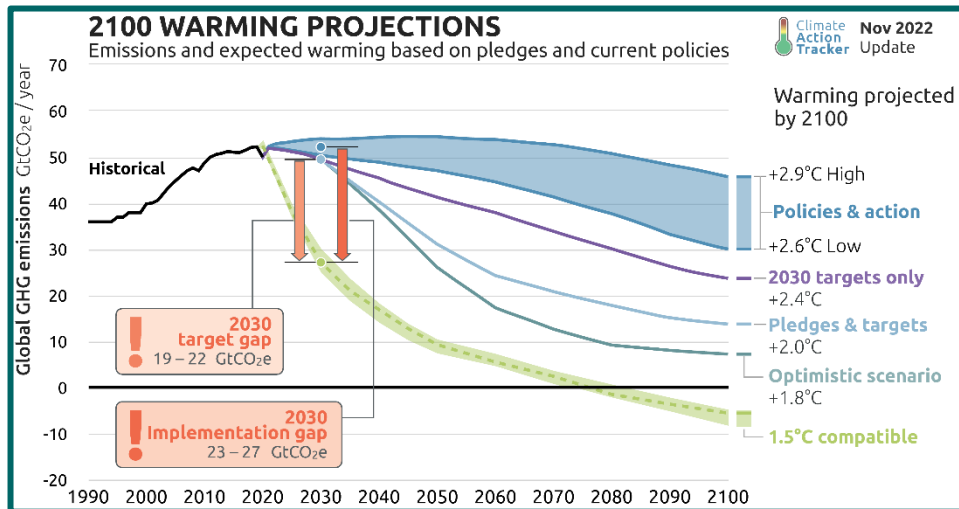
32. The IPCC strongly affirmed that limiting global temperature increase to 1.5°C compared to 1900 is essential since the risk of extreme weather events and their frequency, sea level rise, and drought dramatically increase beyond this threshold.

33. Lack of compliance by the States with the targets would breach the duty of care according to the human rights of persons under their jurisdiction to live with dignity. According to the German Federal Constitutional Court: "*The fundamental right to the protection of life and health [...] obliges the State to afford protection against the risks of climate change*" and to "*combat the considerable potential risks emanating from climate change by taking steps which contribute to stopping human-induced global warming*" (*Neubauer and Others v. Germany*, 2021, para. 144).

34. In case of the State's omissions and failure to implement appropriate policies to achieve the GHG emissions reduction targets, "*applicants may claim compensation from the State for those wrongful failings*" (*Notre Affairs à Tous and Others v. France*, 2021, para. 41).

b. Policy options

35. According to the IPCC 6th Assessment Report, current mitigation commitments are insufficient and will lead to an expected temperature increase of 2.4°C by 2100. Reaching the target of 1.5°C requires GHG reductions, compared to the 2019 emission levels, of at least 43% by 2030, 60% by 2035, 69% by 2040, and 84% by 2050 (IPCC, 2023).



Credit: IPCC 6AR SPM

36. A policy agenda to simultaneously address GHGs emissions and human rights should include the following:

1. **Protecting human rights from climate change effects:** As global warming impacts, among others, the rights to life, private and family life, food, water, health, and sanitation, States should adopt regulatory measures to limit greenhouse gases in the atmosphere and protect all persons from such harm, in compliance with relevant human rights obligations, including the 1948 UDHR and global treaties, such as the 1966 ICCPR and ICESCR, the 1989 CRC. Mitigation should be complemented by actions aimed at alleviating the consequences of climate change (see *infra* on adaptation).
2. **Adopting a new agreement with collective binding obligations on GHG reductions:** The Paris Agreement's review framework is unlikely to create strong incentives for countries to mitigate climate change. States should adopt a new agreement defining pre-assigned binding targets for all countries, limiting GHG emissions and fossil fuel production (Barrett, 2016). This approach requires careful consideration of the diversity among groups of countries in the definition of binding targets. An enforcement system should complete the new legal framework, having in mind the Kyoto Compliance Committee, entrusted with declaring a situation of non-compliance and defining possible legal consequences (e.g., non-compliance declaration, request of an action plan, and suspend carbon market trading).
3. **Defining binding reduction targets at the regional/national level:** All Parties to the Paris Agreement have submitted at least one NDC. Two-thirds enacted "direct" climate legislation (Eskander, 2020). EU Regulation 2021/1119 has set a legally binding target of net zero GHG emissions by 2050, and Regulation 2023/857 defined sharing efforts among Member States. So far, around 50 States have adopted net-zero targets (UNEP, 2022). Enactment of climate legislation expressly regulating GHG

emissions and other regulatory efforts (such as taxes and spending initiatives) can promote the Agreement's full implementation (Adler, 2021).

