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Human rights approach to climate change and migration

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Climate change and migration is an emergent field of research and policy. Solutions are called for in international fora, and human rights are often mentioned as guiding principles. However, it does not seem to be clear, what a human rights approach to climate change and migration actually means. The discussion is still fragmented between different academic disciplines, administrative sectors and fields of law. It is thus important to clarify the commonly used concepts and recognize different approaches. The objective of this article is to contribute to the discussion on the nexus between climate change, migration and human rights, and to the formulation of a common human rights approach to climate migration. Although there are distinguishing features, for example, between human rights of mobile and immobile people, there are also common aspects that should be emphasized. A common human rights approach could focus on safeguarding the respect for freedom, dignity and privacy of people in every decision- and policy-making situation related to climate change, including climate migration.

Approaching human rights of climate migrants

The Finnish Migration Institute takes part in a research project "Climate migration: towards better understanding and management" (ILMASI) commissioned by the Government of Finland, where the main task is to

help Finland and the EU prepare to climate change related migration. In this project, we aim at combining knowledge from different disciplines, and at creating new knowledge together with the stakeholders. One of our goals is to analyse the challenging nexus between climate change, migration and human rights, also called upon in the research literature. One aspect mentioned in the project call is the need to formulate policy actions that would take the human rights into account. However, it is not specified, what is this human rights approach to climate migration.

It is clear that human rights can be understood in many different ways. The differences can be considered disciplinary in the academic context and sectoral in the administrative context. In legal studies, the two typical ways to understand human rights is that they are either rules or principles, but often the actual substance of human rights obligations might be unclear. In other disciplines, human rights can be seen as a discursive tool to advance moral obligations. The challenge is that human rights have all of these aspects, and therefore it is crucial to open the concept carefully so that interdisciplinary or intersectoral negotiations and action are possible. Sarah Nash has commented that the international negotiations around climate change have been lacking conceptual clarity, especially when discussing the human rights and climate migration nexus.

The management of climate migration is obviously an intersectoral endeavor, but the coordination responsibility for this project is located in the Ministry for Foreign Affairs. It is thus necessary to start by determining the human rights approach usually deployed in that institution. The Ministry has published a report in 2015, where the human rights approach to development cooperation is explained in detail. Development cooperation is defined as a key aspect in the action against adverse effects of climate change, which makes this comparison relevant. In that report, the human rights approach to development cooperation is described by four levels: the approach can be either blind, sensitive, progressive or transformative to human rights. The minimum level of engagement is that the interventions are human rights sensitive, but the aim is to be human rights progressive or transformative. It is stated in the report that “Finland does not finance interventions that are human rights blind or that have been identified to further exacerbate or contribute to discrimination or human rights violations”.

Despite the said connection between development cooperation and climate migration, the policy fields, and especially the fields of action, are fundamentally different. Already in the general structural level, we can notice that legal human rights obligations are directed differently. In development cooperation, the duty-bearer is usually the foreign state, and Finland is just helping, whereas in migration management the responsible state is usually Finland itself. It is therefore necessary to take into account the contextual differences when forming a human rights approach to climate migration, but at the same time not to be stuck in the *status quo*, because novel approaches are needed.

Human rights approach to climate change

First, I will investigate, what is meant with human rights approach to climate change, because the climate change and environmental policy-making is the forum where climate migration is mainly discussed. In the academic literature, Simon Caney identifies economic, security, ecological and human rights approaches to climate change. According to him, a human rights approach provides an appropriate way in which to evaluate the effects of climate change. Caney argues that a human rights approach has several advantages over other ways of thinking about climate change. For example, for the protection of the vulnerable, the security approach fails

because it too narrowly concentrates on conflict situations. However, he admits that a human rights approach is perhaps too narrowly limited to effects amounting to human rights restrictions. In the end, he seems to support a balanced approach, where human rights aspects are indispensable.

Perhaps the most recent discussions on human rights and climate change in the international policy level are the nexus dialogues on human rights and the environment organized by the UN Environment Management Group, in close collaboration with the Office of the UN High Commissioner for Human Rights. The dialogues intend to mobilize the UN system behind rights-based environmental action, and to encourage the Member States to address the human rights impact of environmental harm. According to the outcome document of the first dialogue, environmental degradation, including climate change, is a threat to all human rights. In this document, the following human rights are emphasized: the right to food, water, sanitation, housing, health, development, decent work, and life. In addition, the human right to healthy environment is mentioned a few times. In the document, the vulnerability of certain persons, groups and peoples is recognized, and targeted action is called for. Also everyone's rights to information and participation is emphasized, as well as the rights of human rights defenders.

