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Climate Refugees: A Comprehensive and Legal Analysis to Understanding Climate Change-Induced Migration and Displacement

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Climate Refugees: A Comprehensive and Legal Analysis to Understanding Climate Change-Induced Migration and Displacement

Nandini Praveen

ABSTRACT

It is a sad but persistent reality that climate change may lead to migration of people from places that are not viable for living. The impact of climate change is widespread and can cause both displacement and deterioration of living conditions for the lower segments of society. Although many countries' immigration policies adapt to the unfortunate environmental crisis, they do not yet fully offer a safe solution to the accelerating trend of climate refugees. Forced climate migrants fall into the cracks of international refugee and immigration policies. There is considerable resistance to expanding the definition of political refugees and including climate "refugees". This paper is a doctrinal legal research-based analysis to understand forced migration and displacement in the light of climate change. The paper draws the background from the various displacement situations around the world and focuses on the current legal regime around the topic in International Environmental Law and International Refugee Law.

KEYWORDS: Climate Change, Migration, Displacement, Climate Refugees, International Law

لاجئو المناخ: تحليل شامل وقانوني لفهم الهجرة والنزوح الناجمين عن تغير المناخ

نانديني برافين

الملخص:

إنها حقيقة محزنة ولكنها مستمرة أن تغير المناخ قد يؤدي إلى هجرة الناس من أماكن غير صالحة للعيش. إن تأثير تغير المناخ واسع الانتشار ويمكن أن يتسبب في نزوح وتدهور الظروف المعيشية للشرائح الدنيا من المجتمع. على الرغم من أن سياسات الهجرة في العديد من البلدان تتكيف مع الأزمة البيئية المؤسفة، إلا أنها لا تقدم حلاً آمناً حتى الآن لمعدل اللجوء المناخي المتسارع. يقع المهاجرون القسريون بسبب المناخ في تصدعات سياسات اللاجئين والهجرة الدولية. هناك مقاومة كبيرة لتوسيع تعريف اللاجئين السياسيين وإدراج لاجئي المناخ. هذا البحث يقوم بتحليل قانوني فقهي قائم على تحليل لفهم الهجرة القسرية والنزوح في ضوء تغير المناخ. وتستمد الورقة المعلومات الأساسية من مختلف حالات النزوح في جميع أنحاء العالم وتركز على النظام القانوني الحالي حول الموضوع في القانون البيئي الدولي والقانون الدولي للاجئين.

الكلمات المفتاحية: تغير المناخ، الهجرة، النزوح، لاجئو المناخ، القانون الدولي

INTRODUCTION

Environmental changes in general, and those associated with climate change in particular, are increasingly recognized as growing drivers of migration across the world. The displacement of people due to environmental events has received increased attention in recent years, yet much uncertainty remains about the way populations will actually react to long-term environmental change.⁽¹⁾

This growing concern of the international community about the consequences of migration resulting from environmental deterioration was reinforced in 1990 by the publication of the first UN intergovernmental report on climate change which stated that “The gravest effects of climate change may be those on human migration as millions will be displaced”.⁽²⁾

Scientists predict that climate change will cause the forced displacement of people; desertification; protracted destructive wildfires; sea-level rise; ocean acidification; extreme weather events; and severe drought, which then impacts the supply of food.⁽³⁾ It will also cause frequent flooding, torrential rainfall, and of course tropical cyclones, which damage agricultural lands, agricultural productivity, and livelihoods.⁽⁴⁾ Further, migration from rural areas to cities and overseas has been mostly caused by climate change, where low-lying areas have been inundated by sea-level rise. Environmentalists claim that the effects of global warming, especially on sea levels and rainfall patterns, will lead directly to massive population displacement.⁽⁵⁾

The world has been witnessing the largest waves of forced migration

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- (1) Christensen LL, 10 Years That Changed Our Vision: Europe & Hubble (ESA Publications 2000)
 - (2) Intergovernmental Panel on Climate Change, Policymakers' summary of the potential impacts of climate change (Report from Working Group II to IPCC), (IPCC 1990)
 - (3) Stephen Castles, Mark J Miller and Giuseppe Ammendola, 'The Age of Migration: International Population Movements in the Modern World: New York: The Guilford Press, (2003), \$30.00, 338 Pages' (2005) 27 American Foreign Policy Interests 537 <<http://www.tandfonline.com/doi/abs/10.1080/10803920500434037>> accessed 26 July 2022.
 - (4) Mélissa Godin, 'Climate Refugees Cannot Be Forced Home, UN Panel Says in Landmark Ruling', (Time, Jan. 20, 2020), <<https://time.com/5768347/climate-refugees-un-ioane-teitiota/>> accessed 26 July 2022.
 - (5) Castles (n-3)

(within and beyond national boundaries) seen in nearly a century. A few analysts, of whom Norman Myers of Oxford University is perhaps the best known, have tried to estimate the numbers of people who will be forced to move over the long term as a direct result of climate change. “When global warming takes holds” Professor Myers argues, “there could be as many as 200 million people overtaken by disruptions of monsoon systems and other rainfall regimes, by droughts of unprecedented severity and duration, and by sea-level rise and coastal flooding”.⁽¹⁾ Professor Myers’ estimate of 200 million climate migrants by 2050 has become the accepted figure cited in respected publications from the IPCC to the Stern Review on the Economics of Climate Change.⁽²⁾ This is a daunting figure; representing a ten-fold increase over today’s entire documented refugee and internally displaced populations.⁽³⁾