- 4. Promoting faster updates of NDCs and reducing timing between global stocktake sessions:** The approach taken by States following the Copenhagen Accord has been confirmed by the 2015 Paris Agreement. Every five years, the Agreement imposes a collective verification of the commitments (global stocktake) and requires countries to update their NDCs. Such timing could be too slow to adjust targets, and the progression of NDCs commitments is not as fast as needed. In line with the Glasgow Climate Pact, adopted by COP27 in 2021, States should boost the process and strengthen the targets in their NDCs. Furthermore, they should amend the 2015 Agreement to resume the global stocktake session even before the five years deadline.
- 5. Coordinating implementation of MEAs relevant to climate change:** Many MEAs concur to mitigate climate change (e.g., 1987 Montreal Protocol on the Ozone Layer, 1992 CBD, 1994 UNCCD). The outcome of the Rio+20 Conference has encouraged MEA Parties to promote policy coherence and reduce overlaps (UNGA, 2012). IPBES and IPCC have highlighted synergies and trade-offs between biodiversity and climate change measures. Still, there is a need to simultaneously address both issues (IPBES-IPCC, 2021), establish joint bodies and adopt cross-cutting measures within a specific cluster, following the model provided by the common Secretariat of the 1989 Basel Convention on wastes, 1998 Rotterdam Convention on chemicals and 2001 Stockholm Convention on POPs (UNGA, 2012). A key actor in the process of coordination at the universal level should be the UNEP.
- 6. Defining cooperative approaches to climate mitigation:** UNEP recognized a critical gap in financing mitigation actions. Therefore, suitable approaches are required to overcome the issue (UNEP, 2022). Besides increasing financial commitments, States should conclude bilateral agreements to take advantage of cooperative approaches and the market of ITMOs between different actors. Adopting a human rights-based approach would require the protection of communities by avoiding undue harm, assessing risks, and providing effective safeguards for fundamental rights (Riehl et al., 2019).

II. Adaptation to adverse effects of global warming

a. Existing measures

37. The 1992 UNFCCC provides States to facilitate adaptation to climate change by developing appropriate plans and assisting vulnerable States in meeting adaptation costs (Article 4). The 2015 Paris Agreement requires Parties to engage in adaptation

planning and implementation of actions without specifying any measure (Article 7). In this sense, the choice of appropriate interventions remains under the discretion of each State.

38. Adaptation has a fundamental role in granting human rights to vulnerable populations. According to the HRC: *“failure to adopt timely adequate adaptation measures to protect the authors’ collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State positive obligation to protect the authors’ right to enjoy their minority culture”* (Billy and Others v. Australia, 2022, 2022, para. 8.14).

39. States must protect people under their jurisdiction against the adverse consequences of climate change. Failure to take adequate adaptation measures violates human rights. According to the German Federal Constitutional Court: *“the duties of protection arising from fundamental rights involves a combination of mitigation and adaptation measures”* (Neubauer and Others v. Germany, 2021, para. 177).

40. Adaptation measures represent a paradigm shift in approaching climate risks toward a proactive perspective. By adapting to the effects of climate change, communities, and ecosystems can better cope with the changing climate and reduce the negative impacts on human health, economies, and natural resources. Several non-binding instruments promoted communities’ adaptive capacity and resilience, including the 2018 GCM, which recognizes that adaptation in countries of origin is a priority.

b. Policy options

41. Adaptation actions should promote adaptive capacity and prevent adverse consequences. Considerations of vulnerabilities shall integrate sustainable development strategies, sectoral interventions, and international action on adaptation to climate change. The selection of measures should be country-driven, guided by the best available science and traditional knowledge, to meet the needs of persons at risk.

42. A policy agenda that promotes effective adaptation to protect human rights through a gender-responsive, participatory, and fully transparent approach should include the following:

7. Concluding bilateral and multilateral agreements to promote adaptation:

International legally binding instruments can effectively address climate adaptation and create stable cooperation among States and international organizations. States should deepen political engagement in climate change adaptation with international and regional partners. The new EU-OACPS Agreement and its regional protocols, concluded in 2021, and not yet into force, explicitly refer to climate adaptation actions focused on the most vulnerable countries to engage in planning, implementation, and monitoring the progress of national plans and strategies.

