

The role of free movement agreements in addressing climate mobility

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Free movement agreements present opportunities for those who move in the context of disasters and climate change. More work is required, however, to make free movement accessible in practice to affected communities.

Regional agreements for the free movement of persons between States offer a potential mechanism for those moving across international borders in the context of disasters and climate change to access safety and pursue alternative livelihoods. Unlike other, more limited frameworks for cross-border mobility – such as labour migration or refugee protection – which depend on satisfaction of specific eligibility criteria, free movement agreements generally provide much broader access to cross-border movement for citizens of countries in a particular region (or sub-region).

Until recently, however, free movement agreements have not been developed with the particular needs of ‘climate migrants’ in mind. Rather, they are intended as a tool for advancing regional integration and economic development. The importance of States’ political and economic interests within regional free movement agreements means such agreements usually do not address the predicament or challenges faced by communities impacted by disasters, climate change and environmental degradation. In practice, access to free movement may involve onerous documentation requirements or be subject to individual States’ restrictive migration policies. Free movement may even be suspended in situations involving large-scale displacement, such as following a disaster.

In East Africa, the Intergovernmental Authority on Development (IGAD) is pioneering a more progressive approach to free movement. In 2020, it adopted a new IGAD Free Movement Protocol that includes specific provisions ensuring entry and stay for people moving in the context of disasters and climate change. The IGAD Free Movement

Protocol provides pause for thought about what might be possible elsewhere. Could regional free movement agreements in other regions be further developed or implemented to enhance opportunities for climate change-affected communities to access safety and secure their future livelihoods?

Opportunities

Regional agreements for the free movement of persons have a number of key benefits when it comes to facilitating cross-border mobility in the context of disasters and climate change. In addition to broad eligibility criteria, they provide employment, trade and business opportunities for those who move. They could therefore facilitate long-term access to alternative income streams and more sustainable livelihoods for disaster and climate change-affected people.

Flexible rules regarding entry and stay under free movement agreements may facilitate ‘circular’ migration across borders, allowing people to move back and forth between neighbouring countries as circumstances require. This can allow some people to remain at home, while others pursue alternative employment and livelihood opportunities.

Circular or temporary migration can create new livelihood opportunities, support economic development, and build resilience to future hazards by allowing migrants to send back remittances and return home with newly acquired knowledge, technology and skills.¹ This is another advantage of free movement agreements over humanitarian or international protection visas or mechanisms, which are usually ‘one way’ whereby returning to one’s country of origin brings an end to

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lawful status in the destination country and can create difficulties for future re-entry.

In the Caribbean region, free movement agreements have been used during the hurricane season to grant short-term stay, document waivers and access to foreign labour markets to those displaced.² In West Africa, where climate change is impacting traditional patterns of movement, workers and pastoralists frequently use free movement arrangements to access water, grazing lands and alternative livelihoods.³

The 2020 IGAD Free Movement Protocol provides a promising example of what might be possible with more dedicated efforts to make free movement accessible for those who move in the context of disasters and climate change. While the impact of the protocol in practice is yet to be seen, its adoption alone is a significant achievement in a region facing large-scale movement caused by intersecting hazards, including drought, flooding, violence and conflict.

Specific provisions to facilitate disaster or climate change mobility could be incorporated into free movement agreements elsewhere, either by amending existing agreements or by concluding additional, supplementary agreements or protocols. At a 2019 stakeholder workshop on the role of free movement agreements in addressing disaster displacement in Africa, representatives from several West African governments proposed the idea of developing an additional protocol to the Economic Community of West African States (ECOWAS) free movement protocols.⁴

Specific disaster or climate-related provisions in regional agreements provide a sound basis for further cooperation between States, at the regional and/or bilateral levels, to address the needs of those who move. However, they are not the only way of making free movement more accessible and useful to climate change-affected communities. In many parts of the world, regional agreements may be supported by smaller-scale arrangements, such as bilateral agreements for the relaxation of documentation requirements for movements of border area populations between two or three States. These provide flexibility for States to adopt more targeted

cross-border arrangements that cater to the dynamics of disasters and climate change movement in particular regions or for particular populations. Unilateral action by States is also important. National legislation providing priority access to free movement arrangements following disaster, or waivers of procedural requirements for climate change-affected populations, could have a significant positive impact in practice.

Challenges

There are clear opportunities for further developing and supplementing regional free movement agreements to make them more accessible to people who move in the context of climate change. However, the origins of free movement agreements in economic development and market liberalisation pose formidable barriers to the widespread adoption of free movement as a solution to humanitarian concerns such as climate-related human mobility.

Because free movement agreements are not developed for protection purposes, human rights guarantees for those who move may be limited or non-existent. For example, free movement agreements may not include protection against forcible return for those at risk of serious harm at home. Free movement agreements may even be suspended in certain situations – for example, for reasons of national security, public order or even refugee influx.⁵ In theory, the human rights of those who move are protected under other applicable international, regional or national frameworks, and irrespective of their inclusion (or not) in free movement agreements. In practice, however, the application of human rights standards to vulnerable migrants is often poorly understood.⁶ Where they are limited, or absent, within free movement agreements, this could further undermine appropriate standards of treatment for those who move.

Free movement agreements also do not take into account the practical challenges that those moving in the context of disasters and climate change may face, particularly those who are forcibly displaced. The burden of meeting documentation and financial requirements – including travel

documents, permit fees or proof of onward travel – may exclude those most vulnerable to disasters and climate change. For the millions of people worldwide who live without any legal proof of their identity, just obtaining a passport or other valid travel document will be extremely difficult.

Finally, and fundamentally, free movement agreements leave individual States with considerable discretion to limit or shape their commitments to facilitating entry and stay for citizens of neighbouring States. In practice, the implementation of free movement agreements is frequently hampered by insufficient political will, domestic security and other concerns, and economic disparities among States.

Ways forward

Free movement agreements are not a panacea – they present both opportunities and challenges. Indeed, more needs to be known about the potential, as well as the limitations, of different types of free movement agreements for addressing climate-related human mobility, as well as how disaster- and climate change-affected communities are already using such agreements to pursue

safety and more sustainable livelihoods.⁷ With a combination of efforts at the regional, bilateral and national levels, however, free movement could provide better and more lasting solutions for communities affected by disasters and climate change.

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1. Nansen Initiative (2015) *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, p9 bit.ly/Protection-Agenda-Vol1
2. Ama Francis (2019) 'Free Movement Agreements & Climate-Induced Migration: A Caribbean Case Study' bit.ly/Francis-FMAs-2019
3. See Platform on Disaster Displacement (2019) *Stakeholder Workshop Report – The role of free movement of persons agreements in addressing disaster displacement in Africa* bit.ly/PDD-stakeholder-workshop-Africa-2019
4. Ibid
5. See Tamara Wood (2019) *The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement: A Study of Africa* especially p22, 27 bit.ly/Wood-free-movement-2019
6. OHCHR (2019) *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* p9 bit.ly/OHCHR-principles-migrants-2019
7. For example, see Research Agenda for Advancing Law and Policy Responses to Displacement and Migration in the Context of Disasters and Climate Change in Africa (2021) esp 3.2.3; see box p74 for more details and visit <https://disasterdisplacement.org/portfolio-item/research-agenda>