Whilst United Nations (UN) estimates of international migrant numbers are around 214 million people, or 3.1% of the world’s population, the 2009 Human Development Report identifies 740 million people, or almost 11.0% of the world’s population, as having migrated within their own country.⁽⁴⁾ In 2015, an influx of people seeking asylum—largely from Africa, the Middle East, and South Asia—made the journey to Europe by way of the Aegean Sea, the Mediterranean Sea, and Southeast Europe.⁽⁵⁾ Transnational migration from the Pacific to developed countries is a worrying sign. Every year, more than 16,000 people from the Pacific region migrate to developed countries in search of a better life and to escape poverty.⁽⁶⁾

(1) Norman Myers, “Environmental Refugees: An Emergent Security Issue” (13th Economic Forum, Prague, 23-27 May 2005)

(2) Nicholas Stern, “The Economics of Climate change: the Stern review”, (1st edn, Cambridge University Press), 3

(3) Alan Dupont and GI Pearman, *Heating up the Planet: Climate Change and Security* (Lowy Institute for International Policy, 2006).

(4) United Nations Development Programme, *Human Development Report 2009: Overcoming Barriers – Human Mobility and Development* (UN 2009) <<https://www.un-ilibrary.org/content/books/9789210576970>> accessed 26 July 2022.

(5) UN High Commissioner for Refugees, ‘Global Trends: Forced Displacement in 2015’ (UNHCR, 2016) <<https://www.unhcr.org/576408cd7.pdf>> accessed 26 July 2022.

(6) World Food Programme & Pacific Community, ‘Food Security in Vulnerable Islands: A Regional Food Security Atlas of the Pacific’ (WFP, 2018), <<https://docs.wfp.org/api/documents/WFP-0000071751/download/>> accessed 26 July 2022.

Since 2008, over 318 million persons⁽¹⁾ have been displaced because of climate disasters, this is the equivalent of one person being displaced every second, or the entire Australian population being displaced every year. In 2020 alone, 30.7 million people⁽²⁾ were displaced because of environmental disasters, notably linked to climate change.

As the number of people affected by climate change could double by 2050 according to the International Federation of Red Cross and Red Crescent Societies (IFRC)⁽³⁾, the annual displacement of millions of persons worldwide due to environmental disasters needs to be addressed.

REVIEW OF LITERATURE

Interpreting Climate Refugees

Some scholars have created new terms to deal with persons moving away from their home in this particularly worrying situation. Campaigners have long used the phrase “environmental refugee” or “climate refugee” to convey added urgency to the issue. They argue that, in the most literal sense of the words, such people need to “seek refuge” from the impacts of climate change. Any other terminology, they maintain, would downplay the seriousness of these people’s situation. Moreover, the word “refugee” resonates with the general public who can sympathize with the implied sense of duress. It also carries fewer negative connotations than “migrant” which tends to imply a voluntary move towards a more attractive lifestyle.⁽⁴⁾

They were initially denominated as “climate refugees” or “environmental refugees”. The term “environmental refugees” was first coined in 1985 as

(1) ‘Global Internal Displacement Database’ (IDMC) <<https://www.internal-displacement.org/database/displacement-data>> accessed 26 July 2022.

(2) Ibid

(3) International Federation of Red Cross and Red Crescent Societies, ‘The Cost of Doing Nothing: The Humanitarian Price of Climate Change and how it can be avoided’, (IFRC, 2019) <<https://resourcecentre.savethechildren.net/pdf/2019-ifrc-codn-en.pdf/>> accessed 26 July 2022.

(4) Oli Brown, ‘Migration and Climate Change’ (IOM, 2008) <<https://olibrown.org/wp-content/uploads/2019/01/2008-Migration-and-Climate-Change-IOM.pdf>> accessed 26 July 2022.

a report title for the United Nations Environment Programme. Essam El-Hinnawi defined environmental refugees as “those people who have been forced to leave their tradition habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”.⁽¹⁾

The International Organization for Migration defines Environmental migrants as “Environmental migrants are persons or groups of persons, who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad”.⁽²⁾

The terminology adopted by organizations such as the UNHCR to refer to climate refugees is “environmentally displaced persons”. This term is defined as “persons who are displaced within their own country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one”⁽³⁾

In the following years, other definitions of environmental refugees appeared. Myers defines this category of refugee as people “who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems, together with associated problems of population pressures and profound poverty. In their desperation, these people feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt”.⁽⁴⁾

(1) Essam El-Hinnawi, ‘Environmental Refugees’, (UNEP, 1985)

(2) International Organization for Migration, “Discussion note: Migration and the Environment: Ninety-fourth session MC/ INF/288”, (IOM, 2007) <https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf > accessed 26 July 2022.

(3) ‘Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migrations’ (United Nations High Commissioner for Refugees, International Organization for Migration & Refugee Policy Group 1996).