- 8. *Mainstreaming adaptation in existing legislation:*** Sectoral legal acts have been adopted to address adaptation issues, such as the institution of protected areas, and resettlement of industrial and other facilities to safe places. States should address climate change adaptation by amending the existing legal frameworks (Ruhl et al., 2013).
- 9. *Arranging national mechanisms for rapid emergency response:*** States have adopted legislation on DRR and management (Mokhnacheva, 2022). Besides common elements such as risk assessment and early warning systems (IASC-ISDR, 2008), States should adopt contingency plans, define the duties and responsibilities of national agencies, establish rapid-response funds, and provide mechanisms for quick response. Some regulations promote disaster insurance schemes to be developed, paying attention to inequalities among social groups. Women and indigenous peoples are more likely to be included in microinsurance schemes owing to affordability, social discrimination, or economic marginalization (UNSRHRCC, 2022).
- 10. *Promoting structural international cooperation on climate adaptation and DRR:*** Partnership to support developing countries vulnerable to climate change is essential to enable them to reach effective resilience. Regional frameworks for cooperation represent an added value for enhancing adaptation and DRR measures. The EAC Disaster Risk Reduction and Management Strategy aims at mainstreaming sustainable integration of DRR into development plans and strategies of EAC States, providing a framework for collaboration and partnership among the Members (EAC, 2012).
- 11. *Adopting national adaptation plans, strategies, communications, and programmes of action:*** NAPs promote a holistic approach to climate adaptation by defining long-term development pathways supported by effective governance structures. In planning and implementing actions, States should follow the principles of participation, stakeholder empowerment, and gender sensitivity. Inclusive stakeholder engagement and beneficial collaboration could make institutions understand people's specific needs and expectations (Pessiot et al. 2022). Developing States could rely on practices developed under the 2010 CAF or the work program for LDCs developed in 2001 to exchange knowledge and receive technical and financial support to implement adaptation measures. Alternatively, according to Article 7 of the Paris Agreement, States should adopt and periodically update an adaptation communication to identify needs and context-based measures.
- 12. *Enhancing sub-national mechanisms for mainstreaming, implementing, and coordinating adaptation and DRR:*** Subnational or local levels of governance are responsible for implementing from 50 to 80% of adaptation actions, as national policies require subnational governments to set targets, prepare plans, and report on implementation (NRG4SD, 2016; IFRC-UNDP, 2014). Local governments should

lead the way in addressing adaptation challenges by downscaling national-level policies and efforts to the local level or by developing locally-led innovative actions (Mokhnacheva, 2022).

13. Developing institutional policies to address mobility and situations of vulnerable persons and groups: Financial bodies, such as SCCF, LDCF, or AF, should adopt tools and guidance for integrating vulnerabilities and human mobility considerations. Few specific tools were available (UNHCR, 2018), but positive developments have been registered. GEF approved a Policy on Gender Equality, requiring a more proactive integrated approach and improved reporting on disaggregated targets and results (GEF, 2017; Schalatek, 2022). However, only an intersectional approach that considers how gender intersects with other key axes of social difference could effectively impact inequalities (Vigil, 2021). The GCF Indigenous Peoples Policy prohibits financing activities that would result in the involuntary resettlement of indigenous peoples (GCF, 2018).

14. Defining mechanisms to scale up financing and access to institutional funds: Current international, regional, and national funding arrangements are challenging to access. Climate funds should simplify procedures for LDCs and SIDS to access funds required for mitigation and adaptation (UNSRHRE, 2019). IMF highlighted the need for innovative financial instruments and the involvement of multilateral development banks to leverage private investment (IMF, 2022). Regional approaches should complement international actions. AU has proposed an African Climate Fund to address climate adaptation and mitigation issues, including technology development, to be put in place by 2025 (AU, 2015).

III. Loss and damage from climate change

a. Existing measures

43. Loss and damage can result in significant economic, social, and environmental long-lasting consequences on communities and ecosystems, impacting several human rights. Climate change “can result in property such as agricultural land or real estate suffering various forms of damage” and “might thus be accompanied by a loss of stable community ties within the local environment.” (Neubauer and Others v. Germany, 2021, para. 171).

