

Redefining the term Climate Refugees

Ashis Swayamprakash & Srutee Priyadarshini¹

National Law University Odisha, India

19ba036@nluo.ac.in

Abstract

Natural disasters, like cyclones, leave countless people homeless especially in tiny island nations. As more and more people are being forced out of their habitat the concept of environmentally displaced people comes to light. Scholars predict by the year 2050, the number of people coming under that umbrella could increase from 20 million to 200 million. Those numbers look threatening and they are as this happens to be a substantially big population and displacement of that magnitude could lead to international migration induced by climate change. Thus, giving rise to the concept of “Climate refugee”. Refugees have been defined by the 1951 Geneva Convention on Refugees which happens to be a political definition. Some authors say that recognition of people displaced due to climate change as “refugees” will be a solution as this will help them find asylum, but it is highly disputed due to several reasons. The purpose of this paper is to critically examine the proposed solution of defining “climate refugees”. The most serious argument is the problems associated with the eventual broadening of the meaning of legal terms. A process that could easily lead to the potential protection of all-and-no individual(s) in need of protection. The goal is to address the need of dispensing justice to the displaced people to help them “survive”. As well as formulating policy frameworks for a more sustainable global setup for a long-term solution.

Keywords: Climate Change, Climate Refugee, Policy Framing.

Climate change and people affected by it

“At first, we woke up to the sound of the wind, and right after that the water came streaming into our house. We only managed to grab our children and run away to an area which lies on higher ground,” explained Rafael Domingo, a Cyclone Idai affected person who is a father of four. According to the statistics more than 73,000 people were rendered homeless in March 2019 because of this cyclone.²

Climate change and its repercussions is a real thing, but the slow realization of the

¹ Ashis Swayamprakash & Srutee Priyadarshini, National Law University Odisha, India-

19ba036@nluo.ac.in

² Dina Ionesco, *Let's Talk About Climate Migrants, Not Climate Refugees*, United Nations Sustainable Development, <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees> (last visited Dec 18, 2020).

problem into reality can be seen in countries like the Maldives. For a small island nation that is located only a few meters above sea level, it is a serious concern. According to the statistics, if sea levels rise by 1 meter then island nations such as the Maldives, the Marshall Islands, Kiribati, or Tuvalu will become largely uninhabitable. If we consider the present scenario then by 2080, global warming will cause if not 3degrees then 1-2 degrees temperature increase which would affect about 103 million people. It is further predicted that the number of climate refugees from Bangladesh alone would outnumber the number of refugees all over the world right now.

Not only water level rise and glacier melting would be a problem but the problem of water scarcity and drought would also get magnified. Some studies suggest that even under the lowest temperature growth rate assumptions, the results would be fatal, i.e., even a 1-2 degree rise in temperature would result in a water shortage for 700-1500 million people. The worst affected people would be the nations that lie downstream from the Himalaya-Hindu Kush mountain ranges, which approximately encompasses 50-60 percent of the world's population.

Continents such as Asia and Africa would be most affected because of the brimming population and climatic conditions. With Africa being on the arid side and Asia with its low-lying lands and high vulnerability towards cyclones it becomes a gigantic problem for them. If the temperature increases by 2-3 degrees, it would result in leaving 39-812 million South Asians at risk of water stress.

Even if we don't look at the future and look at the present scenario then it is no good. With 14 countries in Africa alone suffering from drought, we have serious issues to look after. The prediction of the number rising from 14 to 25 countries in 2030 makes the situation worse. In Africa, people residing in the deltas of Egypt and Nigeria would be severely affected by the increasing sea-levels.

This situation does not end only with Asia and Africa, it affects every continent to varying degrees.

Thus, the concept of people migrating from one place to another due to climate change doesn't seem like a far-fetched concept. For example, the Development Concepts and Doctrine Centre Global Strategic Trend Program of the United Kingdom's Ministry of Defense predicts a large migration from sub-Saharan Africa towards the Mediterranean, the Middle East, and Europe between 2007 and 2036.³

Thus, the above data shows that climate refugees are a serious issue that should be taken seriously especially when a country is burning (Forest fire in Australia in the year 2020) and glaciers are melting all over the world.

