

A Human Rights-based Approach to Climate Risk Insurance

Making Insurance-related Instruments for Climate Risk Management Beneficial to the Poor and Vulnerable

Introduction

Humanity has faced the risk of climate-related extreme weather events ever since. With climate change, though, extreme weather events such as floods, droughts or storms are increasing in frequency and severity. Even if the goal of limiting temperature rise to 1.5 °C will be achieved and serious adaptation measures are in place, extreme weathers will put people and their livelihoods under risk – especially the poorest and most vulnerable communities in developing countries. The need for managing these climate risks is becoming more pressing as global temperatures rise. Tools that have been gaining attention and promotion in recent years are **climate risk insurance and insurance-related instruments**.¹ When designed carefully, they can buffer some of the risks by providing financial support in the aftermath of an extreme weather event. The Munich Climate Insurance Initiative (MCII) provided valuable input formulating seven pro-poor principles aiming to secure that insurance schemes are designed and implemented so that they do no harm and the poorest and most vulnerable can benefit from these schemes (Schäfer et al., 2016). While the call has furthermore been made for a **human rights-based approach** to climate risk insurance (ibid.), its embodiment still remains vague. This paper aims at helping to fill this gap. It presents conditions for and design choices of climate risk insurance and insurance-related instruments that can ensure an effective, efficient and human-rights-based contribution to climate risk management that benefits those most in need and discusses which actors to involve.

Climate Change Impacts on Human Rights

Managing the risk of disasters is aimed at protecting persons and their property, health, livelihood and productive assets, while promoting and protecting all human rights, including the right to development.
Sendai Framework for Disaster Risk Reduction, 2015: Para 19c

Climate change is already interfering with human rights and will increasingly do so in the future. It puts people under immediate and far-reaching risks that can have direct and indirect **implications on their rights**. Speaking in very broad categories, human rights can be impacted by climate change in two ways: by the direct physical impacts and rather indirect by climate change policies – both of which are relevant in the context of insurance-related instruments for dealing with climate-related risks.

Firstly, the **physical impacts of climate change** can directly influence people's human rights. The physical impacts of extreme weather events such as droughts, floods or cyclones and their increase in frequency and severity due to climate change pose a threat to human rights. Basic human rights such as the right to life, water, food, shelter, health, subsistence or social protection can be affected by direct climate change impacts. When a disaster occurs, impacts vary drastically, also depending on the degree of exposure prior

¹ By climate risk insurance and insurance-related instruments we mean – existing and yet to be developed – financial instruments aiming at risk transfer for climate-related losses and damages. These may encompass more than just standard insurance instruments and refer to more integrated and innovative approaches.

to a catastrophe. Pre-existing vulnerabilities and patterns of discrimination are usually aggravated if a disaster strikes (IASC, 2011: 2). While direct impacts of extreme weather events might be insurable, indirect impacts of extreme weather events and more long-term physical impacts from slow-onset events like sea-level rise or changing weather patterns are largely not insurable but can lead to displacement or famine, too. In many cases, countries that contributed very little to climate change are less equipped to deal with the consequences and suffer disproportionately from extreme weather events (Eckstein, Hutfils & Wings 2018).

Secondly, **climate change policies** can affect (positively or negatively) people's human rights conditions. Measures to mitigate climate change may infringe human rights, for instance renewable energy projects that may implicate forced evictions. Any program that aims at combating climate change or the impacts of it shall not infringe human rights. As explicitly mentioned in the Paris Agreement:

Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

Paris Agreement, 2015

In developing countries, an increasing number of climate risk insurance programs has been implemented through public-private partnerships aiming at insuring the poorest – and often most vulnerable – people. In order to make sure that indeed the poorest and most vulnerable benefit from these schemes, the call has been made to follow a **human rights-based approach** (cf. for example Schäfer et al. 2016). Still, it remains vague how to apply such an approach to climate risk insurance systems and other related disaster risk financing tools. A human rights-based approach aims at protecting and promoting the basic human rights of the poorest and most vulnerable in two ways. Firstly, **fostering human rights should be an objective** of climate risk insurance. Secondly, the achievement of human rights outcomes through climate risk insurance is not, in itself, enough. The process through which these outcomes are achieved is equally important. Therefore, it should be ensured that the process of setting-up a climate risk insurance scheme respects and fosters human rights. **The process itself should follow human rights principles**, which inter alia means the poorest and most vulnerable need to be identified, involved via participation and to be given access to complaint and redress mechanisms.