44. Policies on loss and damage are guided by the 2015 Paris Agreement, which has highlighted the importance of addressing loss and damage, and called for enhancing the WIM, established in 2013.

45. The WIM has addressed the issue of displacement as a non-economic loss, establishing a Task Force which, in 2018, invited States to consider formulating laws and

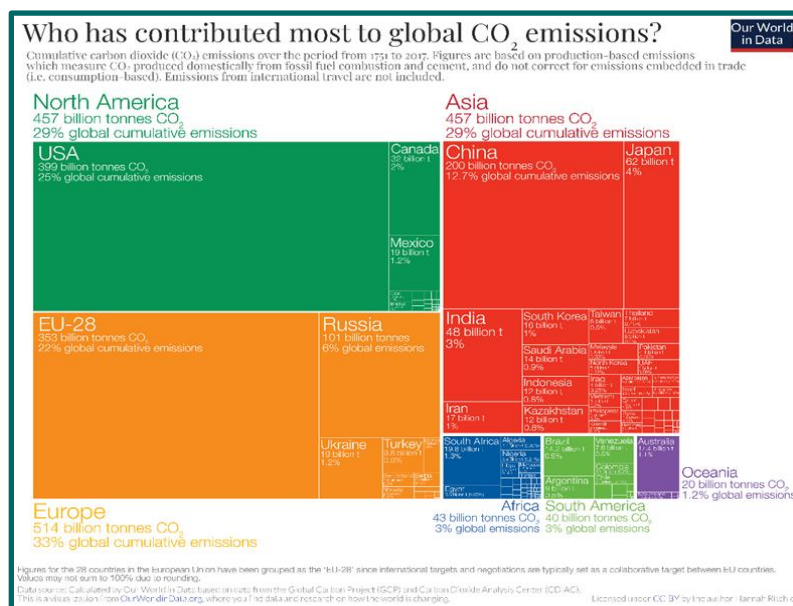
policies that reflect the importance of integrated approaches to displacement related to climate change, taking into consideration their respective human rights obligations.

46. From a human rights perspective, loss and damage are also closely related to the right to remedy and reparation (UNSRHRCC, 2022). Failure to address to prevent loss and damages to indigenous peoples "can lead to violations of fundamental human rights, given the dependence of indigenous minority cultures on a healthy environment and the strong cultural and spiritual link between indigenous peoples and their traditional lands" (Billy and Others v. Australia, 2022, para. 5.7) and requires the State to adopt remedies.

47. Whether developed countries should compensate vulnerable States for loss and damage still remains an open issue. COP21, in 2015, specified that the Paris Agreement does not provide a basis for liability or compensation. At the same time, SIDS declared that the acceptance of the agreement does not constitute a renunciation of any rights under international law. COP27 decided to establish a loss and damage fund for vulnerable countries without indicating who should contribute to them.

b. Policy options

48. Climate impacts increasingly and unequally affect vulnerable LDC and SIDS, threatening livelihoods, culture, health, well-being, and ecosystem services, and shaping migration patterns. Moreover, each individual has their own threshold of perceived expected losses, which can be due to different tolerance to risk or the size of the loss (Adger et al., 2021). States should explore alternative and innovative ways to address such issues, both in financial and non-financial terms.



Credit: Our World in Data

49. A policy agenda to protect human rights and the needs of vulnerable people by addressing loss and damage should include the following:

