

Sea-level Rise (SLR) and Migration Beyond the Mainstream International Law Vocabulary

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Outline



Photo: Brandi Mueller/Getty Images

- 1. Background**
- 2. SLR-related migration and vulnerability**
- 3. Different paradigms of vulnerability in international law and adaptation policy**

Background: Recent Developments on SLR and Migration

- Australia-Tuvalu Falepili Union Treaty (9 November 2023)
- Pacific Regional Framework on Climate Mobility (November 2023)
- International Law Commission (ILC) Study Group on SLR, 75th session (2024) sub-topic: protection of persons



SLR-related migration and vulnerability

- Frequent mention of ‘vulnerability’ in UN human rights policy documents and soft-law instruments on climate change and migration/human rights.

E.g.

- OHCHR (2018), *The Slow onset effects of climate change and human rights protection for cross-border migrants*
- GA (2018), *Global Compact for Safe, Orderly and Regular Migration* (see Objective 7)
- ILC (2016), *Draft articles on the protection of persons in the event of disasters, with commentaries*

- The term ‘vulnerability’ or ‘vulnerable situations’ **has no legal definition.**
- Paradigmatic example of a working definition:

Vulnerability defined by reference to ‘a person’s relative ability to effectively exercise their human rights. [...] vulnerability is understood as both “situational” and “personal”. [...] Increased vulnerability also means that an individual is likely to have less adaptive capacity—or ability to adjust or respond to the impacts of climate change’. (A/HRC/37/CRP.4, para. 52)



- What does this understanding imply?

Vulnerability: underlying message

- Vulnerability paints the picture of a victim but leaves the perpetrator unnamed.
- Contrast w/ principles of **equality** and **non-discrimination** – centering the problem on the ‘distinction, exclusion, restriction or preference’ of a person on specific grounds (CCPR GC18).
- Gibb (2015): ‘vulnerability’ is necessarily underlain with ideology and is susceptible to ideological appropriation.

Geophysical vs. structuralist paradigms of vulnerability

1. Migration as secondary to adaptation

- Geophysical paradigm perceives natural disasters as a force to be prevented, tamed, and corrected as matter of technical challenge.
- Primary focus on technocratic measures, e.g., technology-based warning systems, engineering structures, and hazard-based land-use planning imported from the Global North (see Arts. 4.3–4.5 UNFCCC).
- Migration considered a measure of last resort, sometimes may not be motivated by considerations of human security.

Geophysical vs. structuralist paradigms of vulnerability

2. Migration as a form of adaptation

- Structuralist paradigm argues that vulnerability results from interlinked 'root causes embedded in ideological, social and economic systems, the dynamic pressures of a demographic, socioeconomic or ecological nature, and specific sets of unsafe conditions that, when combined with a natural hazard, produce a disaster' (Wisner et al. 2004).
- Migration reduces pressure on local resources and diversifies household income through the inflow of remittances, forestalling a mass exodus due to SLR (rationale behind Falepili Union Treaty).

Geophysical vs. structuralist paradigms of vulnerability

- Both understanding of vulnerability heavily relies on a nature-culture dichotomy, not recognised in many (indigenous) cultures.
 - While positioned as ingenious and superior, solutions proposed do not primarily serve the interests of the affected communities, but rather external actors (foreign investors, international development organisations, labour recipient states).
 - In other words, the vulnerability framing reproduces a damaging discourse of Western hegemony.
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CONCLUSIONS

- Mainstream international law discourse driven by the concept of ‘vulnerability’ risks victimising and marginalising the subject deemed vulnerable, typically in the Global South.
- More research on indigenous cultures and migration/adaptation practices is crucial to debunk narratives that construe the Global South as vulnerable and the Global North as the sole source of solutions.
- Future attempts to define vulnerability must recognise the ‘**multiple and intersecting** forms of **discrimination, inequality** and **structural and societal dynamics** that lead to diminished and unequal levels of power, choice and enjoyment of human rights’ (Pacific Regional Framework on Climate Mobility, para. 27).

Thank You

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