The Objective: Fostering Human Rights

Well-designed climate risk insurance schemes and insurance-related instruments can *potentially* enhance the resilience of those facing climate-related risks in at least four different ways:

- Firstly, **improving resilience** through receiving a pay-out (e.g. financial or other like seeds) can help those affected by disaster refraining from coping strategies that could threaten the fulfilment of their rights, such as changing their spending patterns or taking children out of school in order to safeguard basic nutrition (cf. Schäfer et al., 2016). Consequently, climate risk insurance can contribute to protecting and promoting the right to life, water, food, shelter, health, subsistence and social protection in the aftermath of an event.
- Secondly, by **providing planning security**, the policy holders can engage in longer term economic activities that require investment (such as more sustainable irrigation methods) but promise a more stable income (regardless whether a disaster occurs or not) and would contribute to fostering the right to food.
- Thirdly, holding an insurance policy or having access to an insurance-related instrument can furthermore **empower people** to exercise their rights, as they are not solely being dependent on the charity of their own governments or donor states in case of a disaster. It is a right of the people that the state

protects their human rights. And in this context the policy equips people with a tangible tool to claim their right to a pay-out.

- Fourthly, a well-designed insurance scheme/instrument can even **provide incentives for risk reduction and prevention activities**, i.e. offering reduced premium rates if certain practices like adopting improved irrigation systems or connection to an early-warning system is given – or even making it a condition for insurance uptake. This in turn can contribute to the protection of human rights, e.g. to food, shelter and water.

The first principle underpinning the claim for support is the principle of **common but differentiated responsibilities and respective capabilities**, which is anchored in UNFCCC Art 3.1. According to this Article “[...] the Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof” (UNFCCC, 1992).² The second relevant principle in this context is the **no-harm rule**, which demands states to prevent, reduce and control the risk of environmental harm to other states. If harm is caused nonetheless, the wrongful conduct must be ceased and full reparation shall be made. This rule is widely recognized in customary international law and is also anchored in Principle 2 of the Rio Declaration (ibid.).³

Rights Holders and Duty Bearers

A key element to any human rights-based approach is that it recognizes people as individual holders of human rights and states as bearers of duties, which are accountable for the realisation of human rights. In the case of extreme weather events, which are exacerbated in severity and frequency, **rights holders** are those affected by the impacts of extreme weather events. The **duty bearers** are first and foremost the states that are required to protect everyone within their jurisdiction and public actors acting on behalf of their governments. But human rights due diligence obligations also apply to companies. Local decisions and actions related to exposure and vulnerability such as spatial planning have a high impact on the scope of climate risk. As a study on disaster risk reduction by the Human Rights Council (2014) highlights:

Natural hazards are not disasters in and of themselves. Whether or not they become disasters depends on the exposure of a community, and its vulnerability and resilience, all factors that can be addressed by human (including State) action. A failure (by governments and other actors) to take reasonable preventative action to reduce exposure and vulnerability and to enhance resilience, as well as to provide mitigation, is therefore a human rights issue.

Human Rights Council, 2014

To a large extent it is in the control of national and local authorities within affected countries to manage where people work and live as well as the quality of construction and disaster risk reduction services – all of which are crucial in order to respect and promote human rights and have a direct impact on the protection of rights. In the cases in which attribution to man-made climate change can be shown, responsibility should – in line with the **polluter pays principle** anchored in the Rio Declaration (UNCED: 1992)⁴ – shift to

² A dynamic interpretation needs to be applied, i.e. the respective capabilities and responsibilities of the countries should be revisited regularly.

³ Principle 2 of the Rio Declaration (UNCED, 1992) reads: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

⁴ Principle 16 of the Rio Declaration (UNCED, 1992) defines the polluter pays principle as follows: “National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

those who have contributed to the anthropogenic climate change (cf. also OECD, 1997). Accordingly, big emitters like companies or states should bear at least parts of the costs of managing the related risks. In the case of insurance-related instruments, this could for instance mean providing premium support as well as financial and technical support to setting up schemes.

International human rights law provides a basis for the claim of support for the most vulnerable (cf. Hirsch, Minninger and Wiebe, 2017). The *International Covenant on Economic, Social and Cultural Rights* of the United Nations that entered into force in 1976 binds its parties to support other affected states with technical and financial support if they do not have the resources to safeguard these basic rights themselves. Article 2.1 asks the parties to “[...] take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means [...]” (UN General Assembly, 1975: 2). Article 11 of the same covenant specifies the fundamental right to an adequate standard of living and freedom from hunger, to which end the parties “shall take, individually and through international co-operation, the measures, including specific programmes, which are needed” (11.2). These principles of international human rights law back the claim for (financial and technical) support of affected developing countries in dealing with the risks and consequences of climate-related losses and damages (Schäfer, Künzel and Bals, 2018).