- 15. Advancing institutional cooperation on loss and damage and human rights integration:** The WIM aims at enhancing cooperation in specific areas, including early warning systems, response to climate events involving irreversible loss and damage, comprehensive risk assessment and management, and risk insurance facilities. Within each area, WIM should find new or existing ways to integrate human rights consideration, promote coherence and avoid duplications within the climate system. In 2019, WIM promoted the establishment of the Santiago Network to catalyse technical assistance in developing countries given by relevant organizations, bodies, networks, and experts. Activities of the network should be guided by a human rights-based approach and tailored to potential victims' needs.
- 16. Setting up effective and equitable mechanisms for compensating loss and damage:** Addressing loss and damage compensation requires adopting concrete measures supported by financial mechanisms. COP27 has established a new fund for loss and damage. A Transitional Committee has been set up to formulate recommendations on terms of reference and work methods. States should decide where the fund will be placed (within or outside the system provided by climate agreements), what types of activities will be supported, how it will be governed, which countries will be eligible, and who will financially contribute, in accordance with the principles of common but differentiated responsibility, polluter pays, intra- and inter-generational equity.
- 17. Promoting regional frameworks for cooperation:** Relevant actors should address loss and damage at regional levels by identifying common objectives and context-based actions through coordination mechanisms and fora to discuss emerging challenges, as the examples of the Framework for Resilient Development in the Pacific and the task force established to provide strategic advice for its implementation.
- 18. Identifying regional financial responses to loss and damage:** States should find a way to transfer risk to other parties, such as through contracts or agreements. At the regional and national levels, initiatives have been developed for insurance and risk transfer (SEI, 2021). The CCRIF, established in 2007, has been the first multi-country risk pool. Based on this model, other facilities have been set up, including the ADRIFI, ACRIF, and ARC. A solidarity fund could be an alternative to compensation and help with immediate human rights needs, liquidity, and long-term recovery action. EUSF is an example of a well-functioning fund that provides payments for occurred losses and damages to its members.
- 19. Promoting national financial mechanisms:** States should promote insurance policies that cover losses and damages caused by climate change effects. Such practices could include coverage for extreme weather events and long-term

damages. Antigua and Barbuda's NDC has foreseen tailored programmes that allow farmers, fishers, residents and business owners to manage and transfer risks resulting from increasing climate variability. Honduras NDC has proposed establishing a gender-responsive agricultural insurance mechanism for loss and damage (Ryder et al., 2021). However, the UN Special Rapporteur on Human Rights and Climate Change warned that funding where developing countries pay for the financial costs of loss and damage is inconsistent with the polluter-pays principle (UNSRHRCC, 2022).

IV. Internal and cross-border migration

a. Existing measures

50. As most movements take place within countries, internal mobility represents an issue related to the exclusive jurisdiction of the State and a challenge to national governments. On the opposite, cross-border migration involves at least two States, and a comprehensive treaty addressing international mobility has yet to be concluded. Few conventions refer to the rights of specific categories of migrants, such as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

51. A couple of regional legal frameworks regulate mobility within a specific area, such as in the cases of Member States of the EU, ECOWAS, and SADC. MERCOSUR has established special provisions and privileges for citizens of Member States.

52. A specific provision regarding climate mobility in Africa is contained in the 2020 Protocol on Free Movement of Persons in the IGAD Region, not yet into force. Article 16 stipulates that Member States shall allow citizens of another Member State who are moving in anticipation of, during, or in the aftermath of a disaster. This provision constitutes the first of its kind at the international level.

53. Proactive migration has been a widely recognized effective form of adaptation (Vinke et al., 2020), reducing pressure on local resources, increasing financial and social remittances, enabling people to stay, and avoiding tipping points in the system. Internal mobility can increase access to job opportunities, education, and healthcare, while cross-border mobility can facilitate international trade and cultural exchange. However, they can also present challenges, such as the potential for increased competition for jobs and resources and the need to integrate cultural systems. Finally, what constitutes adaptation for some may represent maladaptation in other parts of the system (Gemenne et al., 2017).

54. Human rights concerns are at stake: *"People are already leaving their homes as a result of natural disasters and long-term environmental changes such as increased droughts and rising sea levels. [...] Increasingly pronounced changes in the climate thus*

amplify worldwide refugee movements and could intensify international displacement and migration (Neubauer and Others, 2021, para. 28)

55. Individuals affected by climate change, natural calamities, and environmental degradation can be excluded from regular pathways for migration, lacking the social and economic resources or the competencies to rely successfully on ordinary migration programs for work, study, or touristic purposes.

56. In this regard, improvements have been made in the conclusion of free movement agreements, bilateral and regional labour migration schemes, or special visa categories to enable people to move regularly.

b. Policy options

57. The 2018 GCM recognizes the need to develop legal migration pathways as a necessary migration management tool in the context of climate change and strengthen efforts to offer safe routes to those affected by disasters and adverse effects of climate change. Legal requirements for migrants entering, staying, and working in the destination area could limit or enhance mobility opportunities (Detges et al., 2022). During COP27, the UN Network on Migration has encouraged States to include pathways for regular migration in their climate change mitigation and adaptation strategies, which enable labour mobility and decent work, human rights and humanitarian admission and stay, family reunification, education, private sponsorships, and visa waivers.

