

06 Protection and Reparations for “Climate Refugees”

FACTS



Photo: Jörg Böhling

■ A problem of potentially immense magnitude

Among the many concerns raised by the phenomenon of climate change, the likelihood of mass population displacement is among the most pressing and worrisome. There has been relatively little substantive discussion of this crucial issue at the international level, and there is yet no clear international policy direction for addressing a problem of potentially immense magnitude.

A number of reasons exist for the relative lack of movement on this crucial topic. First, there are no solid estimates of the numbers of likely migrants or refugees, and little certainty as to who will be affected and where the affected are likely to take refuge. Available estimates range from hundreds of millions (according to the Stern Review) to a billion (Christian Aid). But all such estimates involve making choices about relevant timescales and climate scenarios, and also predictions about the likelihood of credible mitigation and adaptation action.

This is a second reason for the tardy appreciation of this problem: mass migration, were it to happen, will signal the effective failure of policies to deal with climate change – mitigation efforts will have failed, and adaptive funding or activities will have failed to materialize, leaving migration as the adaptation policy of last resort. For similar reasons, third, climate change refugees are likely to prove extremely defiant in political negotiation. It may seem wiser for states not to engage on the issue as long as they are still grappling with so many other difficult sticking points, with these others at least known and, to a degree, quantifiable. Fourth, the bodies that might naturally be expected to think ahead on this issue – UNHCR and IOM – have significantly failed to take the issue seriously, at least in public.

And yet it is vital to begin to think through the policy implications of climate migration and climate refugees. As mentioned, some small island states are already pre-

paring for the likelihood of the disappearance of their territories, and are negotiating deals with other countries to take on their populations. With this in view, “Brot für die Welt” (Bread for the World), the Pacific Conference of Churches and the World Council of Churches organized a Conference on “Protection and Reparation for Climate Refugees” on May 4-5, 2010 in Chavannes-de-Bogis near Geneva. The goal of the meeting was to stimulate discussion between academia, civil society, governments, intergovernmental institutions and churches about the phenomenon of climate displaced people, and to take stock of the challenges and possibilities for responding.

1. Terminology

The definition of Refugee of the 1951 Refugee Convention (United Nations Convention Relating to the Status of Refugees) does not appear easily applicable to climate change migration. Does this mean that the term “climate refugee” should be abandoned? Opinions at the conference diverged on this point, with some feeling the term should be retained, as it carries the moral authority necessary to convey the seriousness of the situation.

If cross-border migrants are unprotected by the 1951 Refugee Convention (as seems at least possible), then some other form of protection at international level is urgently needed to safeguard the rights, needs and human security of persons displaced by climate change.

From this perspective, it will be useful for policy-making to have a term referring specifically and clearly to cross-border displacement. At the same time, it is vital to draw attention to the wider effects of climate change and to ensure that the needs of victims, before, during, and after displacement are at the heart of adaptation policies. From this perspective “Climate Change Victims“ and “Climate Refugees“ (or “Forced Climate Migrants“) might be regarded as two complementary terms.

What appears clear at present is that, whatever the legal situation, the current guardians of the international refugee regime – the UNHCR and (less officially) the IOM – appear unwilling to regard the issue as coming within their ordinary remit. This does not, of course, mean that the term “climate refugee“ should therefore be abandoned. Indeed, to the contrary: with the relevant policy space largely vacated by the key actors, others may need to fill the void and, if so, forceful arguments and powerful terms will presumably be needed.

2. Regime

Much discussion focused on whether current solutions and regimes are sufficient to deal with the problem or not.

The keynote speaker, Frank Biermann, appealed for a sui generis regime for climate change migrants based on an Optional Protocol to UNFCCC, and emphasized that climate change induced migration will constitute an unprecedented crisis in human history to which current approaches of dealing with problems will not be able to find answers.

The institutional development of the regime would be rooted in five principles concerned with resettlement (2), international assistance, collective rights and international burden sharing. Such a protocol could provide for an executive committee on the recognition, protection and resettlement of climate refugees. The committee could function under the authority of the Conference of the Parties (COP) as in the Kyoto Protocol, through a discrete meeting of the parties (MOP). The committee’s task would be to receive applications from

countries with a foreseeable climate refugee problem, and to seek solutions in advance, in cooperation with other relevant states.

In order not to put climate refugees in competition for financing with other climate change victims, a sui generis regime for financing was suggested. The operational aspects of a Climate Refugee Protection and Resettlement Fund could be linked with other financial mechanisms to increase efficiency; the governance of the Fund should be independent and stand under the authority of the meeting of the Parties to the Protocol.

Four principles would govern such a fund: a grant basis; the notion that funds would be new and additional to existing development disbursements; the principle that refugees needing relocation due to sea level rise would be fully reimbursed; and, the creation of an open list of designated populations as “climate refugees in need of relocation“.