(4) Myers (n-6)

Interpreting Migration and Displacement due to Climate Change

Climate migration or climate displacement are terms that describe a multitude of climate change related migration scenarios.⁽¹⁾ Climate change can cause or exacerbate resource scarcity, which may drive conflict directly as well as induce migration of populations in vulnerable situations attempting to secure safety or livelihoods elsewhere.⁽²⁾

“Greater resource scarcity, desertification, risks of droughts and floods, and rising sea levels could drive many millions of people to migrate”. This alarming prediction appears in the review of the economic consequences of global warming delivered to the British government by Sir Nicholas Stern.⁽³⁾ Sea level rise will expose millions of people to increasing coastal hazards and eventual land loss, with coastal populations growing and many valuable man-made and ecological resources centred on these regions.⁽⁴⁾

The Pacific region has been at the forefront of climate change. Every year, severe weather events take a heavy toll on the region’s small island nations. Industrialized nations are mainly responsible for the current high levels of greenhouse gas emissions in the atmosphere due to more than 150 years of coal burning and other industrial activity.⁽⁵⁾ Further, climate change has also contributed to loss of coral reefs, with attendant implications for the ecosystems on which many islanders’ livelihoods depend; changing rainfall patterns, leading to flooding in some areas; drought in others; and threats to freshwater supplies.⁽⁶⁾

(1) Walter Kälin and Nina Schrepfer, “Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches”, (UNHCR, 2012) <<https://www.unhcr.org/4f33f1729.pdf>> accessed 26 July 2022.

(2) Michael Brzoska & Christiane Fröhlich, “Climate change, migration and violent conflict: vulnerabilities, pathways and adaptation strategies”, (2016), 5, Migration and Development, 190.

(3) Stern (N-7)

(4) Barbara Neumann and others, ‘Future Coastal Population Growth and Exposure to Sea-Level Rise and Coastal Flooding - A Global Assessment’ (2015) 10 PLOS ONE e0118571 <<https://dx.plos.org/10.1371/journal.pone.0118571>> accessed 26 July 2022.

(5) George Carter, ‘Establishing a Pacific Voice in the Climate Change Negotiations’ in Greg Fry and Sandra Tarte (eds), *The New Pacific Diplomacy* (1st edn, ANU Press 2015) <<http://press-files.anu.edu.au/downloads/press/p328371/pdf/ch17.pdf>> accessed 26 July 2022.

(6) Lauren, ‘Climate Refugees: A Global Crisis’ (Choose Love, 16 September 2019) <<https://chooselove.org/news/the- plight-and-rise-of-climate-refugees/>> accessed 26 July 2022.

The 1998 monsoon floods in Bangladesh brought some of the worst flooding in living memory, inundating two-thirds of the country for two months, devastating its infrastructure and agricultural base and leading to fears about the country's long-term future in a world of higher ocean levels and more intense cyclones.⁽¹⁾ The floods left an estimated 21 million people homeless.⁽²⁾ Meanwhile the Yangtze floods of the same year temporarily displaced an estimated 14 million people and triggered the largest ever peace-time deployment of the People's Liberation Army to provide humanitarian aid and rebuild critical infrastructure.⁽³⁾ Hurricanes Katrina and Rita, for example, which lashed the Gulf Coast of the United States in August and September 2005 left an estimated 2 million people homeless.⁽⁴⁾

The United Nation's Deputy High Commissioner for Human Rights recently stated:

“By 2050, hundreds of millions more people may become permanently displaced due to rising sea levels, floods, droughts, famine and hurricanes. The melting or collapse of ice sheets alone threatens the homes of 1 in every 20 people. Increased desertification and the alteration of ecosystems, by endangering communities' livelihoods, are also likely to trigger large population displacements.”⁽⁵⁾

STATEMENT OF THE RESEARCH PROBLEM

Global warming could, in particular, lead to major forced displacements. This will result principally from rising sea levels, but will only progressively manifest itself over the coming centuries, with the exception of the flooding

(1) Dupont and Pearman (n-8)

(2) Carol Bellamy and UNICEF, *The State of the World's Children 2003* (The United Nations Children's Fund 2002).

(3) Dupont and Pearman (n-8)

(4) Spencer S Hsu, '2 Million Displaced By Storms' (13 January 2006) <<http://www.washingtonpost.com/wp-dyn/content/article/2006/01/12/AR2006011201912.html>> accessed 26 July 2022.

(5) Kyung-wha Kang, OHCHR, *The Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities* (Feb. 19, 2008).

of certain islands. The increase in droughts and meteorological disasters predicted by climatic models will also have impacts in terms of migrations, but these will remain regional and shortterm, and are at present difficult to estimate.⁽¹⁾

There is an interplay between climate change and various aspects of eligibility for refugee status. Chakrabarty⁽²⁾ reveals the existential conundrum of climate refugees: “Modernity created this new savage condition of many human beings, the condition of being declared stateless if they could not be identified with a nation-state, forcing them to fall back on the politics of survival.” The existing legal instruments for the protection of persons who migrate due to climate change have a limited scope within domestic and international framework.

As UNHCR has recognized, “where the effects of climate change and disaster interact with violence, conflict, or persecution leading to displacement, individuals may be refugees under the 1951 Refugee Convention.”⁽³⁾

For example, if a government withholds or denies relief from the impacts of climate change to specific individuals who share a protected characteristic in a manner and to a degree amounting to persecution, such individuals may be eligible for refugee status. Similarly, adverse impacts of climate change may affect whether an individual has a viable relocation alternative within their country or territory. Climate activists, or environmental defenders, persecuted for speaking out against government inaction on climate change may also have a plausible claim to refugee status.⁽⁴⁾

(1) Etienne Piguet, ‘Climate Change and Forced Migration’ [2008] UNHCR 15.

(2) Dipesh Chakrabarty, ‘Postcolonial Studies and the Challenge of Climate Change’ (2012) 43 *New Literary History* 1 <http://muse.jhu.edu/content/crossref/journals/new_literary_history/v043/43.1.chakrabarty.html> accessed 26 July 2022.

