

FORCED MIGRATION OF ALASKAN INDIGENOUS COMMUNITIES DUE TO CLIMATE CHANGE: CREATING A HUMAN RIGHTS RESPONSE

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ABSTRACT

Forced migration due to climate change will present one of the most severe challenges to the resilience of communities forced to migrate as well as to local and national governments. The Intergovernmental Panel on Climate Change (IPCC) has identified the regions of the world most vulnerable to climate change and predicts that 150 million people will be displaced by 2050. Erosion, flooding, and sea level rise will be the primary causes of displacement. Water and food security issues, due to drought and salt water intrusion, will also impact the sustainability of communities.

This paper outlines a legal and institutional framework, based in human rights doctrine, to respond to climate-induced human migration. An appropriate legal framework and institutional responses are critical to prevent a global humanitarian crisis.

1. DEFINING THE DISPLACEMENT CATEGORY OF CLIMATE-INDUCED MIGRATION

In Alaska, climate change is evident. Temperatures have increased 2 to 3.5 degrees Celsius since 1974, arctic sea ice is decreasing in extent and thickness, wildfires are increasing in size and extent and permafrost is thawing. These ecological phenomena are creating a humanitarian crisis for the indigenous communities that have inhabited the arctic and boreal forest for millennia.

Four Alaskan indigenous communities must relocate immediately and dozens of others are at risk. There is currently no organized institutional system in place, and government agencies are struggling to meet the enormous new needs of these communities.

In order to create an appropriate humanitarian response, the first step is to define the displacement category of climate-induced migration and profile the population groups that must move. After creating a definition, a legal and institutional framework can be constructed to relocate communities. "Climigration" is the word that best describes forced migration due to climate change. Climigration results from on-going climate-induced ecological changes in a community's environment that severely impact infrastructure, such as health clinics and schools, as well as the livelihoods and well-being of the people residing in the community. Climigration occurs when a community is no longer sustainable for ecological reasons. Climigration differs from migration caused by catastrophic random environmental events.

Failure to recognize the signals of ecosystem changes will critically impede a community's capacity to adapt and can lead to social and economic collapse. Government agencies will also be hampered if they are unable to identify the early ecological warning signals requiring a community to relocate. Funding will be one of the key factors which will facilitate the relocation process. The sooner a community and governmental agencies recognize that relocation must occur, the sooner funding can be diverted from disaster relief to the relocation effort. Determining which communities are

most likely to encounter displacement will require a complex assessment of a community's ecosystem vulnerability to climate change, as well as the vulnerability of its social, economic and political structures.

Early indicators of community vulnerability demonstrating that relocation is required may include: 1) repetitive loss of community infrastructure; 2) imminent danger to the community; 3) no ability for community expansion; 4) number of evacuation incidents; 5) number of people evacuated; 6) predicted rates of environmental change (e.g., sea level rise) from IPCC; 7) repeated failure of disaster mitigation measures; and 8) viability of access to transportation, potable water, communication systems, power and waste disposal.

1.1 Should the UN Convention Relating To the Status of Refugees be Expanded To Include Climate-Induced Migration

Twenty-three years ago, scholars began to advocate that the issue of environmental-caused displacement be incorporated into the international human rights framework of refugee protection and humanitarian assistance. Working for the United Nations Environment Programme, Essam El-Hinnawi coined the term "environmental refugee" in 1985. He identified three categories of environmentally-displaced peoples: 1) those temporarily displaced due to natural hazards; 2) those permanently displaced because of a marked environmental disruption (natural and/or triggered by people); and 3) those who migrate permanently or temporarily because of ecological changes in their environment and can not afford to mitigate the changes.

The word "refugee" has enormous power in the English lexicon and traditionally

has referred to a narrow category of people who need refuge because of horrific violence perpetrated against them. As Stephen Castles states: “Definitions reflect and reproduce power . . . it makes a big difference whether people are perceived as *refugees*, other types of *forced migrants* or *voluntary migrants*.” The reason this distinction is so critical is because of the policy of sovereign nations to admit very few migrants. Those who are accorded refugee status receive not only the benefit of admission but access to services and resources that are unavailable to all other categories of migrants. In a time when sovereigns are hesitant to open their doors to any migrant, Castle correctly notes that expansion of the refugee definition to include “environmental” refugees may have the affect of making it more difficult for refugees fleeing violence to reach safety and sanctuary outside their country of origin.