Similar lists of rights have been introduced in the academic literature, adding for example the right to property, culture and personal security. Stephen Humphreys points out that climate change affects categories of human rights that have weak enforcement mechanisms under international law: social and economic rights, the rights of migrants and rights protections during conflicts. He writes that the human rights approach is difficult also because extraterritorial responsibility and local accountability are hard to establish, emergency conditions limit the application of human rights law and because the rights at hand may conflict.

Humphreys also distinguishes the climate change effects to human rights from the rights implications of the construction of international climate regime. He concludes that “building human rights assessment into long-term mitigation and adaptation scenarios would refine and improve policies, and provide criteria for their adoption or rejection”. Caney comes to the conclusion, that the human rights approach entails duties of compensation to those whose human rights are infringed. This is an issue that has been on the table in the climate change negotia-

tions, also from the point of view of climate migration, but, according to Nash, the states have been reluctant to take it further.

In the conclusion of his book on human rights and climate change, Humphreys also calls for defragmentation of climate change law and human rights law since those two fields are very different. That is certainly true since these different fields of law have different objectives. However, legal fields should be able to go-exist without conflicts within a legal system. The problem in this discursive level of policy creation is that human rights are not always talked about in a strictly legal manner. Also Humphreys sometimes uses human rights in a moral and political sense rather than legal sense, for example when writing about fairness and right to development. What is certain, though, is that the problem of fragmentation is even greater when we add the migration law to this nexus.

Human rights approach to climate migration

The United Nations Office of High Commissioner for Human Rights has provided a report in 2018 on human rights protection gaps in the context of cross-border movement resulting from the adverse effects of climate change. In this report, the High Commissioner calls for States to facilitate migration with dignity for all migrants, and addresses their specific human rights protection needs. According to this document, those protection needs include: water, sanitation, food, housing, health care, social security, education and decent work. The report also mentions rights more closely related to migration: *non-refoulement*, prohibition of collective expulsion, rights to liberty, personal integrity and family unity, as well as ensuring the best interest of the child. In addition, those who are unable to return to their countries because of climate change should be provided with a legal status.

The report addresses in a new way the need to respect human rights of all affected persons in a situation of planned relocation. First, the relocation is said to be a measure of last resort, but when implemented, it should “involve the meaningful and informed participation of all affected persons, including migrants and receiving communities and maintain their previous living standards”. The report also calls for empowering people to achieve effective climate action. This empowerment includes the possibility to decide freely to move, which requires sufficient regular pathways for cross-border movement.

Although this report takes many migration specific aspects into account, the overall

approach to States' willingness to facilitate migration is perhaps too optimistic. For example, the freedom of movement is presented as a fundamental right allowing individuals and communities to avoid the adverse effects of climate change, but that argument fails in substance. Also Nash has identified certain lack of realism in the international policy negotiations concerning migration and asylum policies in the context of climate change. Therefore, it might be useful to describe, what role human rights law has in regard to different aspects of migration and asylum policy.

It is widely accepted that there is no human right to free movement, although States have to respect human rights standards while deciding on entry of foreigners. Most legal systems approve the right to seek asylum, but it is also well recognized that there is no legal category for a climate refugee. Matthew Scott stresses that the Refugee Convention is distinct from the human rights instruments, and being persecuted is not the same as being the victim of human rights violations. However, he thinks that human rights violations, and especially discrimination, can amount to persecution. Scott introduces a different approach, a social paradigm, to so-called natural disasters, and emphasizes the social aspects instead of natural aspects in a disaster. If the State does not protect all the inhabitants effectively and equally from the adverse effects of climate change, these people might need to seek and might even be able to receive international protection in another State.

Also James Hathaway and Michelle Foster write that severe human rights violations could require international protection. According to them, the Human Rights Declaration should be used as interpretative guidance for the Refugee Convention since the Declaration is referred to in the Convention's preamble. Reference to human rights law could provide a tool that helps to inform whether the harm attains the severity threshold. In addition, there is a specific protection scheme developed in the human rights law practice through the *non-refoulement* principle, which is applicable when the general situation in the origin country is so unsafe that forcibly returning people would be inhumane. The current human rights framework might thus help forced migrants in some cases of sudden environmental disaster, but less in situations of slow-onset effects of climate change.

Nash sees inherent difficulties in approaching migration as a human rights issue in the context of climate change. According to her, the human rights logic of rights-holders and duty-bearers, the difficulty of identifying

the people whose mobilities are affected by climate change, and the lack of suitable conceptual categories makes the human rights framework poorly suitable for truly reaching climate justice. I agree that the *status quo* in international human rights law can hardly bring alleviation to people affected by climate change and forced to look for new livelihoods even outside the origin country. However, Nash also seems to consider that the human rights approach to climate migration means locating people in the centre of research and policy. This approach finds also some support in general human rights law, but is perhaps more suitable as a principle guiding the policy-making.