(3) ‘Strategic Framework for Climate Action’, (UNHCR, 2021) < <https://www.unhcr.org/protection/environment/604a26d84/strategic-framework-for-climate-action.html> > accessed 26 July 2022.

(4) Robert A McLeman and François Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (Routledge 2018).

The existing refugee laws are not an appropriate way to address climate-induced displacement. It is essential that the existing instruments are modified or opened up for renegotiation. International migration frameworks are inadequate to deal with various types of voluntary and non-voluntary movements linked to climate crises. Without clarification of the definition of climate-induced displacement and the provision of concrete measures for preventing, preparing and reacting to displacement situations, the current legal and political framework for environmental and climate change is too vague to meet the needs of climate refugees for protection.

The issue of ‘climate-induced statelessness’ is fundamentally linked to unresolved questions of what constitutes a state and when a state can be said to have ceased to exist.⁽¹⁾ Persons rendered stateless by extreme global heating impacts constitute one of the clearest examples of a legal and policy void across international frameworks.⁽²⁾

There are still important holes in the existing displacement framework, including the issue of enforcing and ensuring accountability, the main issues relating to the scope and definition of migration drivers, leaving climate refugees unprotected, are also the key questions. In order to fill these gaps, a new framework is necessary.

PURPOSE

To state the measurable purpose of the research undertaken, this study was geared to achieve the following:-

- 1) To study the various migration and displacement situations around the world due to climate change.

(1) Jane McAdam, ‘Disappearing States’, Statelessness and the Boundaries of International Law (January 21, 2010). UNSW Law Research Paper No. 2010-2

(2) C Palma, ‘NO SHELTER FROM THE STORM’ [2021] Environmental Justice Foundation (EJF) 32 <https://ejfoundation.org/resources/downloads/EJF_Climate-Refugee-Report_2021_final.pdf>https://ejfoundation.org/resources/downloads/EJF_Climate-Refugee-Report_2021_final.pdf> accessed 26 July 2022.

- 2) To examine the legal position of climate refugees in the face of global warming.
- 3) To analyse the gaps in legal framework for the protection of climate refugees.

RESEARCH QUESTIONS

- 1) How does climate change impact migration and displacement?
- 2) What are the present challenges faced by climate refugees?
- 3) How will solving the current legal lacuna with regard to migration and displacement help achieve the SDG 13 for the future?

DATA COLLECTION AND METHODOLOGY

In accordance with the objectives of the present study, the doctrinal research design has been adopted. The doctrinal design has been used to study the jurisprudential development in the several migration and displacement situations used. This has been done primarily with the help of case laws and leading judgments of various courts along with research studies conducted by experts in International Environmental Law and International Refugee Law. Reports from committees and commissions have been scanned for issues relating to the research problem. The scope of the research extends to the past 50 years in process through the different kinds of migration and displacement situations that took place around the world. Countries such as the United States, Bangladesh, Yemen, Afghanistan, Somalia, Vanuatu, Philippines, India, China, Vietnam, Honduras, Cuba, South Sudan, Sri Lanka and Indonesia among some others are the main coverage areas in the research. The stratified sampling method is used to highlight differences between the populations based on the basis of their economic position in the research.

LIMITATIONS OF THE STUDY

The main limitation of the research study is the inability to enquire and collect data from the internal governments of different countries with regard to migration and displaced populations in different societies. The data as understood are confidential and, unfortunately, cannot be used for research purposes. Other limitations include the lack of research of SDG and the proposed research study in mainstream academic circles. There has also been a limitation of inadequate sampling for large populations with reliable data to base the research but it can be overlooked in a qualitative research like this one.

ORIGINALITY/VALUE OF THE PAPER

This paper provides evidence of the intermingling of climate change in displacement and migration through the eyes of achieving SDG'S for the future. The research compares the current situation and shows the need for an impactful intervention to prevent statelessness and protect climate refugees to provide a safe living environment. It also provides important information on the legal tools currently present in understanding the said topic and the need for improvement in the lives of the refugees.

DATA ANALYSIS

a- Impact of Climate Change in Migration and Displacement

Millions of people have been forced to leave their homes because the land on which they live has become uninhabitable or is no longer able to support them. In some cases the cause is a natural disaster; in others, the catastrophe is caused by humans. The disruption to the habitat may be sudden, as at Chernobyl or Mount Pinatubo, or as gradual as the spread of a desert or the retreat of a forest.⁽¹⁾

(1) B.S. Chimni , 'Causes of Refugee Flows and the law of state responsibility' - International Refugee Law: A

There are clear links between environmental degradation and refugee flows. The deterioration of the natural resource base coupled with demographic pressure and chronic poverty, can lead to or exacerbate political, ethnic, social and economic tensions which in turn result in conflicts that force people to flee. Africa, for example, accounts for 10 percent of the world's population and hosts over 29 percent of its refugees. It is no coincidence that those parts of the continent that are most affected by soil erosion, drought and other environmental problems are also the main theatres of armed conflicts, recurrent famine and consequent refugee movements.⁽¹⁾

As Lonergan notes⁽²⁾, five groups of factors can be singled out as environmental push elements that might lead to migration: 1. Natural disasters; 2. Development projects that involve changes in the environment; 3. Progressive evolution of the environment; 4. Industrial accidents; and 5. Environmental consequences due to conflicts.

While most cases of population displacement triggered by extreme weather events are currently of limited duration and involve people moving only short distances within national borders, this pattern is beginning to shift as global overheating results in irreversible environmental changes, making more areas uninhabitable.

