

Climate Refugees: a Cause for a New Agreement

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Abstract: This article focuses on the legal gap in the protection of climate refugees, pointing out that the population displacement caused by climate change has become a global problem. The existing international legal system has issues of marginalization and insufficient targeting in protecting climate refugees. It neither clearly defines their definition and identity, nor has formed precise protection mechanisms for related human rights laws and climate change frameworks. The article first defines the concept of climate refugees, clarifying their differences from environmental displaced persons and climate migrants. Then, it analyzes the deficiencies of the existing protection system. Finally, it proposes the establishment of a new legal system specifically for climate refugees, clearly defining the basic assistance responsibilities of the home country, the fair treatment and non-rejection obligations of the host country, and also suggesting the establishment of a specialized administrative committee, the establishment of a global fund mechanism, and relying on the principle of common but differentiated responsibilities to promote the leading role of developed countries.

Keywords: Climate Change; Climate Refugee; Fair Treatment

1. Introduction

According to Norman Myers' research (2001), climate change creates estimated 200 million migrants in 2050, in the past few years, the number of climate change affected people is gradually increasing and it is proved to be a world-wide concern. In Colombia, more than 3.2 million people affected the impacts from climate change (Laserna, 2014), in Tuvalu, more than 97 percent household are suffering the adverse effect by climate change (Milan, Oakes and Campbell, 2016), the number is going to be increasing if there is no effective controlling and regulation. In order to response to such a big

challenge, the United Nations Framework Convention on Climate Change afford a scientific method and effective mitigation and adaptation mechanism, each member state also promised the reduced contribution of Green House Gas emission, however, those methods mainly focus on prevention of climate change but not people who forced to move invoked by climate change (Myer, 2001), the concerns related with how to ensure the basic living condition for them when the government of home country couldn't provide assistance, and how to protect their infringed human rights during movement are not answered, these remanded more further steps. The preparedness for long term and mass movement when their residence is no longer habitable need to be made in an orderly way.

In July 2018, the United Nations Global Compact on Safe, Orderly and Regular Migration was published with the efforts from international community, under the consensus of achieving a safer, regular and regulated migration, each member state sharing the responsibility and protect the basic rights of migrants and natural citizens in their country, despite the non-binding nature, it offered a flexible beginning and feasible mechanism for accepted countries to ensure the stability of their boundary and deepening the coordination with each other. The successful attempt will be borrowed by climate refugee legal regime, since the lack of legal channel is always regarded as a key contribute to dangerous migration and security concerns brought with that (Carrera, Lannoo, Stefan and Vosyliute, 2018). A specific and regulated legal regime in face of climate refugee issue will solve the legal vacuum with regard to protection on climate change victims and offer due diligence to this marginalized group. On the other words, the regulated and regular movement will be beneficial for smoothing conflicts caused by cultural integration or security concerns. In Korpela and Pitkanen's working paper, they highlighted the importance of legal approach for safe and

orderly migration after the thorough perspective of current migration situation, though lack of unequivocal scientific certainty constitute a key question for people hesitate to admit the existence of climate refugees (Hulme, 2008), as Biermann and Boas responded (2008), “lack of unequivocal scientific certainty should not delay the establishment of an international institution to protect victims of climate change”, especially when we think about consequence of climate change is a worldwide problem, the best option for recognition, protection and resettlement of climate refugee is an “at least partially sui generis regime” (Biermann and Boas, 2012); in Docherty and Giannini’s (2015) point of view, a new legal instrument would flexibility needed for a specialized framework that blends principles and solutions drawn from human rights, humanitarian assistance, and international environmental law”, while none of them is enough for current climate refugee situation.

This article proceeds in three sections, first is the definition of climate refugee, aims to assist prediction of accurate number of climate refugee and establishment of new legal regime. Next, after an analysis of current legal regime on climate refugee protection and deploy the advantages and shortcomings, the article will articulate a blueprint of new legal regime from the perspective of both human rights and climate change framework which also be typed as right approach and responsibility approach, seeking to arrive a more comprehensive and completed method for climate refugee protection with the coordination of international community.