Scholars using the term “environmental refugee” want to expand the traditional definition of “refugee” to include individuals fleeing environmental degradation so that they can have access to the same international structure of humanitarian assistance and protection. The term “environmental refugee”, however, has met with much controversy. Although there are similarities between the two groups of migrants, the most obvious being the forced nature of their flight and then their need for material assistance and permission to live elsewhere, there are also important differences.

Incorporating climigration into the refugee definition is not appropriate. Refugee law is based on the fundamental principle that a person needs legal protection because they are outside of their country of origin due to persecution by a government actor or an

actor the government cannot control. Implicit in this definition is the understanding that the nation-state has failed in its responsibilities towards its citizens. Refugees cannot turn to their own governments for protection because nation-states are often the source of their persecution. Refugees need international intervention to ensure there is safe refuge.

In contrast, in the situation of climate change migration, the majority of climigrants will migrate *within* their country of origin. Communities may still be able to rely on national protection to respond to the humanitarian crisis. Most significantly, persecution is not a contributing factor in forced migration due to climate change. In conflict-based refugee migration, international diplomacy plays a critical role in creating durable solutions to resolve the humanitarian crisis.

In comparison, scientists will play the critical role in responding to climate-induced migration. Clearly a spectrum of environmental events causes people to leave their communities. In some situations it is impossible to identify the specific cause of the flight. By analyzing socio-ecological data, scientists will assist communities and governments to determine a durable solution and the appropriate adaptation strategy. The spectrum of solutions may range from mitigation measures, such as erosion control, to relocation. For these reasons, the term “refugee” defined by the 1951 United Nations Convention Relating to the Status of Refugees should *not* be expanded. Climigration requires a completely new Protocol to define this displacement category and establish human rights principles to frame the humanitarian response.

In addition, forced migration due to climate change must have a unique framework of response that is distinct from other environmental catastrophes that cause people to migrate. Narrowly defining the circumstances of climigration will enable national, regional and local governments and international organizations to respond and ensure communities' resilience.

2. ALASKA

In Alaska, climigration is happening. Shishmaref, Kivalina, Shaktoolik and Newtok are faced with the most critical situation because of their geographic location on the west coast of Alaska. These coastal communities must relocate because climate-induced disappearance of sea ice and sea-level rise create stronger storm surges that are eroding the land on which they are situated, thereby precluding a sustainable future of each community in its present location. Newtok is a Yupik Eskimo village located on the Ninglick River beside the Bering Sea. Shishmaref and Kivalina are Inupiat Eskimo villages and located further north on the Chukchi Sea. Shaktoolik is a Malemiut Eskimo village located on Norton Sound. These villages have active subsistence lifestyles and have existed on the coast of Alaska for thousands of years. Environmental studies indicate that a catastrophic climatic event could submerge all communities within the next 15 years. There is no higher or more distant ground to which these villages can move to avoid the encroaching erosion. Their only alternative is migration. Despite the consensus that these communities must relocate, no government funding has been specifically allocated to begin this process.

Each community is involved in an ad hoc process with state and federal government agencies that are struggling to provide protection to the communities while

they figure out a relocation process. Climate change is challenging the disaster relief framework of response. Government agencies have responded to increased coastal erosion through their traditional methods of erosion control and flooding prevention. However, due to the severity of the erosion, these adaptation strategies have proved ineffective to protect the communities from a rapidly deteriorating environmental habitat. In Kivalina, the Army Corps of Engineers built a new seawall to protect the community in 2006. The day after the dedication ceremony, a storm ruined a critical component of the seawall leaving the community vulnerable and exposed. In 2007, the community was forced to evacuate when a fall storm that threatened the lives of community members. Temporary evacuation of the villages, rebuilding public infrastructure and erosion control structures, and returning the population to original locations is no longer protecting the communities. Permanent relocation is the only durable solution.

Newtok is the most advanced in its relocation efforts. The community has identified a relocation site and has acquired the land through an act of Congress. A state agency planner has also been dedicated to coordinating the efforts of approximately 25 different government agencies to facilitate relocation. However, these agencies have no mandate or dedicated funding for relocation assistance. Complex regulations that guide the work of each agency also present tremendous roadblocks to moving forward with the relocation effort. The regulations of several agencies require that an existing community with a minimum population be at the site before infrastructure is built. The agencies responsible for erosion control and flood prevention have no regulatory guidance to relocate the communities.