58. A policy agenda that address climate-related migration and protect the human rights of migrants should include the following:

20. Establishing regional frameworks granting free movement of persons within a specific area: Free movement agreements aim at advancing regional integration and represent practical tools for facilitating mobility, including circular migration (Wood, 2022). States should promote such frameworks based on existing practices. Besides Europe, other areas provide examples of regional frameworks. The 1979 ECOWAS Protocol on Free Movement of Persons, Residence, and Establishment has led to the abolishment of visas for stays of up to 90 days within ECOWAS territories. The 2003 ECOWAS Protocol and Regulation on Transhumance facilitate mobility within the concerned area.

21. Considering national planned relocation: Planned relocation has been recognized as a strategy to protect the population, mainly when other options are no longer available. More than 400 cases have been reported since 1970 (IOM, 2022). States should consider actions tailored to the rights and needs of a given population, define the legal basis for undertaking the resettlement, build capacity, and set a participatory process to find a suitable location (UNHCR, 2017). Financial and post-relocation support is essential (Ferris et al., 2023). Such concerns have been addressed by Fiji, which adopted the 2018 Guidelines on Planned Relocation to ensure an inclusive and gender-responsive participatory process.

22. Adopting national policies promoting self-managed planned relocation:

Participation is fundamental for exercising human rights. Principle 10 of the 1992 Rio Declaration on Environment and Development has affirmed that environmental issues are best handled with the participation of all concerned citizens. In this sense, relocations have the best chances of success if people actively influence decision-making. States should promote self-management of relocation to enhance participation, give value to the group decision on the habitability of a specific area, and enhance the possibility that the solution will be permanent (Gini et al., 2020). An example is the Protocol of Consultation concluded in 2016 among the Brazilian federal authorities, local governments, and the Association of Residents of Enseada da Baleia. An authorization for self-organized relocation was released to the Association, which managed the land division for houses and assigned priorities for the most vulnerable persons.

23. Facilitating admission to other countries for humanitarian reasons: States should grant legal admission into their territory to persons displaced by environmental calamities in their country of origin. Measures can vary from the provision of “humanitarian” visas to the abolition of entry requirements. In the EU, the Visa Code (Regulation 2009/810) allows the issuance of humanitarian visas. These provisions could be applied to grant the admission of environmental and climate-displaced people into the EU territory. In 2022, Argentina launched the Environmental Humanitarian Visa Program to provide admission and temporary visas to persons displaced from Mexico, Central America, and Member States of the CARICOM due to “socio-natural disasters,” which may originate from extreme natural or weather events.

24. Supporting visas focused on labour migration: ILO estimates 150 million migrant workers and a growing gap between the opportunities in home communities and abroad. Climate shocks aggravate poverty, increasing labour mobility in the decades to come (ILO, 2015). States should assess if current migration schemes need a revision to include the consideration of labour needs (ILO, 2021). Some countries have introduced job search visas that allow particular groups of potential labour migrants to come to the country to search for work. States should create mechanisms that facilitate the employment of foreigners in essential worker positions and seasonal and indefinite works that meet basic labour market needs (ILO, 2021).

V. Climate-related displacement

a. Existing measures

59. No comprehensive legal framework that includes the “climate change consequences” as a cause legitimizing the recognition of the status of protected person exists, as it could be challenging to identify elements that distinguish when someone is predominantly moving because of climate change impacts (Gemenne et al., 2017).

60. In 2017, New Zealand announced that the country was considering issuing “an experimental humanitarian visa” category for Pacific Islanders displaced by the effects of climate change. After a few months, the plan was dropped. However, the application of this instrument would have needed a clear definition of the persons entitled to it.

61. It should be noted that although the “climate refugee” label has had a significant impact both on the public and the academia - having the merit of shining the limelight on this issue - it is widely recognized that most people displaced by environmental and climate-related hazards would not meet the requirements of the refugee definition (McAdam, 2012; UNHCR, 2020).

62. Policy instruments from international institutions adopt a definition of environmental migrant, or climate migration, as in the case of the IOM, clarifying that it does not create any new legal categories but it represents a working definition to describe all the situations in which people move in the context of environmental or climate factors (IOM, 2019).