2. Definition of Climate Refugee

As cited by Biermann and Boas (2012), some intergovernmental agencies such as international organization for migration and the office of UN high Commissioner for refugees prefer term “environmentally displaced persons” and reject “climate refugee” for the reason that they are not forced to flee out of fear of persecution as defined in the 1951 refugee convention. Meanwhile, “climate change migrants” (Nishimura, 2015) and the term “environmental refugee” (United Nations, 1992) was mentioned instead and overlapped with the scope of “climate refugee”. Despite that, “climate refugee” has its own legitimate and moral reason which makes it more appropriate to be used. The climate refugee was included in the “environmental refugee” since it will restrict to

people who flee their country because of consequence of climate change, especially sea-level rise, extreme weather events and water security, also climate refugee is different from “climate change migrants” because the latter neglected the urgent need of assistance for climate change affected people, the consequence of climate change has the similar grim consequence when compared with traditional refugee, it will force people to flee their place of residence under a stressing circumstance, what’s more, as highlighted by Biermann and Boas, the moral reason that people who contributed less to climate change while suffered most from it is the crucial point for their refugee identity. In addition, a more specific definition of “Climate refugee” will narrow the scope of affected people in order to reduce the responsibility from international agencies meanwhile make the whole progress more effective. Nowadays, people who affected by climate change always seek for internal displacement (McAdam and Saul, 2010) and international movement was also predicted to be one resort for adaptation in future period, since that, there is no necessity to distinguishing the internal displacement and external resettlement, both internal displaced climate refugee and transnational climate refugee will be protected under the new legal regime. While different from internal displacement, transboundary movement will require corresponded responsibilities from accepted countries. “Where they have crossed an international border, the receiving state should accord basic human rights protection, until such time as they are able to return their homes (in the case of temporary displacement) or, in the case of permanent displacement, necessary legal arrangements should be made for their transition as residents of the receiving country with access to basic services and amenities.” (Atapattu, 2015). With the good example of climate refugee, the definition will be articulated as “people who forced to flee their habitat because of severe environmental damage associated with climate change, either temporarily or permanently, move to another place, under the situation of internal movement, the government of home country shall offer assistance for their displacement, while when they cross the boundary, the accepted country should provide basic service and protect their human rights.

3. Current Protection on Climate Refugee

The United Nations High Commission for Refugees (UNHCR) was created in 1950, during the aftermath of the second world war, has played an important role in assisting refugees since then. However, with the increasing of refugee's number in current society, it faced a big challenge, according to the statistic provided by UNHCR, one person is forcibly displaced every two seconds as a result of persecution (UNHCR.org, 2018); given the reality of displacing traditional refugee, the attempts of expanding traditional refugee scope so as to take climate change in is called against by many scholars, As McGregor(1994) expressed, refugee convention with a narrow political definition of refugee didn't give too much space for the victims who are forced to leave their country in consequence of natural disaster. Despite the restrictions, refugee law posed a good point for the future steps of climate refugee protection, the protection on refugee's rights such as the right to life, the right to access court, the right to freedom of religion, the right not to be punished for illegal entry into the territory of a contracting state, etc. provided a good example for climate refugee's protection, the more justified process the refugee displacement has, the more stability the border will be^[1].

The linkage between human rights and climate change was becoming more and more strengthen as increasing evidence show people's right to life, right to food, right to health were violated at different level caused by climate change (McAdam and Saul, 2008; Atapattu, 2015). The report of OHCHR put the cause and effect to a clearer status that: "Irrespective of whether or not climate change effects can be construed as human rights violations, human rights obligations provide important protection to the individuals whose rights are affected by climate change" (OHCHR, 2009). Although that, it was not helpful for the continuing marginalized status of climate refugee since the non-legally binding nature and absence of related statutes in the international human rights law (Atapattu, 2015). What's more, it rejected the idea of establishing an "legal regime" for these forced displaced people. This misleading decision will not only deepen the protection gap and intensify their affected degree but also adding international tensions because of increasing climate refugee. The severe consequence by climate change was fully undertook by affected people in developing countries and small island

states, and it will become a worldwide human rights issue which human rights law shall addressed as soon as possible (Kravchenko, 2008). However, since the huge hinderance for proving cause and effects between climate change impacts and human rights violation, and the affirmation of specific duty holders, the failure of Inuit case informed us (Atapattu, 2008) that the merely assumption of developed countries' responsibility is not enough under international human rights law.