Based on the aforementioned principles and due to their extraterritorial obligations, e.g. defined in the *International Covenant for Economic, Social and Cultural Rights*⁵ or the *International Convention on the Rights of Persons with Disabilities*, states have a **legal obligation** to stop damaging and protect the affected. However, not only are there no agreed-upon measures of implementation, the existence of these economic, social and cultural rights are disputed by some governments altogether, such as the US Government (Humphreys 2012). Apart from the legal difficulties of extraterritorial duties political challenges arise. Climate change requires cooperation among states. Choosing the legal route bears the risk of harming negotiations or even exclusion of economic cooperation from powerful partners. Development countries and LDCs might therefore refrain from supporting legal proceedings of their citizens against countries they deal with in other policy arenas fearing retaliation. By way of contrast, it can also be a way of dissolving negotiation gridlocks (Schäfer, Künzel & Bals 2017).

The *United Nations Guiding Principles on Business and Human Rights* that have been adopted in 2011 provide 31 principles on how to respect, protect and remedy human rights in the context of transnational corporations and other **business enterprises**. According to these principles, not only states are bound to respect, protect and fulfil human rights and fundamental freedoms. Business enterprises, too, are required to comply with all applicable laws and to respect human rights. Furthermore, it states that victims of business-related abuses should have access to appropriate and effective remedies (Ruggie, 2011).

The Process: In Line with Human Rights Standards

Positive human rights outcomes of climate risk insurances and related instruments – no matter how noble the ends – will only be achieved if the **process** of establishing them is **in line with human rights principles** (Orellana, 2012: 54; Uvin, 2007: 172). Any scheme should be designed on the basis of the four basic principles of the human rights approach to climate risk insurance (see Figure 1).

⁵ Art.2.1 focuses on extraterritorial rights: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” Available at: www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx [31.10.2018].



Figure 1: Principles of a human rights-based approach to climate risk insurance and insurance-related instruments⁶

1. The process should be **non-discriminatory and inclusive**, especially with regard to marginalised groups. In the case of climate risk insurance, a special focus should be put on the poorest and most vulnerable, especially poor women. Furthermore, poor people not owning any land such as seasonal workers lacking continuous income necessary for regular premium deserve attention. As it has been pointed out by several authors (e.g. Hillier, 2017 and Akter et al. 2016), **women**, even if equally exposed to risks regarding reduced production and income, are often more vulnerable and have less adaptive capacity to climate change-related risks. In the face of fewer economic options and limited access to resources, services and decision-making processes, their ability to recover from disasters is lower. Insurance solutions should take into account that women and men are often responsible for different crops and livestock as well as agricultural tasks (Müller, Johnson and Kreuer, 2017). In order not to exclude women and exacerbate gendered power imbalances even more, insurance programs should furthermore examine possible gaps in financial literacy. As Akter et al. (2016) found out in a study among farmers on an island among Bangladesh, lack of understanding and trust was a main reason for women to refrain from index insurance. It is imperative to make climate risk insurance and related instruments available to the **poorest and most vulnerable** and to avoid exacerbating already existing social inequalities.

2. The design, implementation and review of any climate risk insurance program should be working towards **participation and empowerment** of the affected people, i.e. the rights holders. In order to do so it is crucial to empower all stakeholders to get actively involved. Thus, it is not enough to simply include those people in the process. In order for people vulnerable to extreme weather events to actively engage in the process as well as to gain decision making power and competence, the capacities of the right holders must be strengthened. In the case of climate risk insurance strengthening the policyholder's insurance literacy does not suffice. Efforts should be directed towards understanding the risks that people face, their current risk management strategies, analysing the existing gaps and opportunities. Through providing accessible information people should gain knowledge and decision making power of how insurance can be integrated in a more holistic approach towards climate risk management.

3. The process should be **transparent and include accountability mechanisms**. Hence, the implementation of a climate risk insurance scheme should include transparent financial structures to avert corruption and incorporate compliance mechanisms and procedures. A **complaint and redress mechanism** guarantees the empowerment of the rights holders and provides an effective way to claim rights (cf. also

⁶Source: Gesellschaft für Menschenrechte (modified and extended)