Towards a common human rights approach

This article has shed some light to different human rights approaches to climate change and migration nexus. However, it is by no means an exhaustive presentation of different aspects and conceptualizations available in policy documents and research literature. I have tried to capture the most essential approaches and highlight the most obvious hurdles in building a comprehensive human rights approach. That is challenging because there are inherent differences in how human rights are conceived and applied in different contexts. In connection to climate change policy, human rights are most often approached as implications and adverse effects of climate change, and they are rights of citizens or foreigners living in the State that is facing the environmental effects. In the context of climate migration, the discussion is about the rights of migrants and about the right to migrate or seek asylum in another State than one's own.

States' human rights obligations are different towards foreigners. It is thus relevant to distinguish, if we are talking about the human rights of immobile or mobile people. Especially the rights related to mobility have a weak human rights connection. Only in very harsh situations, the human rights law framework could offer protection. However, that aspect is also important and requires more investigation. If we want to facilitate migration as a coping method for people affected by environmental degradation, there needs to be more openness to migration policies and more solidarity to asylum policies. This might require new national, regional or international law instruments, and thus political will. If this is not feasible, the least we can do is to respect and enforce the existing human rights obligations towards migrants

and asylum seekers, as well as emphasize the principle of inalienability of human rights.

There is also another human rights approach emerging from the observed documents and research literature: the call for placing the people affected by the adverse effects of climate change in the center of research and policy. This might seem obvious, but it can be easily forgotten in a state-centric international system, and it has been long absent in the international negotiations on climate change and migration. The research needs to be more focused on the aspirations and possibilities of people to confront the adverse effects in their everyday life. The people should be given more agency not only in designing measures to prevent climate change implications, but also in deciding on measures in the event of an environmental disaster, and especially in the phase of reconstruction or relocation. This is where human rights law can be drawn into the picture again. Human rights are not relevant only in listing the implications of climate change, but also in designing responses to those adverse effects.

The overarching human rights approach in climate change and migration could thus be the respect for freedom, dignity and privacy of people in every decision- and policy-making situation related to climate change. It may sound simple, but it requires difficult balancing of interests, especially in the context of migration. This is what human rights courts already do, but it should also be applied in the policy-making. The essence of the human rights system, in my opinion, is to back up and protect people's freedoms against the more powerful state that might otherwise feel tempted to rely on easy and cheap solutions at the expense of human rights. This kind of approach would be at least sensitive and protective of human rights, if not transformative.

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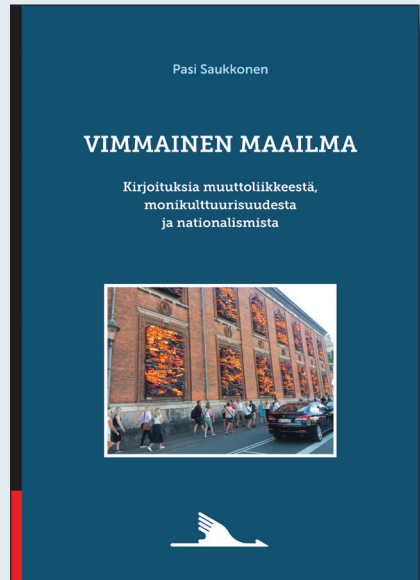
Vimmainen maailma

Kirjoituksia muuttoliikkeestä,
monikulttuurisuudesta ja nationalismista

Kansainvälinen muuttoliike on aina muuttanut maailmaa. Läntiset yhteiskunnat, Suomi mukaan lukien, ovat entistä monikulttuurisempia. Samalla uusnationalistiset liikkeet ja puolueet hyödyntävät ihmisten epävarmuutta ja kaipuuta takaisin kansallisvaltioiden maailmaan. Rasistisia näkemyksiä viljellään etenkin sosiaalisessa mediassa, ja niin islamistiseen kuin kansallismieliseen ajatteluun sisältyy äärimmäisiä, fasisistina pidettäviä piirteitä. Elämme vimmaista aikaa.

Tähän kirjaan on koottu erikoistutkija, dosentti Pasi Saukkosen vuosina 2015–2019 julkaisemia Siirtolaisuus-Migration-lehden kolumneja sekä muita kirjoituksia maahanmuutosta, monikulttuurisuudesta ja nationalismista. Kirjoitukset kommentoivat ajankohtaisia tapahtumia ja keskusteluja. Ne myös tarjoavat tietoa kirjan teemoista. Teoksen päättää aikaisemmin julkaisematon kirjoitus, joka kokoaa tärkeimmät kehityskulut ja katsoo kysyvästi tulevaisuuteen. Mitä tapahtuu seuraavaksi?

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