



Need for Effective International Legal Framework to Tackle Climate Changed Induced Migration

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ABSTRACT

The furthestmost impact of the climate change would be displacement of people, leading mass migration at a large scale. The affected communities would be largely from climate vulnerable island nations and also from developing countries which will not have the infrastructure to cope with the climate change induced natural disasters. The main issue here would be the cross-border migration leading to refugee status claims. But the present international refugee law framework governed by the Refugee Convention, 1951 is in no way equipped in dealing with climate refugees. This clearly calls for international co-operation and consensus building for dealing with the climate refugees as a part of the climate change adaptation mechanism. An effective and binding provision in the climate change agreements for tackling climate change induced migration through co-operation is crucial. This paper points out the lacunae in the present international refugee law framework and discusses regarding mitigating this gap and provides pointers regarding the way forward.

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Introduction

When we talk about climate change as a phenomenon or discuss the climate change governance/negotiation process, an issue which did not draw as much attention as it deserves is the aspect of Climate Change Induced Migration ("CCIM"). This paper makes an attempt to discuss the problem of CCIM by highlighting the rationale for the recognition of climate refugees, lack of clarity in the current international environmental, climate change, and refugee policy and legal frameworks and climate change negotiations and the way forward.

The furthestmost impact of the climate change would be displacement of people, leading to mass migration at a large scale. The affected communities would be largely from climate vulnerable island nations and also from developing countries which will not have the infrastructure to cope with the climate change induced natural disasters. The main issue here would be the cross-border migration leading to refugee status claims. This clearly calls for international co-operation and consensus building for dealing with the CCIM as a part of the climate change adaptation mechanism. An effective and binding provision in the climate change agreements for tackling CCIM through co-operation is crucial.

Need For Recognition of The CCIM

Statistics shows that more than 20 million people have been displaced by climate-related sudden-onset natural disasters in 2008 alone (Burlinson, 2009). The direct physical effects of climate change are likely to include more extreme weather events, such as storms, floods, droughts; the melting of glaciers; desertification; rising sea levels and salination of land; and higher temperatures (Saul, 2009). In the past two decades alone, there has been an increase from 200 to 400 major disasters per year (Saul, 2009). These immediate impacts of climate change will be felt differently in different places. Some developing States will be particularly affected by climate change, because of

both geographic vulnerability and their relative inability to easily adapt to the negative effects.

Climate Change, Human Rights and Migration

The impact of these hostile situations would be on multitude of human rights, particularly, the social and economic rights such as right to food, right to health, right to housing and right to livelihood. Moreover, there may be internal disturbances and other civil and political unrest in climate change affected countries leading to violation of civil and political rights. Lack of protection in the event of grave breach of the human rights by climate change would lead to a situation of extreme vulnerability especially of the marginalised communities of various developing countries and the extreme conditions would induce them to resort to migration. Various factors such as poverty, gender, minority and disability would further add to the vulnerability of people who would be forced to migrate.

As seen climate change impinges upon enjoyment of the full range of internationally protected human rights. Thus, a human rights approach offers a foundation point and significant possibilities for the development of proactive principles and guidelines to protect environmentally displaced persons (Laczko and Aghazarm, 2009).

The detailed list of the various recognised international human rights to which the climate change cause great threat are as follows: (1) The right to life: The quality of the environment affects people's ability to enjoy the universally held right to life. Direct impacts include the increased incidence of natural disasters, while indirect impacts include poorer standards of health, nutrition, access to clean drinking water, susceptibility to disease, and diminishing livelihood capacity as a result of desertification. (2) The right to development: The attainment of the right to development in developing countries will be severely impaired by impacts on food and water security, decreases in the

Earth's landmass, traumatic weather patterns and ecosystem destruction. (3) The right to property: Climate change may result in the deprivation of property without compensation, particularly in coastal areas subject to flooding and permanent inundation, and may also have an effect on land uses as a result of changing weather and climate patterns. (4) The rights of indigenous peoples: As noted in the first section, indigenous people are particularly vulnerable to the impacts of climate change because of their close relationship with the environment and their reliance on the land for their livelihood. (5) The right to health: Climate change is likely to increase the number of worldwide deaths from malnutrition, heat stress and infectious diseases. It will also alter traditional sources of, and access to, clean water. (6) The right to food: Climate change will have potentially severe impacts on food security by reducing the availability of food, changing access to food, worsening the stability of food supply and affecting the utilization of food. (7) The right to water: Climate change will result in changes to the components of the hydrological cycle and hydrological systems, such as changing rainfall patterns, intensity and extremes.

Importance of these rights could be well perceived from the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966 and International Covenant on Social, Economic and Cultural Rights, 1966 and other international human rights instruments providing for the protection of these rights.

The United Nations Human Rights Council has also clearly stated that adverse impact climate change upon human rights. On March 28, 2008, the United Nations Human Rights Council passed its first resolution 7/23 on Human rights and climate change: (1) explaining that "climate change poses an immediate and far-reaching threat to people and communities around the Problem with present human rights framework word" and (2) calling upon the Office of the United Nations High Commissioner to develop a study on climate change and human rights. Further in March of 2009, the Human Rights Council's resolution 10/4 unequivocally recognized that, "climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights."