In addition, there is no lead agency designated to create a relocation strategy and

coordinate the various agencies working on housing, transportation, community infrastructure, education, health and related socio-economic needs. The indigenous tribes are also hampered because of limited administrative and technical staff to work with multiple state and federal agencies on relocation activities. The Governor of Alaska created a Sub-Cabinet on Climate Change in 2007. A sub-committee of the Sub-Cabinet, the Immediate Action Work Group, has been meeting since November 2007 to develop an action plan to provide protection to endangered communities. Their work, however, has been challenging because relocation is the only durable solution, and no government agency has the authority or experience to relocate communities.

3. GUIDING PRINCIPLES OF CLIMIGRATION

The humanitarian crisis in Alaska clearly demonstrates the need to create clear guidelines so that governments can protect and assist the communities forced to migrate due to climate change. Alaska is the logical place to develop climigration principles that can serve as a model for other regions because of the rapid pace of climate change, the inevitability of permanent displacement in many cases, and the large number of communities where this issue must be addressed in the coming years.

Guiding Principles on Climigration, based in human rights doctrine, need to be developed. Refugee law, the Universal Declaration of Human Rights, the Guiding Principles on Internal Displacement and the recently adopted Universal Declaration on the Rights of Indigenous Peoples provide a theoretical basis for creating these principles. However, none of these legal documents address the complex and unique social, economic and political crises of populations facing climigration.

Guiding Principles of Climigration will ensure that the social, economic and

cultural human rights of individuals and the communities forced to migrate are protected during displacement as well as during resettlement. Forced migration creates significant stress and adverse impacts on the health and well-being of those forced to leave their communities. These adverse consequences can be minimized only if the affected community is a key leader in the relocation process and culturally and linguistically appropriate mechanisms for participation and consultation are fundamental components of the relocation process.

The Guiding Principles will also affirm that families and tribes remain together during the relocation process. For indigenous communities, tribal relationships are essential to cultural identity. The relocation process must ensure that socio-cultural institutions remain intact. The Guiding Principles must also ensure that subsistence rights and the customary communal rights to resources are protected and that the relocation process is framed with an intent to improve income strategies.

The Guiding Principles will also affirm the human rights principles regarding access to safe and sanitary housing, potable water, education and other basic amenities. The living standards of the affected communities must not be diminished in the relocation process and must implement sustainable development opportunities as part of the relocation process. In this way, the relocation process will enhance the resilience of communities by addressing socio-economic issues that are currently contributing to the vulnerability of communities.

Creating an international institutional framework of response to migration caused by climate change is the next essential step that needs to be taken by the international community. Debates about the number of people forced to migrate delays the creation of

institutional response mechanisms and ensures that a global humanitarian crisis will occur. The institutional response requires the identification of continua of conditions that cause communities to migrate for environmental reasons.

The first continuum will identify the environmental causes of flight. Climigration will be at one end of the continuum when no other environmental issue, such as overgrazing, is causing the community to relocate. At the other end of the environmental displacement continuum, factors such as overuse of resources will be included. This continuum will define the variety of environmental factors that can force communities to migrate. Accurately defining the cause of the environmental displacement is critical in order to ensure that the institutional response is appropriate.

The second continuum will define the institutional response and will incorporate factors, such as the temporal nature of the displacement and the site of the relocation, i.e., whether international, state and local borders are crossed that impact the ability of the community to resettle in a particular location. The institutional framework created will mirror the environmental displacement continuum to ensure that the humanitarian response is appropriate. For example, the agencies that have traditionally provided “disaster relief” and erosion control will continue to engage in these activities until it is determined that relocation must occur to protect the life and well-being of the community. At this point, the community, along with tribal, state and federal governments, will shift their focus to create a relocation process.

4. CONCLUSION

Climigration is forcing communities to permanently relocate. There is no ability to return home. For these reasons, guiding principles and an institutional framework,

based in human rights doctrine, need to be created to address the specific circumstance of climigration and ensure the resilience of communities forced to migrate. The experience of Alaskan indigenous communities is guiding the creation of these principles and the institutional response.

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