63. In cross-border displacement, the perception of uninhabitability is accompanied by the impossibility of living safely, and with dignity, in the country or place of origin. As international law imposes on States an obligation not to expel a person to a country where the latter would face cruel, inhuman, or degrading treatment, indeed, climate-related disasters might reach the threshold required under such an obligation, as they might cause “intense suffering” and harsh living conditions in the country of origin.

64. In 2015, the “Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change” was endorsed by 109 States, including several EU Member States and the EU itself. The Agenda aimed to identify and consolidate “effective practices” to improve preparedness and response capacity to address cross-border disaster displacement.

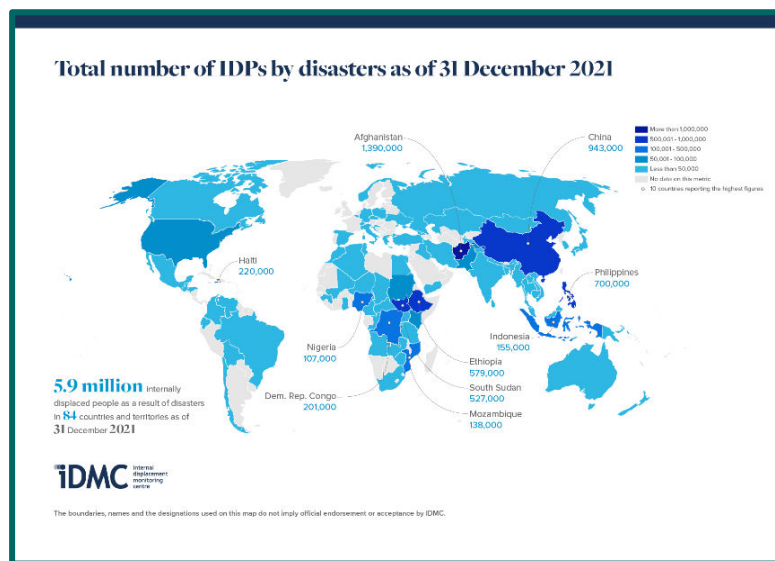
65. The protection of IDPs remains a primary responsibility of the State. At the same time, some binding instruments provide legal frameworks for assisting IDPs and protecting their rights, such as the 2009 AU Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention), which is the first legally binding instrument on internal displacement. Non-binding instruments have also been adopted, including the 1998 UN Guiding Principles on Internal Displacement.

b. Policy options

66. Given the magnitude of the phenomenon, climate mobility must be effectively addressed with proactive measures. Protection should represent a residual option for those still forced to migrate despite adopting previously envisaged measures, such as

mitigation and adaptation actions, compensation for loss and damage, and legal migration pathways.

67. Moreover, it should be considered that most of the displacement in disaster contexts occurs within countries. During 2008-2021, IDMC recorded 342,3 million displaced, representing almost three times the number of people displaced by conflict and violence during the same period.



Credi: IDMC

68. A policy agenda that effectively prevents displacement and protects the human rights of forced migrants should include the following:

25. Developing legal frameworks addressing internal displacement: National authorities should primarily provide humanitarian assistance and protection for IDPs. Regional legal frameworks could guide States in fulfilling their obligations. The mentioned 2009 Kampala Convention grants protection and assistance for persons displaced from their homes due to natural disasters or climate change and calls upon States to lay down the conditions on which such an internal displacement solution can be sustainable and lasting. Moreover, it aims to create National and Regional Mechanisms for Early Alerting, Disaster Risk Reduction, and Coordination of Humanitarian Assistance.

26. Recognizing complementary protection: States should respect the principle of non-refoulement and consider forms of complementary protection, to be granted when the effects of climate change in countries of origin expose individuals to violations of their right to life or other fundamental rights (HRC, 2018). The right to private and family life could be used to grant protection to persons from environmentally degrading and polluting countries.