Problem With The Present International Human Rights Law Framework

The reason for significance of human rights approach that is needed in the climate change context is explained by McAdam and Saul as follows (McAdam and Saul, 2008): "(1) It sets out minimum standards of treatment that states must afford to individuals, providing both a means of assessing which rights are compromised (in this case, by climate change), and which national authorities have primary responsibility for responding to those at risk. (2) It can guarantee 'complementary protection': when rights are compromised by climate change, human rights law may provide a legal basis whereby protection may be sought (and granted) in another state. (3) In cases of relocation, human rights law requires minimum standards of treatment to be observed in the host state".

But the main issue of concern is that even though the climate change has a significant adverse impact upon the human rights, the present international human rights normative and institutional mechanism do not perceive any particular mechanism by which the vulnerability of those violated victims are taken care of and especially could curb the migration tendency of the vulnerable and victimised group of people. The

international human rights covenants and conventions have a very weak implementation or redressal mechanism where the strong normative framework of international human rights which are mentioned above could be claimed by the victims. Further most of the international human rights which are above mentioned have to be implemented against state for its non-action or violation of the rights. Here climate change as a phenomenon though has the anthropogenic causes, the responsibility cannot be put on one single state as it is diffused and pinning down the responsibility is not a viable option.

Hence what need to be understood is that, human rights approach is needed for the very reason as provided above but the present international human rights institutional mechanism is not adequate to the deal with the same. This actually shows the gap in the international human rights law and policy to tackle the aspect of CCIM.

The right to a level of environment adequate to permit a life of dignity and well-being, when considered to be a basic human right, raises many issues relating to protection for those subject to environmental displacement. The lack of a clear definition of the content and scope of such a right, as discussed, constitutes a severe problem (Laczko and Aghazarm, 2009). Current norms and international legal regimes for protection do not, at present, directly offer any coherent or concrete protection machinery for the environmentally displaced.

Lack Of Clarity In The Current International Environmental Law

One important impediment in the quest for recognition of the acceptance of the climate refugee is the vacuum in the existing policy and legal framework, since there is no clarity as to the definition or the institutional mechanism which could be used in tackling the problem. There is no obligation upon the states that could be entailed from the legal or policy framework relating to international environmental law (including the climate change regime) or that of the international refugee law. State responsibility in the event of the CCIM is difficult to ascertain as mentioned before due to the diffused responsibilities of historical green house gas emissions (Saul, 2009).

Principle 2 of the Rio Declaration notes the responsibility of states to ensure that the sovereign right to resource exploitation does not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction and Principle 3 of Rio Declaration indicates that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of future generations. These two principles could be defined in a crude interpretation as to limitation on carbon emissions and the damage it potentially might cause by displacing vulnerable populations. The above mentioned sustainable development concept is in a very diffused and non-comprehensive manner be attributed to state or any other non-state actor. This difficulty in fixing the responsibility also makes the application of the principle of polluter pay to be largely of no use to CCIM. The responsibility aspect that could be vested on states for the purpose of causing CCIM is limited to the above in the context of the international environmental law. This clearly shows that the international environmental law as it stands today also do not take into consideration the CCIM and has no remedy that would accommodate their plight.

Gaps In The Existing Refugee Law And Policy

An important area that need to be looked into when we talk about the CCIM is the aspect of whether these people would be

accorded with the protection under the refugee law framework in case of the cross-border migration. The current mandate of United Nations High Commissioner on Refugees on refugees' covers only individual falling with the definition as provided in the Refugee Convention, 1951. The official definition of refugee is based on very narrow legal concern recognized under the 1951 Geneva Convention that characterize 'refugee' as: (a) s/he must be outside his/her country of nationality or former habitual residence (b) must fear persecution (c) due to race, nationality, religion, membership of a particular social group or political opinion (d) and the fear must be well-founded.

The ambit of definition under the Refugee Convention, 1951, is quite restrictive in nature so as to only include the persons who have fled their country in fear of persecution for the reason of race, religion, nationality, membership of a particular social group or political opinion. Climate change is not expressly listed in this definition and further since the Refugee Convention being a creature of its time; it is difficult to conceive climate change or environmental aspects to be covered within its ambit. The political reason behind the formation of this particular convention is in the context of the refugees in the post-World War-II context and do not conceive the aspect of the environmental induced migration. CCIM may trigger the human rights principle of non-refoulement, in which individuals are protected from being returned to their countries if facing a risk of certain ill-treatment. But this particular interpretation is actually stretching the limits bit too far and lacks clarity.

Further there is a new emerging voice advocating for the change in the Refugee Convention, 1951 for the accommodation of the class of refugees who could be called as the climate refugees. The United Nations University Institute for Environment and Human Security advocates this idea on the basis of the expansion of the regional refugee conventions of the Africa and Latin America beyond the conventional definition on the ground of seriously disturbed public order and drawing an analogy the United Nations University Institute for Environment and Human Security says that "situation of seriously disturbed public order is that comes closest to some form of official international recognition, which could potentially encompass those compelled to leave their country of origin due to environmental factors" (Burlinson, 2009).