The concept of common but differentiated responsibility(CBDR) was enshrined in 1992 Rio declaration (UNFCCC, 1992), stands for a manifestation of general principle of equity in international law, it takes historical differences of GHG house emission and respective capacity to tackle the global environmental problems into account, regulated each member states responsibilities (CISDL, 2002). The common but differentiated responsibilities principle constituted an appropriate and effective guidance under UN climate change framework and effectively coordinate member states into the mitigation and adaptation of climate change impacts. Nonetheless, the absence of human rights language in UN climate change framework lead to the less protection for climate refugee, either the first time affirmed the "gender equality and the effective participation of women and indigenous people" in Cancun or in the draft Paris agreement (Atapattu, 2016), the attempts made to include human rights in climate change law were unsuccessful. As a great number of evidence proved that climate change caused and will cause the large human migration in the future, there is a need of a more specific approach to protect climate refugee. In Vliet's (2016) working paper, she compared the human right based approach, responsibility approach and security approach, applying climate refugee into each approach respectively, concluded that any single approach is too fragmented to address the climate refugee issue, the blend of each principle will be the best way^[2].

Neither human rights law nor the current protocols under UN climate change convention afforded a pinpointed method for climate refugee issue, though the relevant discipline, they didn't fit well. In order to cope with the legal vacuum, the new legal regime will be discussed from the lens of human right based approach, security approach and international

environmental law approach. The human right based approach provides a machinery for individual person to seek redress for environmental wrongs (Atapattu, 2008), it emphasizes the importance of climate refugee's basic rights, it also provides a method to protect people's human rights no matter in what circumstance. Through this way, the protection of climate refugee during movement and relocation after cross boundary will be ensured, meanwhile the conflicts brought by irregular and human rights less protected migration will substantially reduce. "where the guarantee of basic rights for all people is the key component in creating stability, the security approach can widen to a human security approach by combining the right based approach" (Vliet, 2016), it's the same effects which highlighted in refugee law. Meanwhile, the international climate change law mainly focuses on the cooperation of member states, the assistance provided to nations and emphasizes the common duty in face of climate change, the principle of common but differentiated responsibility and the polluter pay principle in UNFCCC embodies the general obligation of states to cooperate in a spirit of global partnership (Atapattu, 2008), considering the contributions of GHG emission and the inequitable burden among most vulnerable states and communities. Given that climate refugees are the victims of climate change, the responsibility approach shall play a necessary role in the combat of climate change and assistance to climate refugees^[3].

In conclusion, the current global legal regime on climate refugee crisis only provides a marginalized protection, which is untenable for the future preparedness of climate refugee displacement, resettlement and protection, despite UNHCR and Guiding Principles on Internal Displacement offering certain protection to internally displaced people, it's not specific for climate refugees, and the protection with regard to international movement didn't cover in the current legal regime, thus a *sui generis* regime which in response to climate refugee crisis is required.

4. The Proposal for a New Legal Regime

As an opinion expressed by a Tuvaluan actually stand for all climate refugees, instead of used as an evidence of climate change, they prefer more consideration on people who affected by climate change impacts (Farbotko and Lazrus, 2012)^[4-5].

Rather than an economic or security strategy a more humanitarian method is welcomed. Thus, this article aims to build a framework that ensures climate refugees' displacement in a dignified manner, there are several critical points, such as service afforded to climate refugees' basic human rights during the process of cross boundary migration, the internal displacement and the assistance, and the establishment of an effective exercise committee and a mechanism of global fund. This article will propose three aspects which need to be recorded under the new legal regime: ensure a dignified internal displacement and the transnational movement, and the administrative agency^[6-7].

The home state shall provide basic assistance during the moments of temporary relocation or permanent resettlement, the international legal regime on climate refugees doesn't mean "a domestic decision not to take adaptive measures for the purpose of preventing or mitigating environmental vulnerabilities" (Mayer, 2011), the home state governments shall afford maximum protection to climate refugees, help to strengthen the construction of their houses and training people to respond to climate change in a skillful and professional manner, according to Peninsula Principles on Climate Displacement within States, "states should provide adaptation assistance, protection and other measures to ensure that individuals, households and communities can remain in their lands or places of habitual residence for as long as possible in a manner fully consistent with their rights." (Leckie, 2013). Example was the government of Maldives seeking to purchase land in India or Australia. The international community should provide financial and technical assistance to affected states in order to build adaptation ability, meanwhile, the home state governments shall take measures to collect climate change information and foster citizens to be skillful and educated workers, increase their opportunities and ability of migration^[8-9].

