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CLIMATE-INDUCED DISPLACEMENT AND THE LIMITS OF THE 1951 REFUGEE CONVENTION: NEED FOR A NEW INTERNATIONAL LEGAL CATEGORY

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Abstract

The issue of climate change is causing the migration of many individuals around the globe seriously. The rise of the sea level increases storm, drought, and bad weather, and this causes millions of people to relocate in case they need to be safe. Although it is a large matter, the existing international refugee policies particularly the 1951 Refugee Convention do not particularly consider individuals who are displaced due to the surrounding environment. The Convention primarily targets individuals who have escaped persecution due to race, religion, nationality, politics, or even a social group; hence climate refugees do not enjoy the protection under this Convention. This loophole in the law poses a genuine difficulty in providing climate-displaced individuals with their rights and assistance. In this paper I take a closer look at the inefficiencies of the 1951 Convention and will urge that we require a new category or framework of legal framework that actually acknowledges and safeguards climate migrants under the current international law.

Introduction

Global warming today is turning out to be one of the largest issues of our age that deals with all aspects of life and the economy as well as the sheer survival and safety of human beings. Natural calamities are becoming frequent, the sea level is rising, droughts are increasing, floods are intensifying and all of those are displacing millions of people. This form of movement is known as climate-induced displacement and it has turned out to be a significant humanitarian and legal challenge to the international law. The global organisations continue to mention that the population of climate-displaced individuals is steadily increasing annually, how urgently we should have the effective legal protection mechanisms.

Regardless of those pressing needs, the current system of the protection of refugees is simply not established to take this on board. Since 1951 Refugee Convention and its 1967 Protocol, the building blocks of the refugee law, are designed to protect people who leave their homeland due to persecution on grounds such as race, religion, nationality, politics, and membership in a specific group. Due to this fact, individuals who are displaced due to environmental degradation or climate change do not fit into this definition. That creates a critical vacuum in defense, and climate-displaced persons are deprived of a definite legal bench or entitlement to global assistance.

The displacement caused by climate is also difficult since in many cases, it is gradual. Slow

changes like desertification and loss of land and rising of the sea level imply that people can be moved when this happens gradually and not necessarily on one occasion. On many occasions, they can relocate both in their country of origin and international borders without having a legal framework that deals with their unique case. All this has caused scholars, policymakers and international organizations to strine more to categorize climate migrants as a specific legal category. This paper discusses these issues and proposes a new international law that would provide the population displaced by climate with the security they warrant.

Thematic Discussion

One of the greatest causes of human migration currently is climate change. The damage of the environment, increasing sea levels, extended droughts, desertification and natural calamities are compelling people to find safer places to live. Climate-displacement, unlike normal migration, which tends to be more about the employment or politics, is the result of changes in the environment that may pose a threat on what it takes to support human survival. Climate change is coming to seem like human security in vulnerable locations, such as small island territories and coastal regions. Although this is such an urgent matter, there yet is no comprehensive system to offer protection to the displaced due to climate as outlined in international law.

One of the most important instruments in the refugee law is the 1951 Convention, which is supported by the Protocol signed in 1967. According to it, a refugee is a person that is outside his/her country and cannot or does not want to go back home because he/she is afraid of persecution because of reasons such as race, religion, nationality, politics or a social group. That was reserved when people were running out of political problems but it does not include the population who shifted due to climatic or environmental conditions. In such a way, when climatic factors drive off people, they simply do not fit into the legal category of a refugee,

although the flooding or food scarcity endangers their dignity and lives.

Since people who have been displaced by climate are not covered by the Convention, they are left in a legal vacuum. Even in host countries where they tend not to be given an official status, they are therefore not entitled to the rights and protections afforded to refugees, such as protection against forced repatriation (non-refoulement), any access to asylum processes, and protection of basic social and economic rights, unless they are officially recognized. In the absence of refugees, climate migrants are able to be classified as irregular migrants and are subject to detention, deportation, or abuse.

There are various types of climate displacement. Sudden events may compel immediate migrations of large masses of people such as hurricanes, earthquakes, floods, and cyclones. An example is that powerful cyclones and floods in South America have rendered millions of individuals displaced. Slow-onset processes, including desertification, salinisation of agricultural land, glaciers melting, and increasing sea levels, destroy livelihoods over a period and drive one to migration slowly. Such slower shifts render it quite difficult to have established laws keeping pace since displacement does not happen at only one point of time.

Small island developing states are one of the most vulnerable populations that experience displacement caused by climate. The danger of a direct swallowing of entire nations by who wave is indeed quite real, and will render inhabitable places such as Kiribati, Tuvalu, and the Maldives in the coming years. Once that occurs, there is a likelihood that people might end up being forced to move across borders permanently. Under such conditions, it is unsurprising that numerous academics and campaigners call on the creation of a new area or framework of law that can take the issue of individuals who are displaced due to climate change seriously. To be sincere, according to the regime of the prevailing law of the refugees,

these individuals are not really refugees since they were not displaced as a result of persecution. Because they lack legal status there is no doubt that it is high time that the entire international protection structure is re-evaluated.

One of the major setbacks in addressing displacement caused by climate is how to define environmental migration as opposed to the other forms of migration. The process of climate change usually blends with economic, social, and political content, making the migration patterns extremely complex. As an example, a serious drought may destroy farmland and hence individuals will seek employment in other fields. Although what drags them out may seem economically viable on the face of it, the actual cause may be an environmental degradation due to climate change. Such a knotty cause concept translates to facing a difficult time trying to classify climate migrants into pre-existing legal classifications that are founded on well-defined persecution grounds.