Those who are forced to migrate due to environmental stress, the 'environmental refugees', hold a lost identity (Brown, 2007). The definitions and explanations presented for an 'environmental refugee' so far serves no legal validity. Further, there is no uniform definition that is drawn based on any international consensus regarding what would constitute climate refugee. This would also add to the reason for lack of any effective development regarding tackling the issue of CCIM and further also stays as a road block for the normative development of a policy and legal framework.

Extending the definition of Refugee Convention to include so-called 'environmental refugees' is deeply problematic. It is erroneous to consider environmental change as a persecutory agent in the Convention sense, much less a state-sponsored process. Moreover, only in extreme cases, where competition for depleting resources might lead to conflict, would people be forced to flee (Rueveny, 2007). Thus the term 'refugee' should not be used to describe those who are displaced, either in part or entirely, by environmental factors (Laczko and Aghazarm, 2009). Renegotiating the Convention to incorporate

environmental refugees' would, inevitably, introduce greater complexity and confusion into status-determination procedures. Large numbers of the migrants propelled by changing environmental conditions will differ from refugees for an important reason: that they will not have crossed an international border but will be internally displaced persons (Laczko and Aghazarm, 2009). The 1998 Guiding Principles on Internal Displacement cover an important protection gap in relation to the 1951 Geneva Convention and offer both the scope for extending protection to those who are forcibly displaced by environmental conditions, and a model for developing similar guidelines for these involuntary migrants. The 1998 Guiding Principles are a synthesis of human rights law, parts of refugee law and international humanitarian law, arguably the synthesis that might equally apply to people displaced because of environmental conditions. Climate change-induced forced migrants falling within the notion of internally displaced persons may not receive proper attention and assistance; and in another scenario, countries may not be able to accommodate huge uprooted people resulted from weather extreme events (Shamsuddoha and Rezaul, 2009).

Way Forward

From the above discussion regarding lack of effective legal framework regarding the climate refugees, we could perceive a situation of the victims of climate induced displacement being totally devoid of any human rights or humanitarian protection as there is no obligation upon the states to accept the climate change induced migrants and the victims of climate induced displacement have to wait for the charity or mercy of the developed countries to accept them. This state of lack of an effective legal framework would also lead to situations of serious security concerns.

Climate change is a consequence of global process so someone cannot say that her/his livelihoods or habitat has been destroyed by an individual state. Given the inappropriateness of terminologies, the 'climate induced migrants' is in need of new legal recognition that will resonate a sense of global responsibility and accountability, as well as a sense of urgency for impending disasters (Shamsuddoha and Rezaul, 2009).

As mentioned, climate change is a consequence of the cumulative build-up of Green House Gases emission, mainly by the developed countries and the developing countries have contributed only around 24 percent to historical emissions (Shamsuddoha and Rezaul, 2009), though the emission from developing countries are rapidly increasing now a days. But the impacts of climate change would be distributed very unevenly and disproportionately. Those who have contributed least to the human-induced climate change should accept all the burden and distress. In this context it is important to look at the Article 3 obligation of the United Nations Framework Convention on Climate Change, 1992 ("UNFCCC"). Article 3 of the UNFCCC states that "(a) Parties should protect the climate system 'on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities, (b) Developed countries should take the lead in combating and the adverse effect thereof.'" The Common But Differentiated Responsibility ("CBDR") that entails from Article 3 of UNFCCC, is not only limited to emission cut obligations but also extends to the aspect of combating and facing the effect of climate change. Hence the CBDR could be well applied to the adaptation measures also, apart from the mitigation measures.

United Nations climate negotiations are focusing on: (1) climate mitigation (2) adaptation (3) environmentally sound technology transfer and (4) financial mechanisms (Burleson, 2009). Adaptation measures aims to strengthen the capacity of societies and ecosystems to cope with and adapt to climate change risks. Climate change adaptation includes wide range of actions and activities including relocating population from the flood-prone or from the at risk areas but, yet, it has not clearly defined how to address the multi-causality of forced displacement largely caused by climate change (Shamsuddoha and Rezaul, 2009).

A rights-based approach provides the means of both averting some of these migratory outcomes of climate change and addressing some of the challenges that such migration will create. The spotlight has fallen on tracing out the moral imperatives for affording such people protection, and on generating the tools by which protection might be implemented (Laczko and Aghazarm, 2009). Arguments focusing on theories of justice have principally highlighted either humanitarian motivations for protecting groups who will be affected by climate change or, equally compellingly, restorative justice.

Conclusion

What need to be done in the way forward in climate change negotiations is to accept the humanitarian and rights based approach to CCIM as an adaptation strategy. This would lead to paradigm shift in the present thinking of climate change migration being just a secondary issue. The climate change negotiation process should pro-actively try to build consensus among the state parties to agree upon a definition for climate induced migrants. A uniformly accepted definition would help in recognising the importance of tackling the issue of climate refugees and to further push the international community to address the issue of developing a policy and legal framework, may be by way of separate optional protocol under the United Nations Framework Convention on Climate Change, that would

place an obligation upon the states to provide shelter for climate change induced migrants.

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