The movement option, rather than a sign of unsuccessful adaptation, it can be a way to achieve security and attain human rights (McAdam, 2011), under the new legal regime, host states shall take their responsibilities as required by CBDR principle and polluter pay policy, the social, economic and political rights which are afforded to all human beings, equally enjoyed by climate refugees in accepted countries. "Fair treatment" (Docherty and

Giannini, 2015) requires host states offering “the equal treatment to climate refugee at least the same as to other aliens”, or a “better standard” than other nationals, this proposal mainly derived from the equity and fairness principle, “who are most vulnerable to the consequences are not those who contributed most of the problem” (Atapattu, 2015)^[10-11]. In Human rights Approaches to Climate Change, the author took the example of small island states, whom contributed to the large part of climate refugee, queried “is it fair that these people have to abandon their homes, ancestral lands and their culture, and pay a very high price for something that was caused by others?” if the answer is no, then what compensation can we afford at least to support them migrate as a citizen, that’s what the fair treatment focus on, such as the respect to their culture, ethnic, religious and language, the relocation and displacement shall comply with the standard which offered to the nationals^[12-13].. The fair access to justice is another important guarantee of Climate refugee’s dignified movement, as one group of minorities, they are more likely to they are more likely to be arrested for minor infractions and to face greater punishments (Purkey, 2013). What’s more, the difference of language, culture will hinder their steps in seeking for judicial approach which make the conflicts and rights violation more frequently (Davis, Erez and Avitabile, 2001)^[14-15]. It is a common difficulty for all recent refugees. The original intent to protect climate refugee might be shrunk because of less legal safeguard. Given the reality that climate refugees are unable to attain the assistance from home states, nor assistance from any other third country without binding treaties (Purkey, 2013), the host state shall offer more opportunity for climate refugee to seek legal protection in courts, the branch of climate refugee courts or the corresponded legislature on report procedure will be potential strategies. The protection on require the migration processed in a transparent and justified way which effectively reduced security problems, likely security issues will make the further development of protection on even harder and deepen the conflicts over the border^[16-17].

The Non-refoulement principle provides that a government should not eject a refugee from its state-territory or borders and push back those people to a place (country of origin or otherwise) where he or she might be exposed to torture or

experience persecution (Duffy, 2008)^[18-19].. In the case of climate refugee who suffered the natural disaster associated with climate change, the non-refoulement shall play the similar role as the circumstance of traditional refugee, the rationale behind that is the opinion that climate refugee shall be afforded the same or similar rights as refugees displaced by other causes. (Renaud, Bogardi, Dun and Warner, 2007)^[20-21].. Despite the differences existed in human activities leading to climate change and inhuman torture, the effect caused by climate change and the irreversible damage to climate victim’s daily life, are same (Docherty and Giannini, 2015). The host states shall provide basic service to these unlawfully entered climate refugee who face severe survival threats and shall not push them back to the habitat where they will keep suffering consequence of climate change^[22-23].. Last but not least, the operation of climate refugee protection dependent on an effective administrative committee, which consist of expert group, financial branch, and coordinate organization. At cop 21 in Paris in 2015, the Warsaw international mechanism for loss and damage was mandated to establish taskforce on displacement, it was tasked with recommending approaches to avert, minimize and address displacement related to adverse impacts of climate change on different level (UNFCCC, 2018). It has played an adhesive role in integrating different groups together in cope with the climate change impacts and the further displacement program, the TFD is crucial for the operation within new legal regime, since it will combine the assistance from expert groups and different international bodies, encourage the international coherence and cooperation, activate the effectiveness from each branch related with climate change displacement. Besides, the legal regime also requires a financial mechanism to collect global funding, each state member shall take their common but differentiated responsibilities as recorded in Rio principle and Kyoto protocol, according to the historical contribution and the economic capacity (Docherty and Giannini, 2015), an expert group is also demanded to reinforce the scientific certainty related with the number of climate refugee, affording sufficient evidence to prove the cause and effect of climate change and migrants, what’s more, the completed scientific information is beneficial for the legal and moral obligations shared by developed countries^[24].

5. Conclusion

Overall, in order to cope with the unprecedented risks brought by large sum of climate refugee, the relocation and protection need to be processed in a safe, regular and regulated way and climate refugee shall be treated equally in a dignified manner, the current absence of climate refugee status identification and the legal instrument caused the problem stay still and increasing number of affected people, the combat fight against climate change and the displacement of people who suffered from climate change shall lead by developed countries under the CBDR. It's the common consensus that the adverse effects of climate change on vulnerability is the common obligation sharing with international community, under a legally systematic method, the climate refugee issue will be solved smoothly. Climate change is faced with each participant, including states, non-government organization, and private citizens, they are willing to do more when they are part of a physical or virtual community or network that allows them to take action with others^[25].

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