

Refugees, climate change and international law

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How can the category of 'climate refugee' be considered within international law in the 21st century?

If we accept that anthropogenic climate change does exist, we cannot deny the obvious implications of this in terms of human rights. What is not so obvious is how and to what extent the effects may be described as violations in the strict legal sense. Legally the concept of 'climate refugee' does not exist, despite the term being in frequent use, as climate and environmental issues do not fall within the definition of refugee in the 1951 Refugee Convention.

Nevertheless the principle of *non-refoulement* could apply in situations where there was little reasonable hope that migrants will return to life-threatening situations. Climate change is frequently viewed as a risk multiplier in the context of the pre-existing social, economic and environmental conditions that constitute the key risk factors for each community. Although it could also be argued that individuals facing extreme poverty in their countries of origin could be subject to the same justification on the understanding that there are underlying structural and economic questions beyond their control, this is where the element of 'responsibility' is vital and, in this sense, agreement on the cause of climate change is fundamental. We live in a global situation where even contamination is globalised and where extra-territorial responsibility is, at the very least, difficult to establish.

There is a disconnect between human rights and climate change. The issue involves two totally separate discourses that are mutually exclusive in any practical sense. Of a sample of 65 documents selected from 294 relevant United Nations (UN) General Assembly Resolutions, Treaties and Conventions, other reports and documents, some 23% were found to mention climate change and 25% were on issues referring

to migrants and refugees but only 6% established a connection between the two.

The lack of a link between climate change, migration and the legal treatment of the category of refugee is clear. The legal instruments currently at our disposal, many of them shaped years ago, do not consider aspects that generate debate today, while others can only serve as subsidiary instruments (such as the UN's Universal Declaration of Human Rights and its International Covenants, the Convention on the Reduction of Statelessness and the Cartagena Declaration on Refugees). Defining state responsibility for climate change is one of the most complex issues.

Given that no legal instrument offers protection relating to people displaced by climate or environmental factors, some people see the need for a new and specific instrument. The most effective responses would have to consider movements related to climate change within a broad human rights framework. In 2010, a second version was presented of a 2008 draft, drawn up by specialists from the University of Limoges, which is one of the most complete proposals to date.¹ It is a valuable contribution as it combines protection, assistance and responsibility, incorporating the principles of proximity, proportionality and non-discrimination, and highlighting the principle of common but differentiated responsibilities.

There are some currently unavoidable obstacles in the way of establishing an international agreement, some of which are linked to political will. In recent years, the number of international forums on climate and environmental issues has multiplied but none of these has arrived at any binding solutions. However, even were

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one adopted, we could expect ratification to be less complete than is necessary, resulting in an instrument that is weak.

At the moment, then, it would be difficult, perhaps impossible, to achieve global consensus on the issue of international population movements and climate change. Also, it is a risky move to transfer into international law a debate which continues to generate controversy in the scientific sphere and, worse still, for that transferral to lead to the modification of legal entities that currently function – in spite of their deficiencies – to protect refugees. Any change to the statutes in force could endanger the advances achieved so far in the early years of the 21st century. The number of refugees (by the current definition) has increased in recent years; swelling that number further would serve no purpose if this is not translated into an improvement in terms of the human rights and dignity of those affected.

On the other hand, restricting protection to those affected by climate change issues would marginalise others affected by geo-environmental phenomena and changes (whether anthropogenic or not), which could be discussed legally in terms of

responsibilities but not in terms of human rights. Perhaps current conditions do not allow for an adequate definition of a problem that is still mired in uncertainties. An *a posteriori* definition of the legal status of these migrants would have to be created, establishing whether they can in some way be differentiated as a group with their own characteristics.

Once this approach is established, regional or bilateral solutions would be the preferred way forward. This would mean working with affected governments on solutions that involve in situ measures and adaptation strategies, accompanied by a real commitment to the reduction of contaminating emissions. A regional response of this type, although it may appear a little ambitious, could constitute the first step towards more widespread international efforts.

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1. Project for a Convention on the International Status of Environmentally Displaced Persons
<http://tinyurl.com/CIDCE-Environmental-displaced>