Several billion people live in areas where they are expected to be severely affected by climate change in all parts of the world. Impacts of climate change are both ubiquitous and synchronous and can thus overwhelm seemingly stable and resilient communities and even exacerbate conditions that increase the likelihood of state failure, conflict and therefore flight.⁽³⁾

Reader, (1st Edn, Sage Publications, 2000), 150

- (1) Ibid
- (2) Steve Lonergan, 'The Role of Environmental Degradation in Population Displacement' [1998] Environmental Change and Security Project Report 11.
- (3) Katie Peters and Janani Vivekananda, 'Topic Guide: Conflict, Climate and Environment' (Evidence on Demand 2014) <<https://www.gov.uk/dfid-research-outputs/topic-guide-conflict-climate-and-environment>> accessed 26 July 2022.

In recent years, typologies are being developed, such as these observable mechanisms linking climate change to voluntary migration and involuntary displacement⁽¹⁾:-

1. Longer term drying trends;
2. Rising sea levels;
3. Glacier melt (and changed river flow);
4. Increased frequency and magnitude of weather-related natural hazards;
and
5. Competition over scarce natural resources.

Migration is a traditional form of adaptation to environmental change, usually in a regional dynamic resulting in internal displacement and some international migration to neighbouring states⁽²⁾, with Africa being one area of focus⁽³⁾. As climate change is a global phenomenon, its impact and instances of climate-induced migration can be observed in many different locations.⁽⁴⁾

Conflict-induced or aggravated by climate change—is another dimension. Climate change and other aspects of global change are driving involuntary migration, both directly by forcing people to leave their homes or abandon their fields, and by aggravating existing tensions and conflicts.⁽⁵⁾

b. Reasons of Migration and Displacement by Climate or

(1) Susan Martin, Kanta Kumari Rigaud, Koko Warner, Hanspeter Wyss, 'Human Mobility Should Be High on the Agenda in Paris' <<https://blogs.worldbank.org/peoplemove/human-mobility-should-be-high-agenda-paris>> accessed 26 July 2022.

(2) Cristina Cattaneo and Giovanni Peri, 'The Migration Response to Increasing Temperatures' (2015) 122 *Journal of Development Economics* 47.

(3) Alex Whiting, 'Africa at Highest Risk of Major Economic Blow from Future Climate Threats: Global Index' Reuters (19 December 2016) <<https://www.reuters.com/article/us-agriculture-climatechange-idUSKBN14802K>> accessed 26 July 2022.

(4) Andrea Milan, Benjamin Schraven, Koko Warner, Noemi Cascone, 'Migration, Risk Management and Climate Change: Evidence and Policy Responses', (Springer, 2016)

(5) Carl-Friedrich Schlessner and others, 'Armed-Conflict Risks Enhanced by Climate-Related Disasters in Ethnically Fractionalized Countries' (2016) 113 *Proceedings of the National Academy of Sciences* 9216 <<https://pnas.org/doi/full/10.1073/pnas.1601611113>> accessed 26 July 2022.

Environmental Refugees

From a human rights standpoint, the impact of climate change on the individual is significant. The increase in temperature can lead to extreme drought, effectively compromising access to farming and fishing, which overall impacts resources. Resource scarcity may in turn lead to increases in food pricing, which will disproportionately hurt the poorest.⁽¹⁾

Poverty and loss of livelihood may force persons into unsafe trades such as drugs distribution, trafficking or prostitution, which puts many persons in severe dangers to health and safety.⁽²⁾ Pollution in air and water may cause or contribute to cancers, increase spread of diseases such as malaria and lead to cardiovascular diseases, respiratory infections and lethal problems with the digestive system. Extreme heat exacerbates these conditions and indirectly increases the risk for lung damage due to smoke inhalation as the frequency of forest fires increases.⁽³⁾

Even on islands and atolls threatened by sea-level rise, decisions to migrate can entail many more factors than climate change alone. A study of the small Pacific island nations of Kiribati and Tuvalu found that socio-economic pressures resulting from lack of employment and development opportunities as well as other kinds of environmental changes are the main drivers of out-migration. The role of climate change needs to be viewed together with these processes.⁽⁴⁾

As for region specific challenges, people residing in coastal cities,

(1) Siobhan McNerney-Lankford, Mac Darrow and Lavanya Rajamani, *Human Rights and Climate Change: A Review of the International Legal Dimensions* (The World Bank 2011) <<http://elibrary.worldbank.org/doi/book/10.1596/978-0-8213-8720-7>> accessed 26 July 2022.

(2) Eve Lester, 'Work, the Right to Work, and Durable Solutions: A Study on Sierra Leonean Refugees in The Gambia' (2005) 17 *International Journal of Refugee Law* 331 <<https://doi.org/10.1093/ijrl/eei012>> accessed 26 July 2022.

(3) Jon Barnett and W Neil Adger, 'Mobile Worlds: Choice at the Intersection of Demographic and Environmental Change', *Annual Review of Environment and Resources* <<https://www.annualreviews.org/doi/epdf/10.1146/annurev-environ-102016-060952>> accessed 26 July 2022.