- 27. Issuing temporary protection residence permits:** States should consider the possibility of collectively protecting climate displaced rather than granting protection on the basis of an individual assessment of applications. These group-based schemes (usually called temporary protection) provide minimum protection and contribute to a better-managed response to humanitarian crises. Within the EU, climate migrants seem to be excluded from the applicability of the Temporary Protection Directive (2001/55), even if categories of Art. 2(C) are not exhaustive. The United States introduced a permanent national temporary protection system, ready to be activated when extraordinary and temporary conditions in the foreign State prevent nationals from returning to the State in safety.
- 28. Establishing ad hoc status for persons forcibly displaced by climate and environmental hazards:** States should assess the opportunity to introduce *ad hoc* protections. Few countries have done so. Sweden and Finland have long been explicitly mentioning environmental hazards as causes of displacement, but they never granted protection on this ground (Scott et al. 2022), and provisions were repealed in 2016. Italy provides a specific residence permit for persons displaced by environmental calamities (Art. 20 bis of the Immigration Act, amended in 2018), which lasts six months and is renewable once.
- 29. Adopting policies on cash-based interventions:** Among non-legally binding policy measures, States, as well as sub-national and local authorities, could opt for defining cash-based interventions. Cash transfers ensure that individuals can access basic needs and help stimulate local economies by increasing demand for goods and services. At the same time, CBIs may lead to fraud or distortion of local prices and social tension with the host community. The Somalian 2019 National Policy on Refugee-Returnees and IDPs identifies several conditions and support measures, such as microcredit for setting up businesses and cash-for-work schemes.
- 30. Concluding a treaty on the protection of climate displacement:** States should assess the opportunity to conclude a new legally binding international framework. It could be a stand-alone treaty or an additional protocol to the Geneva Convention or the UNFCCC (Biermann et al., 2008; Felipe Pérez, 2018) aimed at protecting climate-displaced persons. The conclusion of a new international binding framework would be the most comprehensive solution. So far, the proposals have never gathered the needed political support from States, and establishing a new legal framework applying to climate-induced displacement is unlikely to materialize.

C. CONCLUSION

69. Climate migration and displacement are complex phenomena due to the multicausality given by the factors at stake, including the effects of global warming, habitability, interactions among social factors, and human rights. Such complexity requires the adoption of adequate measures.
70. Policies to better manage climate migration patterns and prevent displacement should adopt a holistic approach, which includes actions to avoid or retard the reaching of a social tipping point in the SES and protect people living in uninhabitable areas. This approach should consider potentially-affected persons' specific needs and vulnerabilities to grant their fundamental rights and address inequalities.
71. Adopting adequate measures would also allow the integration of scientific, social, and political considerations into the planning and implementation of actions, as in the cases of mitigation and adaptation, always in a context that poses human beings at the centre, in their individual and collective forms.
72. The resort to a wide range of policy options should always be complemented by a human rights-based approach, to shed light on all dimensions linked to climate migration, and entail, as a minimum, compliance with the core legal principles provided by the UDHR and relevant core treaties on fundamental rights.
73. While such provisions focus on the protection of individuals, a comprehensive approach to policy options that include human rights and climate change law in tandem allows for addressing the problems of the populations involved collectively. Thus, all decisions made by States and relevant actors in this field should always maintain the human being at the core of the policy.

List of acronyms

ACRIF	African Climate Risk Insurance Facility
AF	Adaptation Fund
ARC	African Risk Capacity
CAF	Cancun Adaptation Framework
CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
CBI	Cash-based Intervention
CCRIF	Caribbean Catastrophe Risk Insurance Facility
COP	Conference of the Parties
CRC	Convention on the Rights of the Child
DRR	Disaster Risk Reduction
EAC	East African Community
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EUSF	European Union Solidarity Fund
GCF	Green Climate Fund
GCM	Global Compact for Safe, Orderly and Regular Migration
GEF	Global Environmental Facility
GHG	Greenhouse Gas
HRC	Human Rights Committee
IACtHR	Inter-American Court of Human Rights
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IFRC	International Federation of Red Cross and Red Crescent Societies
ILO	International Labour Organization
IMF	International Monetary Fund
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	Intergovernmental Panel on Climate Change

ISDR	International Strategy for Disaster Reduction
ITMO	Internationally Transferred Mitigation Outcome
LCD	Least Developed Countries
LDCF	Least Developed Countries Fund
MERCOSUR	Latin America Southern Common Market
NAP	National Adaptation Plan
NDC	Nationally Determined Contribution
SADC	Southern African Development Community
ADRIFI	Africa Disaster Risk Finance
SEI	Stockholm Environment Institute
SES	Socio-Ecological System
SIDS	Small Islands Developing States
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHCR	United Nations Office of the High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNSRHRCC	Special Rapporteur on the Promotion and Protection of Human Rights in the context of Climate Change
UNSRHRE	United Nations Special Rapporteur on the issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment
WB	World Bank
WIM	Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts
WP	Work Package

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