3. Collective vs. Individual Rights

Climate change affects groups, communities, and even nations. Yet it is generally individuals who are the bearers of human rights. In this context, a recurring theme at the meeting concerned the extent to which forced climate migrants should be treated as collective or individual rights bearers.

Some argued that a collective rights approach was necessary since climate change effects do not in fact target individuals; that the issues (housing, settlement, emergency measures) arise in any case at the level of groups; and that broader collective rights, such as to cultural autonomy are also at stake in climate change. Indigenous peoples groups have already pursued collective rights aspects of climate change. Others pointed out that if rights are implemented collectively there is a great risk of overlooking individual cases, particularly of those most vulnerable within the vulnerable groups (e.g. women).

One area where collective rights must surely be respected in treating mass migration due to climate change is

the preservation of ways of life (rights to culture) in the event of the entire disappearance of territories, a threat facing some Pacific islands.

4. States' Obligations

Under international human rights law a state bears human rights obligations towards all persons within its jurisdiction. It is often observed that certain extraterritorial obligations can be derived from human rights law provisions indicated in Article 2(1) of the ICESCR which refers to an obligation on states to utilize available "international assistance" towards the fulfillment of the relevant rights.

If (extraterritorial) state obligations are still evolving in the area of human rights, they are somewhat clearer in other areas of international law. The principle of common but differentiated responsibilities (CBDR) in the UNFCCC recognizes that developed countries are obliged to take the lead and help other states in dealing with climate change.

International law also generally recognizes state responsibility for transboundary harms, environmental and otherwise. These are among several areas where the effective responsibility of some states for the likelihood of climate change migration may translate into a legal responsibility.

5. Suggested strategy for Further Action

Local level

- 1) Enhance commitment by governments to target humanitarian aid in closer coordination with civil society and local administration.
- 2) Work towards increasing local capacity, supporting communities and households. Encourage bigger engagement of the private sector with a focus on Corporate Social Responsibility.
- 3) Encourage collective action and sense of community at the local level through:

- Praying together, adopting a spirit of reference to creation and to one another.

- Speaking and acting together.

- Creating awareness, which is a catalyst for a shared concern and action.

- Identifying the most vulnerable and providing platforms for them.

National level

- 1) Engage the media proactively and educate parliamentarians.
- 2) Go to national authorities, representatives on a national level and decision makers and let them know what works on a local scale.
- 3) Build national networks of organizations. Identify leverage points and allies, and work together towards a common goal.
- 4) Build bridges between different policy communities.
- 5) Clarify of the terminology: This will help policymakers.

International level

- 1) Build a strong link between large humanitarian organizations to local communities.
- 2) Catalogue and pursue the various different options for acquiring a recognized status for climate change displaced persons.
- 3) Bring more attention to human rights in the climate change regime.
- 4) Create awareness on significant problems for the classic notion of the nation state raised by climate change.
- 5) Exert influence over the regional blocks through national decision-makers.

6) Be careful in choosing messages. In addressing forced displacement it will be important to remain cautious about potentially volatile issues such as compensation or human rights text.

7) Develop a strategy on how to develop and derive climate change victims' rights from civil and political rights, and how their participation in the decision-making process can be enhanced.

8) Form NGO partnerships in key countries. Develop fundraising strategies in connection with concrete adaptation needs.

6. Conclusion

Two approaches were postulated in the course of the meeting. First, a "visionary" approach, with a new Optional Protocol to the UNFCCC as a possible goal; second a "pragmatic" approach exploring all existing avenues for a slow but sure progress in furthering the cause of human rights through the climate change process. Many participants saw an Optional Protocol as a good but far-fetched idea and stressed the need for solid interim measures. But it may also be necessary to keep a visionary "horizon" in view even while pursuing solid practical steps.

What is the role of the churches in addressing climate change refugees? The church can enhance the participation of local people(s), while pointing to human rights language and procedures, including complaint procedures and standard setting mechanisms, in order to ensure that victims become active stakeholders.

From this perspective, it is important to remember that climate change is not just about law and legal instruments; it is also about making governments change their policies and concepts on development. The churches might therefore aim to identify "champions" among states and governments. Candidates might include, for example, the Arctic Council, the Pacific Islands Climate Change Cooperative (PICCC) and the Alliance of Small Island States (AOSIS).

Climate change presents challenges at many levels, but it is above all a challenge to the imagination. In order to determine how to avoid immense population displacement, we need first to imagine the kind of world that will permit mass forced migration – and we must then imagine another kind of world. We need to imagine not only how to bring our carbon consumption down but also how to help our fellow human beings in other parts of the world adapt to climate change. But we also need to imagine what it will mean if we fail.

This report was drafted by Kasia Snyder (International Council on Human Rights Policy), Theodor Rathgeber (German Human Rights Forum), and Stephen Humphreys (London School of Economics).

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Responsible: Thomas Sandner

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