(4) Jane McAdam and Maryanne Loughry, 'We Aren't Refugees' (*Inside Story*, 30 June 2009) <<https://insidestory.org.au/we-arent-refugees/>> accessed 26 July 2022.

remote areas or on islands are particularly vulnerable due to already lacking resources, frail infrastructure, rapidly growing populations and sometimes limited access to adaptive measures.⁽¹⁾ Any pre-existing vulnerability factors such as poverty, sickness, disability, old age, lack of parental care and pre-existent statuses as a migrant or a minority, may furthermore hurt the person following the effects of climate change.⁽²⁾

While migration presents an opportunity to adapt to climate change, it can also come with challenges as migrants may face exclusion, violence and hostility, including in contexts where populations are already affected by scarcity, marginalization and conflict. For children, this means greater risk of dropping out of school, greater risk of teenage pregnancy and juvenile crime, incomplete citizenship rights, difficult access to social services and the danger of social exclusion.

Conflicts, aggravated by climate change, and heightened climate vulnerabilities due to conflict can lead to increased migration, displacement and other forms of humanitarian crisis.⁽³⁾

c. Understanding the Status of a Climate Refugee in International Law

It has to be understood that climate refugees cannot be described as refugees as per the present conventions. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol continue to provide the functional core of international refugee jurisprudence.⁽⁴⁾

(1) 'Migration and Global Environmental Change: Future Challenges and Opportunities' (Government Office for Science 2011).

(2) 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: October 2015' (2016) 28 International Journal of Refugee Law 156 <<https://academic.oup.com/ijrl/article-lookup/doi/10.1093/ijrl/eev004>> accessed 26 July 2022.

(3) Cristina Colón and Lucy Szaboova, 'Summary Report Climate Mobility and Children.' (UNICEF 2021) <<https://www.unicef.org/globalinsight/media/1926/file/Summary%20Report:%20Climate%20Mobility%20and%20Children.pdf>> accessed 22 July 2022.

(4) Jessica Cooper, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition', (1998) 6 NYU Envtl. L.J. 480

The UN Convention created and operates under a specific definition of the term “refugee.” Under this Convention, in order to qualify as a refugee, a person must:

- (1) Demonstrate a well-founded fear of persecution on one of five protected grounds: race, religion, nationality, membership of a social group, or political opinion;
- (2) Be outside the country of former habitual residence;
- (3) And, be unable or, due to fear unwilling, to return to that country.⁽¹⁾

However, while there is no universally recognized definition of ‘persecution,’⁽²⁾ it most likely entails an act or acts taken by governments against an individual or a group of individuals.⁽³⁾ Such a definition would necessarily exclude climate refugees, who likely will not face government-sponsored attacks, and may even continue to look to their home governments for protection in ways that individuals fleeing persecution cannot.⁽⁴⁾

Second, the persecution that refugees fear must be on the basis of “race, religion, nationality, membership of a particular social group or political opinion.”⁽⁵⁾ Climate refugees cannot plausibly maintain that they have a fear of persecution based upon the membership in one of the enumerated groups,⁽⁶⁾ and therefore do not fall within the Convention and Protocol’s definition of a refugee.⁽⁷⁾ Climate change is not an entity, and for that reason the intent of harm

(1) United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 [hereinafter 1951 Convention].

(2) ‘Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating...’ (UNHCR 1992) HCR/IP/4/Eng/REV.1. < <https://www.unhcr.org/4d93528a9.pdf>> accessed 22 July 2022.

(3) Astri Suhrke, ‘Global Refugee Movements and Strategies of Response’, in U.S. IMMIGRATION POLICY: GLOBAL AND DOMESTIC ISSUES (Mary M. Kritz ed., 1983)

(4) Bonnie Docherty and Tyler Giannini, ‘CONFRONTING A RISING TIDE: A PROPOSAL FOR A CONVENTION ON CLIMATE CHANGE REFUGEES’ (2009) 33 Harvard Environmental Law Review 56.

(5) UN (n-54)

(6) Shaina Stahl, ‘Unprotected Ground: The Plight of Vanishing Island Nations’, (2010) N.Y. Int’l L. Rev. 1.

(7) António Guterres, ‘Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective’ (UNHRC 2008).

is inexistent (an attribute necessary to characterize an agent of persecution). Hence, it would not be suitable to describe the situation of “climate refugee” as persecution.⁽¹⁾

This definition of the term refugee excludes many people who have fled the effects of climate change but have not actually moved out of their home country. These “internally displaced peoples” currently have no international doctrine of which to avail themselves.⁽²⁾ While concerns about environmental and subsequent humanitarian conditions may lead a refugee to be unable or unwilling to return to his or her home country,⁽³⁾ environmental migrants are still hampered in meeting the three other characteristics.

The only way international refugee law would apply to climate refugees currently is if they either ⁽¹⁾ cross a border in the context of a conflict linked to environmental degradation or ⁽²⁾ cross a border as a result of the obstruction or withholding of aid and assistance following a climate-related natural disaster. These instances retain the key characteristics of refugeehood – in that they would involve a degree of persecution related to the criteria in the 1951 Convention as well as movement across a political boundary.⁽⁴⁾

The OAU Convention⁽⁵⁾ has been considered a landmark to the refugee regime due to the alternative conceptualization used by the member states to define the term refugee. Although the definition of the 1951 Convention is present and included in the OAU Convention, the concept used in the universal instrument could not properly address the refugee situation in Africa. As a result, the OAU Convention created a second definition of the term refugee that could be adequate to tackle it.⁽⁶⁾

(1) Fabrice G Renaud and others, ‘A Decision Framework for Environmentally Induced Migration.’ <<https://cite-seerx.ist.psu.edu/viewdoc/download?doi=10.1.1.466.2243&rep=rep1&type=pdf>> accessed 26 July 2022.