Current legal scenario in different countries regarding environmentally displaced people

Before suggesting the solutions and suggesting a framework for the problem at hand we need to analyze the current provisions and options available to the

³ FRANK BIERMANN & INGRID BOAS, PROTECTING CLIMATE REFUGEES: The Case for a Global Protocol, 50 Environment 10–16.

environmentally displaced people/climate migrants. If we look at the present international and domestic law concerning the immigration of the people displaced by environmental issues it is lacking in several aspects. Given the situation, the only way to resettle in another country is by fitting into the categories within the immigration laws of the destination country. However, some countries have some legal framework to address the issue of climate migrants

Many countries have proceeded to the enactment of legal provisions or to modify the existing ones, to adapt to changing political, economic demographical scenarios that could occur due to population displacement. One of the First Nations to foresee the impact of the social dimension of environmental changes and try to prevent them from using legal tools was the USA using legislation called the Immigration and Nationalities Act.

Another country to take prompt steps is New Zealand, it has brought about the "Pacific Access Category" project. This framework has been used in the past for the citizens of the island nation of Samoa. Currently, it is put into force in cooperation with the governments of Tuvalu, Kiribati, Tonga, and Fiji. As described by Kiribati President Anote Tong, a "win-win" project, this so-called migration project allows 75 Kiribati, 75 Tuvalu, 250 Tonga, and 250 Fiji nationals to migrate annually to New Zealand with their companions and children. Nevertheless, its severe restrictions, on the one hand, including the age limit, set between the ages of 18 and 45, a basic knowledge of the English language, a declaration of income allowing applicants to pay the living costs of the host country and the job offer needed as prerequisites, a visa application fee of 50 New Zealand dollars, an unreasonable sum for many applicants, on the other hand, turn the project into an 'unaffordable dream' for many candidates.

Legislative proposals on this subject remain very restricted within the frontiers of the European continent. Except for the Scandinavian states that have either adopted or adapted their legislation to meet the needs of the environmentally displaced people and one or two exceptions from some other countries, the rule is that the environmentally displaced people problem remains a theoretical one for the moment. Apart from Sweden and Finland, which have chosen to explicitly offer a protective status to environmentally displaced people, the rest of Scandinavian countries, recognizing the problem, have chosen a purposive reading of their legislation, to be able to offer a protective status needed to environmentally displaced people. This is the case of Denmark, which, from 2001 to 2006, has granted residence permits to Afghan families with young children, suffering from famine due to a long drought season affecting the country at that period. Although not explicitly protecting persons fleeing environmental disasters, the "survival criterion" predicted by the Aliens Act of 1993 S.9 was widely interpreted and, after a ministerial decision of 1999, it was applied to Afghan nationals, as stated in a memorandum of the Visas and Humanitarian Affairs Office of the Ministry of Immigrants, Refugees and Integration published in 2005.

In Norway, during the 2006 parliamentary debate on the adoption of a new Aliens

Act, the immigration minister explicitly recognized the need for a legal provision, giving foreign nationals the possibility of granting residence permits based on "humanitarian" criteria including natural disasters.

Belgium also put the issue of "environmental refugees" on the table in 2006, when Deputy Philippe Mahoux proposed that a resolution "to accept the role of environmental refugees in international conventions" should be adopted. The recommendation urged the government to promote acceptance, at the UN level, of a special position in international conventions for people fleeing environmental disasters. The report, submitted to the Belgian Senate by Margriet Hermans on behalf of the Committee on International Relations and Defense, was signed unanimously. Given all the above-mentioned legislation implementation and/or adjustment measures from European countries over the last decade, there are very few examples of the entering into action of these laws relating to so-called 'humanitarian asylum' by the Nordic experts and therefore provide a rather limited field of knowledge and conclusions.

Compared to American legislation, where not only individuals but also states can submit a request for their nationals to apply the provisions of the Temporary Protective Status before the US authorities, such an option is not provided in any of the European legislation. This could explain why the environmentally displaced people's security regulations have never been utilized until this day, given the growing number of people worldwide suffering environmental disaster conditions. Nevertheless, as is well known, most of the environmental changes resulting in the migration of people occur on the continents of Africa and South Asia. The lack of information among the local population is also another factor for the inapplicability of the aforementioned provisions so far,

Why can climate refugees not be defined with the usual definition of refugees?

