Statelessness and environmental displacement

Jessie Connell

Stateless people and migrants are at greater risk of displacement and are less likely to receive assistance; in turn, environmental displacement (especially multiple migrations) heightens the risk of becoming stateless.

Stateless people and other ‘non-citizens’ often reside in areas which are highly vulnerable to the effects of climate change and have few options available to them to mitigate its impacts. One of the barriers to improving support for stateless people in the context of climate change, especially its potential to create displacement, is the paucity of reliable data which might inform appropriate responses. Further research is needed to map the potential points of vulnerability created by statelessness in circumstances of environmental displacement and other impacts of disasters and climate change. Some of the areas where empirical research is needed include:

- the degree of influence that environmental factors play in displacing or motivating stateless persons to migrate
- the nature of this movement in different contexts and the barriers stateless people face in seeking assistance
- the potential exclusion of stateless persons in receiving humanitarian assistance following disasters, or in receiving climate adaptation finance and support
- whether ‘environmental displacement’ contributes to people becoming stateless.

To be stateless is to not be considered a citizen by any state under the operation of its law. There are estimated to be at least 11 million stateless people in the world, and many more who are unable to prove their nationality through appropriate documentation or registration.\(^1\) Little research has been done on how stateless populations residing within nations such as Bangladesh, Myanmar and Malaysia are affected by environmental change, and how their status as non-citizens affects access to services, ‘climate finance’, development assistance, humanitarian aid and other support designed to help communities recover from disasters or facilitate adaptation to climate change.

Stateless people and migrants often reside in shelter that is temporary, ‘illegal’ and in settings which are geographically most vulnerable to environmental impacts. In addition these groups are particularly vulnerable to both environmental displacement and development-induced displacement, due to their tenuous legal standing and the ease with which they can be ‘moved on’ without compensation or support. There is also evidence to suggest that being stateless or residing as a migrant (legally or illegally) in places affected by environmental processes, such as disasters, makes it difficult to access support services.

An example of the complex interaction of statelessness and environmental displacement can be found in the aftermath of the 2004 Indian Ocean tsunami. Some sources estimate that there are around one million stateless children living in Thailand, many of whom are children of migrants from Myanmar. Local organisations working with communities following the disaster estimated that 127,714 people from Myanmar were living in Thailand’s five tsunami-affected provinces; of these only 22,504 (less than 18%) were registered with the Thai authorities, and many migrants were ineligible for official aid following the tsunami due to their uncertain legal standing.

Stateless people are not prioritised in efforts to support communities to recover
from disasters or adapt to climate change. Climate finance is usually channelled through national governments rather than directly to the most affected individuals, making citizenship a potential condition for support. Beyond the consideration of stateless people in some environmental mitigation strategies, it seems that there is no substantial research currently underway that links environmental processes and statelessness, with the exception of work relating to climate change and the disappearance of low-lying island states.

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A role for strategic litigation

Matthew Scott

Strategic litigation to protect individuals at risk can usefully support higher-level protection initiatives.

Strategic litigation seeks to achieve significant changes in the law, practice or public awareness using methods such as the bringing of test cases to court, submitting amicus curiae briefs in ongoing cases, consistently advancing arguable points across a range of similar cases over time and so forth.

Discussion of protection gaps relating to cross-border displacement in the context of disasters and the adverse effects of climate change often takes place at the relatively abstract level of provisions of international legal instruments. Less attention has been paid to the practicalities of securing protection for individuals at risk of disaster-related harm both in terms of how the law can be interpreted against specific factual scenarios and in terms of the roles that academics, NGOs, lawyers and courts can play in addressing individual protection needs and clarifying the scope of host state obligations.

In addition to the (sometimes surmountable) challenges presented by the law itself, a further ‘protection gap’ may operate if lawyers are not identifying cases where individuals may risk being exposed to disaster-related harm on return to their home countries.1 Lawyers may be constrained from asking relevant questions because they are conditioned by mental or actual checklists relating to the requirements for securing refugee status or complementary forms of protection, and it can be difficult to think outside of that box. Or claimants may not point to a fear of disaster-related harm because they feel they need to present their protection narrative in terms easily reconcilable with established refugee categories.

A strategic litigation initiative around these matters should, firstly, provide the opportunity to test the actual scope of host-state protection obligations. Two cases in New Zealand have made useful contributions to our jurisprudential understanding of how the law applies in this emerging area, despite the fact that in both cases the claimants were considered not to be in need of international protection.2

Secondly, it provides the opportunity to raise public awareness. Media coverage of the above-mentioned cases was substantial, with articles appearing in a number of international as well as local newspapers.