(2) Breanne Compton, ‘The Rising Tide of Environmental Migrants: Our National Responsibilities’, (2014) COLO. NAT. RES. ENERGY. & ENVTL L. REV. 357.

(3) Xing-Yin Ni, ‘A Nation Going Under: Legal Protection for “Climate Change Refugees”’, (2015) B.C. INT’L & COMP. L. REV. 329.

(4) Guterres (n-60)

(5) Organization of African Unity, Convention Governing the Specific Aspects of Refugees Problems in Africa, 1001 U.N.T.S. 45, entered into force June 20, 1974.

(6) Natália de Figueiredo Coelho Maciel, ‘Climate Refugees in International Law’ (CHARLES UNIVERSITY, FACULTY OF SOCIAL SCIENCES Institute of Political Studies 2019).

In accordance with the OAU Convention, a refugee is “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”.⁽¹⁾

The reflections about including “environmental refugees” under the scope of protection of the OAU Convention is a reiterate issue. In 1983, Rwelamira mentioned in his article, the emergence of “a new class of refugees who are forced to leave their countries of origin or habitual residence because of ecological changes and their effect on the environment”.⁽²⁾ He asserts that the refugee definition of the OAU Convention is certainly “wider and sufficiently broad to include even victims of ecological changes”.⁽³⁾

Having the example of the OAU Convention in recent past, the Cartagena Declaration⁽⁴⁾ also created a complementary definition of the term refugee. The Declaration included in the definition of refugees of the 1951 Convention any persons who “have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”.⁽⁵⁾

The Cartagena Declaration intended to curb refugee protection by limiting the use of the objective criteria; the simple indication of the concrete existence of one the five grounds listed in the definition was not considered enough.⁽⁶⁾

(1) OAU (n-65)

(2) Medard R.K. Rwelamira, (1983), ‘Some Reflection on the OAU Convention on Refugees: Some Pending Issues’, *Comparative and International Law Journal of Southern Africa* 16.

(3) *Ibid*

(4) Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19-22 November 1984.

(5) *Ibid*

(6) Alice Edwards, (2006), 14 ‘Refugee Status Determination in Africa’, *African Journal of International and Comparative Law*, 216.

The concession of refugee status is not bounded only by the occurrence of one of the five grounds of the definition; it is also imperative that the person should have fled “because their lives, safety or freedom have been threatened”. In other words, the two conditions must meet so that the person fleeing can fit under the refugee definition of the Cartagena Declaration.⁽¹⁾

Whilst the above stated regional conventions provide expanded definitions which may nominally include those displaced by natural disasters, establishing legal causation between a particular natural disaster and human activity will prove difficult.⁽²⁾

Principle 1 of the 1972 Declaration of the United Nations Conference on the Human Environment⁽³⁾ (the Stockholm Declaration) states that there is ‘a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing’. The Stockholm Declaration reflects a general recognition of the interdependence and interrelatedness of human rights and the environment. The 1989 Convention on the Rights of the Child⁽⁴⁾ provides that states parties shall take appropriate measures to combat disease and malnutrition ‘through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution’.

Unfortunately, the rights guaranteed by these conventions are difficult to implement, as climate disasters – intensified by climate change and since 2020 coupled with the Covid-19 pandemic – make it more complex to access these essential goods.⁽⁵⁾

(1) Eduardo Arboleda, (1995), 7 ‘The Cartagena Declaration of 1984 and Its Similarities to the 1969 OAU Convention - A Comparative Perspective’, *International Journal of Refugee Law*, 91.

(2) R. Cohen & M. Bradley, (2010) 1 ‘Disasters and displacement: Gaps in protection.’, *Journal of International Humanitarian Legal Studies*, 95

(3) ‘Report of the United Nations Conference on the Human Environment’ (UN) A/CONF.48/14/Rev.1 <<http://www.un-documents.net/aconf48-14r1.pdf>> accessed 26 July 2022.

(4) ‘Convention on the Rights of the Child’ (OHCHR) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 26 July 2022.

(5) Joanna Apap and Capucine du Perron de Revel, ‘The Concept of “Climate Refugee” (European Parliamentary Research Service 2021).

The 1998 UN Guiding Principles on Internal Displacement, written by independent legal experts and based on existing provisions of international human rights and humanitarian law, state that all internally displaced persons are entitled to enjoy, without discrimination, the same rights and freedoms under international and domestic law as do other persons in their country.⁽¹⁾

In 2013, a judicial decision declining Ioane Teitiota's refugee protection attracted the attention of international media⁽²⁾ and legal journals. Teitiota required the recognition of his status of "environmental refugee" based on environmental changes in his home country, Kiribati, caused by the effects of climate change.⁽³⁾ The judge of the case asserted that regardless of whether the person was once an IDP, this fact does not guarantee the refugee status. Besides, he added that Teitiota could not even be considered as an IDP according to the Guiding Principles as his movement within Kiribati was a "voluntary adaptive migration".⁽⁴⁾

The Kampala Convention,⁽⁵⁾ adopted in 2009 was made keeping in mind the principles, is the only binding international legal instrument specific to IDPs and explicitly states, "Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change."⁽⁶⁾ Complementary forms of protection allow states to offer protection to people facing the prospect of being returned on human rights grounds in cases not addressed by the 1951 Refugee Convention and its 1967 protocol. These types of protection are subsidiary to the refugee status

(1) United Nations High Commissioner for Refugees, 'Guiding Principles on Internal Displacement' (UNHCR, 2004) <<https://www.unhcr.org/en-in/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>> accessed 26 July 2022.