With the issue spreading faster than the forest fire in Australia, the United Nations seems poorly prepared. According to the United High Commissioner for Refugees (UNHCR) in the present scenario 10 million refugees are only being dealt with.

At this point, it is extremely important to deal with the term used 'Climate Refugees' because of the alarming increase in the use of the term and the situation it deals with. Before one defines Climate Refugees, it is necessary to define Refugees. Refugees are a political concept and the nuances should be understood as such.

As per the definition given in the 1951 Refugee Convention, A refugee is *"a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to*

return to it.”⁴

If we look at the term climate refugees by keeping this definition in mind, then we have a few major aspects to look at.

First, Climate migration is something that happens mostly within the country or to a third country or any international agency is not involved as such. When there is migration inside the country, then the government is responsible and they cannot be termed as climate refugees rather they would be termed as climate migrants. But if we look at the statistics and predictions then soon enough, we will have to deal with the problem of climate refugees. But in this scenario, we need to understand the problem that migration due to climate change has other factors involved as well, naming a few would be humanitarian, political, social conflict, and economic grounds. When there is an involvement of several factors then it leads not only to confusion in the legal framework but also in understanding the situation.

Second, the term refugees as one can see is a political terminology and it involves certain components such as the safety of the nations involved but when we have to talk about climate refugees then we have to plead on a more humanitarian ground rather than a political ground. We need to understand that if we try to add the term climate refugees with the present term refugees that would mean that the 1951 Refugee Convention would have to be opened which might not be the best solution in this case. In a world where there are so many people in need of protection due to persecution and the ongoing crisis, it is an extremely bad decision to calm the two terms. This leaves us with the alternative of creating a new convention which would be a lengthy political process.

In 2011, International Dialogue on Migration encouraged the use of the existing bodies of law and instruments but with the present scenario that is not enough.

Third, In the Refugee Convention, there are five grounds of persecution listed which are as follows - race, religion, nationality, membership of a particular social group, and political oppression. And for someone to fall under the category of refugees one had to qualify as someone likely to be “persecuted” which is not the case of climate refugees.

To illustrate the point further one can refer to an Australian case of 2009 which rejected the claim for climate refugees from a citizen of Kiribati. To quote the tribunal- “The Tribunal does not believe that the element of an attitude or motivation can be identified, such that the conduct feared can be properly considered persecution for reasons of a Convention characteristic as required. It has been submitted that the continued production of carbon emissions from Australia, or indeed other high emitting countries, in the face of evidence of the harm that it brings about, is sufficient to meet this requirement. In the Tribunal’s view, however, this is not the case. There is simply no basis for concluding that countries that can be said to have been historically high emitters of carbon dioxide or other greenhouse gases have any

⁴ UN Convention on refugee § 1 (1951).

element of motivation to have any impact on residents of low-lying countries such as Kiribati, either for their race, religion, nationality, membership of any particular social group or opinion. Those who continue to contribute to global warming may be accused of having an indifference to the plight of those affected by it once the consequences of their actions are known, but this does not overcome the problem that there exists no evidence that any harms which flow are motivated by one or more of the Convention grounds.”⁵

Concluding, according to the definition of refugees in the 1951 UN Convention Relating to the Status of Refugees, climate change migrants most likely would not qualify as refugees. Consequently, they have not been able to benefit from the protection offered by the Convention or claim refugee status under those national immigration laws which follow the definition of the Convention and which are capable of granting permanent residence status to refugees. Under the 1951 Refugee Convention, read in conjunction with the 1967 Protocol to the Convention, the definition of who qualifies as a refugee is rather narrow. Under the definition of the Convention, for example, people who flee their home country because of war do not necessarily qualify as refugees, although they may be covered by regional refugee protection provisions.

The definition of a refugee in the Refugee Convention is provided in Article 1(A)(2). According to the definition, those migrating as a result of climate change are not likely to count as refugees under this definition because they are unlikely to be considered “persecuted.” Five grounds of persecution are listed in the Refugee Convention: race, religion, nationality, membership of a particular social group, and political opinion. So even if climate change is considered a form of persecution, it is not likely that migrants will be considered persecuted.