Climate-displaced individuals have some protection under the international human rights law, but not much of an extensive one. Global human rights documents safeguard such rights as the right to life, decent home and standard of living. In others, the right to retaliate by returning people to the regions in which the extreme environmental circumstances may pose a life threat will violate such rights. However, climate migrants do not have a universal legal status in the human rights law, and states are not compelled to grant them admission or protection. Thus, the protection existing is largely based on the will of states.

Through different regional legal tools, the refugee concept has been attempted to be expanded by incorporating a broader understanding of the concept beyond the narrow scope of the 1951 Convention definition. Consider the OAU Refugee Convention or the Cartagena Declaration – they offer status of a refugee to greater happenings, even those which are a real disruption to the usual

tranquillity. There are scholars who believe that extreme environmental catastrophes could be included in that broad perspective. Nonetheless, these regional structures were not constructed with a climatic displacement in mind, therefore, it remains unclear whether they cover environmental migration or not.

What the global population has begun to pay attention to in the past few years is the growing extent of massive displacement caused by climate. Numerous campaigns have been attempting to address the problem by means of the policy framework rather than enforcing legal regulations. As an example, the Nansen Initiative was initiated in 2012 aimed at developing an agenda of protection of people who were displaced across the borders due to disasters and climate change. The last Nansen Protection Agenda emphasized that the cooperation of the world, humanitarian support, and strategies of the planned relocation were needed. Equally, its Global Compact to Safe, Orderly and Regular Migration withdraws environmental and climate-driven factors of migration and calls on states to establish migration channels to impacted population. The only thing is that each of those instruments is not binding meaning that nobody is technically liable in law.

Since the previous refugee protection framework is somehow a misfit, researchers and policy-makers are discussing establishing a new international legal framework of climate-displaced individuals. The main proposal is to refer to them as to climate refugee a separate category of the law of the international law. That would entail an increase in the term of who qualifies as a refugee to include those who are forced by climate. It may extend the portfolios of the Refugee Convention to climate migrants, yet most nations are reluctant to renegotiate the Convention because of increased legal obligations and migration pressure.

The other concept at the table is the idea of creating a completely new international treaty that will put the focus on climate-induced displacement. This kind of treaty will provide a

clear definition of what the climate migrants are in law, the responsibilities of the states, and establish systems of international cooperation and sharing of responsibility. It would also map out plans on scheduled relocation, resettlement and compensation on affected populations. By having a special legal instrument, the planet would be able to address the peculiarities of climate displacement without corrupting the existing system of protecting refugees.

It is good to elevate the bar on the global level, but it is also the big task of national governments. States are able to implement domestic policies that assist in migration as a climate-change adaptation strategy. Consider protection by temporary programs, humanitarian visas, or relocation assistance of communities impacted. Certain countries have already provided an opportunity to stay temporarily in their countries to the people who have been displaced due to environmental disasters. Although such attempts are good, they remain patchy and not inter-jurisdictional.

Climate justice is another important frontier to displacement caused by climate. The most affected countries of the climate change are normally the ones who chugged the least of the world carbon. The states and other developing nations with small islands do not even have the strength to depilitate large strategies of adaptation, or to resettle programs. Climate-justice demands that historically high-emitters, who are also already rich, should do more. That may be cash, resettlement opportunities, or technology exports to get climate resilience inflated.

The Planned relocation is also taking action as one of the solutions of long-term climate displacement. It is simply a movement of the communities at high risks to safe areas in advance of the catastrophe. Although relocation will reduce the vulnerability to climate risks, it will also bring a lot of legal, social, and cultural headaches. Migrants can lose their old territories, culture, and tight communities. Any relocation policies must therefore have powerful protective

measures to protect human rights and involve the displaced voices of decision-making.

In a nutshell, the issue of climate induced displacement is a giant burden on international law and universal governance. The existing system of protecting refugees that was established under the name think 1951 Convention was constructed based on persecution rather than climate, thus climate migrants are therefore left in darkness. With the increasing pace of global warming, the number of people who have to migrate will be increased as their houses will not be able to accommodate the new environment. Addressing this issue implies the development of new legal and policy instruments that view climate displacement as something special and provide such people with protection that they actually require. It is important that the international community should take active measures to ensure that the climate-displaced citizens get every possible means to take care of their basic rights and dignity whether by formulation of a new international treaty, expansion of the existing legal definitions, or the invention of a full-scale policy framework.

Conclusion

Climate-related displacement has become one of the most topical humanitarian and legal aspects to research nowadays. The rise in sea level, environmental degradation, and extreme weather are driving millions of people to cross and relocate across the borders. The present refugee protection regime such as the 1951 Convention was designed when political persecution and war was the primary concern thus simply does not apply to those who have been displaced by climate. The uprooted due to environmental reasons are therefore not covered by the international protective measures of refugees thus leaving an incredible gap in the law. I believe that this demonstrates that the current legal means are old-fashioned and we need to reengineer the way we help vulnerable individuals who have to escape the country due to climate change.

The increased magnitude of climatic displacement highlights the issues of the necessity of legal and institutional change. Although certain efforts like the Nansen Protection Agenda and the Global Compact for Migration have noted the problem, they are still more of non-laws and do not emanate the protection on the ground. Thus, it is more and more needed to develop an international category of law or a specific treaty that would deal with the issue of climate-induced displacement. It ought to contain human-rights considerations, climate justice, and international cooperation to provide impoverished groupings with genuine, lasting safeguarding, aid, and remedies, as our climate computer keeps advancing.

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