(2) Amnesty International, 'UN Landmark Case for People Displaced by Climate Change' (Amnesty International, 20 January 2020) <<https://www.amnesty.org/en/latest/news/2020/01/un-landmark-case-for-people-displaced-by-climate-change/>> accessed 27 July 2022.

(3) New Zealand v AF (Kiribati), [2013] NZIPT 800413.

(4) Ibid

(5) 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) October 23, 2009 | African Union' <<https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>> accessed 26 July 2022.

(6) Ibid, Article 5.4

granted under the 1951 Refugee Convention and may vary widely from one jurisdiction to another.⁽¹⁾

In 2012, the Nansen initiative⁽²⁾, launched by the governments of Norway and Switzerland, appeared as the first milestone towards the recognition and protection of people externally displaced because of climate-related issues. It aimed to fill the legal protection gap regarding the status of people externally displaced by climate disasters, by building a consensus among states to implement a protection agenda, with standards of treatment. In October 2015, this state-led consultative process resulted in a non-binding ‘agenda for the protection of cross-border displaced persons in the context of disasters and climate change⁽³⁾’, which was endorsed by 109 states.⁽⁴⁾

Although the Kampala Convention and the Nansen initiative opened up new perspectives for the recognition of externally displaced people by climate-related issues, the question as regarding their status still remains.

In September 2016, the General Assembly decided, through the adoption of the New York Declaration for Refugees and Migrants⁽⁵⁾, to develop a global compact for safe, orderly and regular migration. In 2018, new, non-binding international agreements on displacement and migration were adopted by the UN: the Global Compact on Migration and the Global Compact on Refugees⁽⁶⁾. The Global Compact on Migration (GCM) includes recognition of climate

(1) Apap and Revel (n-77)

(2) ‘The Nansen Initiative’s Protection Agenda on What to Do about Disaster Displacement’ (D+C, 2017) <<https://www.dandc.eu/en/article/nansen-initiatives-protection-agenda-what-do-about-disaster-displacement>> accessed 26 July 2022.

(3) ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change’ (The Nansen Initiative) <https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_-low_res.pdf> accessed 27 July 2022.

(4) Apap and Revel (n-77)

(5) ‘New York Declaration’ (Refugees and Migrants, 15 September 2016) <<https://refugeesmigrants.un.org/declaration>> accessed 27 July 2022.

(6) ‘GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION INTERGOVERNMENTALLY NEGOTIATED AND AGREED OUTCOME’ (13 July 2018) <https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf> accessed 27 July 2022.

as a driver of migration, along with acknowledgement of the importance of climate mitigation.

However, from the outset, the UN made it clear that UN members were not ready to give specific legal international protection to climate-induced migrants.

RECOMMENDATIONS/SUGGESTIONS

(I) Expanding the definition of ‘Refugee’.

There is a need for an International Legal Framework to accommodate the protection of climate refugees. The UN member states along with the UNEP should frame a universal policy for governments to acknowledge the migration and displacement of climate refugees. The new policy should be completely different from the 1951 Convention and have a binding value to countries accepting refugees along with the affected countries.

(II) Environmental Rule of Law should be adopted.

National Laws should consider environmental stress as one of the criteria in running governance to analyse and survive the rapid pace of climate change which will increase the number of climate refugees in the coming future. It is necessary for countries to rethink the role of disasters and bridge fundamental rights of humans to evolve the process of environmental sustainability.

(III) Adaptation and Relocation for IDP

All the stakeholders including environmentally vulnerable communities should be given consideration for their due needs and desires before establishments of corporate industrial units along with sensible negotiation talks with indigenous people to understand their environment. They should be given the option of government assisted relocation taking into due consideration of sustainable developmental opportunities for IDP.

(IV) Establishing a Standing Policy Process on Climate Change and Migration.

A standard policy process has to be introduced in the global level to assist with the paperwork and immigration arrangements of climate refugees which has to be undertaken by International Organizations and adopted as a necessary measure to achieve environmental goals to sustain life in the future by different States.

(V) Improve the conditions of climate refugees.

The countries should adopt a reasonable stand towards climate refugees with governmental help in providing the same basic utilities as the current residents like healthcare, housing, financial support, etc. They should feel welcome through educational awareness on migration and displacement due to climate change as part of environmental governance strategies.

(VI) Finance Responses to Climate-Induced Migration.

All public, private and non-profit sectors have to support the United Nations Central Emergency Response Fund and the Green Climate Fund in alliance with climate refugee accepting countries to help in rehabilitation and resettlement. Governments will have to individually take the lead to facilitate the sustenance of economically backward persons seeking refuge.

CONCLUSION

Adrift from their states, climate refugees are equally adrift in law. They're going to not fear any state-sponsored persecution based upon an immutable characteristic or political opinion, just the rising sea water which will eventually inundate their states or render them otherwise uninhabitable. These individuals will therefore not meet the normal definition of a refugee and cannot have the benefit of many of the protections and rights offered by

refugee law. Nonetheless they'll be forced from their homes with no prospect of return, and that they will rely upon the goodwill of other states to search out firm ground. Climate-induced migration can be a forced displacement and relocation, or a planned and facilitated adaptation strategy but the Governments will have a growing responsibility to act at all levels, regional bodies, and international organizations to accommodate global warming as factor in governance.