The definition of the Convention also dictates that those who seek refugee status are from outside the country of which they are residents. Therefore, even if victims of climate change may prove that they have suffered persecution on one of the grounds mentioned, they would have to leave their country before they could demand refugee status under the Refugee Convention.⁶

Thus, from the above points, we can easily understand that climate refugees are more on a humanitarian ground rather than a political ground and thus can not be accommodated in the usual definition of refugees.

Suggested course of actions

(a) For the current situation of environmentally displaced people

While we are discussing environmentally displaced people we have to take into

⁵ Rafael Leal-Arcas, *Climate migrations: Legal Options*, Queen Mary University of London, 67-69 Lincoln’s Inn Fields, London WC2A 3JB, United Kingdom.

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account the situations under which they are forced to move out of their homes. One of the most detailed analysis has been done in his 1985 report by El-Hinna. He divides them under three categories which should be considered while framing laws for the people facing displacement because of the environment currently.;

Firstly, those temporarily dislocated due to disasters, whether natural or anthropogenic. The eruption of the Soufriere Hills Volcano on the Caribbean island of Montserrat in 1995-8 is a clear example of a natural disaster prompting refugees. 7000 people were forced to evacuate by these eruptions. This acute occurrence is consistent with unintentional migration, assuming that volcanoes do not have secret agendas. Technological disasters are entirely anthropogenic, but they are temporally acute and inevitably cause migration, like natural disasters. This group involves the evacuation after the release of a toxic cloud from the Three Mile Island Nuclear Power Plant in 1979 of 144,000 individuals from central Pennsylvania. Technological disasters, unlike natural disasters, arise more from human technology decisions than from incidents triggered by natural conditions;

Secondly, those permanently displaced due to drastic environmental changes, such as the construction of dams; interestingly in his category, he considers people who are removed from their lands by use of warfare techniques as well such as in the 1960s and 1970s, the huge displacement of rural Vietnamese citizens because of the use of defoliants by the United States. Herbicides, like Agent Orange, have been used to kill crops and forest resources, causing rural people to move to towns to survive. During the Salvadoran Civil War, similar attempts to force migration by damaging the ecosystem occurred. To undermine agricultural development, government troops used land mines and bombed fields, and forced rural people from their land and into cities or refugee camps. Similarly, land mines have discouraged agricultural activities in the Kurdish regions of Iraq, especially when placed near wells and roads; and

Thirdly, those who migrate based on the gradual deterioration of environmental conditions. When, where, and how they move, people from deteriorating environments have some space to negotiate. They, therefore, share a widely acknowledged lack of reference as refugees. This type of environmental refugee is best defined by the word 'environmental emigrant,' as it acknowledges the difficulty of migration choices in this situation. Refugees from disasters and forced evictions have little control over whether displacement can result from environmental changes. Ecological migrants, on the other hand, decide how they respond to environmental change. For cases, only these individuals are known as refugees when degradation progresses to a level where a catastrophe occurs.

Currently, these three categories of people are the most affected and should be given utmost importance while framing any document.⁷

Prompted by the restrictions of existing legislation, a range of plans have been put forward for proposed multilateral international legal frameworks to shield refugees

⁷ Diane C. Bates, *Environmental Refugees? Classifying Human Migrations Caused by Environmental Change*, 23 *Population and Environment* 465-477 (2002).

from climate change. Such initiatives build on many existing legal frameworks and literature, including laws on migrants, human rights law and environmental law, and literature urging the consideration of, or study of, the definition of environmental refugees. While there is much in common in the plans for new multilateral agreements, they do vary in several important aspects. Many plans, for instance, concern both internal and cross-border climate migration, while others apply only to cross-border migration, usually out of respect for domestic sovereignty. However, not everyone agrees with the starting point of these proposals, that it is desirable to put considerable effort into developing a new multilateral protection instrument covering climate migration. Some of the skeptics suggest that instead of developing a new multilateral instrument, countries might focus on improving existing migration mechanisms in national immigration laws.