Orellana, 2012). As the poorest and most vulnerable often do not have access and financial means to legal advice, such a complaint and redress mechanism must be easy to access, efficient and comprehensive information of the procedure must be given beforehand. In order to fulfil their human rights obligations, the role of the state should be to put in place the **legislative and administrative framework**, i.e. insurance regulation based on international human rights standards and norms and building the capacity of state institutions to set up transparent public financial management systems: “Without specific insurance regulation, many of the elements of insurance institutions cannot be recognised and enforced by law, including the right to issue insurance policies or to claim on insurance contracts in the event of a loss.” (CISL, 2015: 24) In some rare cases, like India and South Africa, governments have instructed regulators to incorporate compulsory targets for private sector insurers to reach out to the low-income market” (CISL, 2015: 23). Yet over-regulation can also hinder the access to insurance for the poorest and most vulnerable people if the regulatory framework imposes excessive costs and complexity on offering insurance (CISL, 2015). If insurers for instance have to fulfil disproportionate capital requirements this may impede the insurers capacity to enter a new and risky market (ibid.). Especially in countries where insurance companies did not exist for a long time, extreme regulations may pose disincentives for international investors as well as for domestic entities (ibid).

4. It is important to **respect the existing structures in the country or region and to establish ownership**. In the absence of insurance farmers have traditionally developed several coping mechanisms for dealing with weather-related risks, such as risk sharing arrangements (Fuchs and Wolff, 2011). Insurance-related instruments should be carefully integrated with traditional climate risk management to further strengthen them. Before putting an insurance scheme in place this requires a thorough assessment of existing structures as well as investigating the needs and wants of the community. Insurance then might become a complementary part to a broader climate risk management that integrates both traditional and formal approaches (Hutfils, forthcoming).

How Climate Risk Insurance can be a Bane if not Designed Carefully

If not designed and implemented carefully, **climate risk insurance and related instruments may cause more harm than good**. The most important aspect in this regard is the accessibility of those financial instruments for the poorest and most vulnerable people. If, for instance, they do not have access to insurance due to **high premium costs**, already **existing social inequalities will be exacerbated**. A special focus of any project must thus be the active inclusion of marginalized populations, people with disabilities, indigenous peoples, women and children as well as migrants. Next to that, the implementation of insurance-related instruments can potentially **create new dependencies** for smallholder farmers – which would run counter to empowering resilience. As insurance is often bundled with commercial products like hybrid seeds or fertilizers farmers might become dependent on commercial retailers. For instance, “[hybrid] seeds typically do not reproduce the desired traits in the second generation and thus cannot be saved from one season to the next” (Müller, Johnson and Kreuer, 2017: 29). Farmers thus have to buy seeds again and again. Let aside the questionable consequences for biodiversity and the resilience of the broader ecosystem.

Furthermore, if insurance is not sufficiently integrated in a broader disaster risk management strategy and next to complementing mitigation and adaptation means, the negative impacts on human rights might increase even more in the long run. With ongoing climate change and extreme weather events increasing in severity and frequency **insurance premiums may become unaffordable in future** – leaving the poorest and most vulnerable without cover if insurances and related instruments remain the only risk management tool applied. Finally, it is important to acknowledge and find responses to the presence of **losses and damages that cannot be insured** but will be affected by climate change. It must be recognised that insurance-related instruments cannot be an answer to non-economic losses and damages. Such **non-economic losses** include inter alia the losses of indigenous and traditional knowledge, biodiversity or human mobility

– all of which cannot be insured. Further, **slow-onset events** like sea level rise or salinization trigger losses and damages, too, that can hardly – if at all – be insured. But these risks also negatively impact human rights such as cultural heritage, or the right to health and water and hence need to be addressed. All of the aforementioned aspects should highlight that any insurance-related program, project or framework that is set up should be analysed for their contribution to upholding human rights.

Way forward

If implemented carefully and managed through a comprehensive risk reduction, risk management and risk reduction strategy, insurance-related instruments can support the protection and promotion of human rights. In order to apply a human rights-based approach in this context, four basic principles should be followed carefully: *Firstly*, inclusion participation in the process of designing and implementing insurance schemes and thereafter are indispensable. *Secondly*, it must be guaranteed that the instrument is not discriminatory and foresees measures for empowerment such as capacity building. *Thirdly*, transparency and accountability need to be ensured and complaint and redress mechanisms must be in place. As there are no one-size-fits-all approaches, it is *lastly* important to consider and respect existing structures.

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Author: Marie-Lena Hutfils

Contributors: Maik Wings, Christoph Bals, Rixa Schwarz

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Germanwatch e.V.

Office Bonn

Kaiserstr. 201

D-53113 Bonn

Phone +49 (0)228 / 60 492-0, Fax -19

Website: www.germanwatch.org

Office Berlin

Stresemannstr. 72

D-10963 Berlin

Phone +49 (0)30 / 2888 356-0, Fax -1

E-mail: info@germanwatch.org

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