Another option that has been raised is developing regional responses to climate change migration, perhaps under an international framework. A regional approach might be more desirable than a multilateral approach because individuals who move due to climate change may be more likely to move within their home country.

While it is close to impossible to regulate the problem, yet the solution can be discussion and discourse. Collective action plays a great role and it can be used in this context as well. As the question of refugees comes under the security council and it would not be healthy to open the definition of refugees thus the best possible way would be via collective action.

Regional response is more necessary as the situation of migration is more important than that of refugees in the current scenario. Countries need to consider the possibility of mass migration from one area to another due to climate changes. States with positive laws need to make more discussion around the topic to create a platform for collective action.

Until and unless an international multilateral agreement is not formed it would be the best solution, keeping in mind the sovereignty of the states and the humanitarian ground of the environmentally displaced people.

(b) For handling the situation of environmentally displaced people in future

A new multilateral convention is the need of the hour. Even though it has been mentioned time and again that a new convention would take a lot of time and might cause a lot of damage to the refugees, it should also be considered that regulating an international issue without an convention would be close to impossible to govern. While regional and collective approach should be the way until an international convention is not passed and ratified by different countries/states.

While recently the UN has started taking substantial discussion and discourse around this topic, it is high time that international bodies as well as states come together to address the issue of environmentally displaced people.

In general, terms, when arguing for the development of a new multilateral convention, the following issues should be taken into account: what national interests are at play that might support or oppose such a new legal instrument? What domestic interests might choose to influence a state's position on this question? If a convention

were implemented to cover climate migration, would a soft-law or hard-law approach be preferable? Which needs would either approach satisfy or leave uncovered? How broad and deep should the agreement be? Would it need compliance provisions and side payments for participation? Would allocations of resources through the Adaptation Fund or the Green Climate Fund satisfy the need? If so, under what rules and procedures should the funds be governed? Would alternative funding approaches be more likely to succeed, i.e., funds not connected to the UNFCCC/Kyoto Protocol? Would regional agreements in potential immigration “hot spots” such as U.S.-Mexico or North Africa-EU have more promise?

Conclusions

Mass migration of people due to migration is a serious issue and it is being aggravated every minute. While we use the term “climate refugees” there can be serious repercussions to it.

We need action at regional as well as global level. While regional actions are more inclined towards discussion and discourse, global action looks different from that.

At the global stage, five alternatives are usually considered. The first alternative is an expansion of the Geneva Refugee Convention's context. The emerging consensus, however, is that the extension and alteration of the concept of refugee is neither a viable nor a desirable choice. In the current political environment, the opening up of the Geneva Convention could risk weakening the scope of protection currently provided under the Convention to beneficiaries of international protection, although the extension of the Convention's personal scope is unlike that of the Convention. The promotion of the Internal Displacement's guiding principles is debated in the literature as one of the most promising alternatives. They lack legal force as “guidelines”, however, and instead depend on the political will of governments and other related actors to bring them into effect. It is doubtful that the development of a new legal system applicable to environmentally induced displacement would materialise, primarily because there is a lack of political will. A fourth alternative proposed is to incorporate a climate-induced migration protocol to the Climate Change Framework Convention of the United Nations (UNFCCC). The inclusion in the Cancun Adaptation System adopted in 2010 of a paragraph on climate-induced displacement, migration and expected relocation may have opened a window of opportunity to explore this alternative. A fifth alternative is to use different types of temporary aid as a method to accommodate people affected by environmental disasters, such as extreme weather events. However, protection for those who leave can only be part of a policy solution that is more comprehensive. Planned resettlement and vulnerability mitigation of affected populations by customised development cooperation initiatives should be considered in addition to the security options, as additional options that can be used for both slow-and rapid-onset events. In addition, bilateral migration agreements, including potential seasonal migration

plans, can be useful tools for promoting migration, especially at the regional level, as an adaptation strategy for longer-term environmental change.⁸

At this stage, giving international aid to countries more vulnerable to climate induced migration can also be considered as an option, but ultimately we need an international multilateral convention and we need it at the earliest.

⁸ Albert Kraler, Marion Noack & Tatiana Cernei, *“Climate Refugees” Legal and Policy Responses to Environmentally Induced Migration* (2012).