

The Impact of Climate Change and Forced Movement: an Overview of the Incompetence of Laws for Climate Change Refugees

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Abstract

Climate change will force millions of people to flee their homes over the coming century. Rising sea levels threaten to envelop small islands. Desertification will make swaths of currently occupied land uninhabitable. More instance storms will drove people, at least temporarily, to relocate to safer ground. Studies predicts that by 2050 the number of climate change refugee may dwarf the number of traditional refugees that is those entitled protection under the 1951 Refugee Convention and its protocol of 1962. Climate change is an environmental aspect, but most researchers believe that human activities around the world contribute to it. There are a number of scenarios in which people could be displaced or forced to migrate due to climate change and extreme weather events. While many of the international convention has failed to address the climate change refugees, it is the appropriate time to address this issue and develop international legal and policy framework for the refugees like those of the traditional ones.

Keywords: climate change, refugees, legal gap, UNFCC

I. INTRODUCTION

Over the past two decades the problem of climate change migration has grown. In the early 1990s, the Inter-governmental Panel on Climate Change (IPCC), a United Nations scientific body that won the 2007 Nobel Peace Prize for its comprehensive and objective reports on climate change highlighted the effect of climate change on humans. It stated that the gravest effects of climate change may be those on human migration as millions are uprooted by the shoreline erosion, coastal flood

The 2001 World Disasters Report of the Red Cross and Red Crescent Societies reported the estimate of 25 million ‘environmental refugees’. And in October 2005 the UN University’s Institute for Environment and Human Security warned that the international community should prepare for 50 million environmental refugees by 2010. The United Nations Office of the High Commissioner for Human Rights (OHCHR) began to pay special attention to

climate change, knowing that it could affect hundreds of millions of people in a number of ways; one may be through “permanent displacement”. The Deputy High Commissioner for Human Rights in 2008 said that, by 2050, more numbers of people in hundreds of millions 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 the ecosystems, by enlarging communities’ livelihood are also likely to trigger large population displacements.

The seriousness of climate change migration has been realised by both experts from environmental and human rights communities. Estimates of the number of people who will flee their homes because of climate change vary depending on the definition of the classes of displacement and the source of data. The United Nations (UN) estimated that in 2008, 20 million people were displaced by climate change. Preliminary estimates indicates that the total number of people at risk of sea level rise in Bangladesh could be 26 million, in Egypt 12 million, in china 73 million, in India 20 million and elsewhere 31 million, making the aggregate total of 162 million. At the same time, at least 50 million people could be at risk through increased drought and other climate dislocations. The Office of the United Nations High Commissioner for Refugees (UNHCR), the Central United Nation Organ that deals with the traditional refugees, reported that globally in 2006 there were fewer than ten million refugees as defined by the 1951 Refugee convention.

The Maldives could see portions of its capital flooded by 2025. Kiribati, Tuvalu, the Marshall Islands, and several Caribbean islands, are also considered to be under threats. While some states ceased to exist, other states may lose portion of territorial lands, which would in turn spur migration. Climate change also has a great impact in the coastal areas of Asia. Eighty percent of Bangladesh is delta, and the country is especially susceptible to the impacts of global warming, including enhanced typhoons, storms surges and sea level rise. In 1995, the worlds’ first climate refugee was reported when

half of the Bhola Island in Bangladesh became permanently flooded, leaving 500,000 people homeless. The scientist also predicts that the rising sea levels may ultimately swallow more than twenty percent of Bangladesh's land. While the exact number of the people who will be forced to cross borders because of climate change is not known, there are growing indications that the numbers are significant. This displacement may overwhelm not only receiving states but also the international legal system, which has yet to develop a legal regime or institutionalised response to the problem.

II. THE LEGAL GAP

Most of the relevant legal frameworks relating to refugee law and climate change law precisely and definitively address the issue of climate change refugees. No legal instruments specifically speaks to the issue of climate change refugees, and no international law has the clear mandate to serve the population, which needs human rights protection and humanitarian aid on refugees of climate change.

A. The absence of legal framework

In principle, refugee and climate change law offer possibilities for addressing the problem of climate change migration. Neither of the regimes has embraced the notion of providing rights and aid to those who flee environment disruption. The refugee regime's narrow definition of refugee restricts its power to help with the climate change situation. The Refugee Convention of 1951 defines refugee as someone with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion". Most of the commentators do not believe that environmental refugee, a concept that gained traction decades after the Refugee Convention's adoption, fall within its scope. They argue that climate change refugees have not been prosecuted in the same way that traditional refugees have. Climate change refugees can, and still do, look to their home state for protection in ways that those fleeing traditional prosecution often at the hands of the state, do not. There has also been little political mobilization to amend the core definition of the Refugee Convention, leaving behind the convention too narrow an instrument to look for protection for climate change refugees. The UNFCC applies directly to climate change, but it too has legal limitations in dealing with climate change refugees. As an international environment treaty, the UNFCC primarily concerns state to state relations in dealing with climate change, it does not discuss duties that states have to individuals or communities, like those legal aid laid down in human rights or refugee law. Although the UNFCC has an initiative to help states with adaptation of climate change, the programme does not specially deal with the situation of climate

change refugees. Like the refugee legal regime, the UNFCC was not designed for, and to date has not adequately dealt with, the problem of climate change refugees.

B. Absence of institutions

Even though the legal framework for providing protection and aid to climate change refugee could be found in international legal regime, the practical reality is that the international communities' existing institutions are not addressing the problems. No comprehensive response, either internationally or nationally, has emerged, and small and ad hoc initiatives are unlikely to provide the consistency and breathe needed for a long term solution. The UNHCR has not instituted protections for environmental refugees and has not viewed its mandate for such act of protection to climate change refugees. The UNFCC's existing institutions are ill-suited to deal on the climate change refugee problems at present. Its adaptation effort focus primarily on prevention and mitigation of climate change itself, rather than assistance for those who cross borders to flee climate change's effects. Therefore, there is a need to fill the gap because neither the refugee regime nor the international climate change regime was specifically created to solve such climate change induced dislocation. So, a major institutional and legal policy void needs to be filled.

III.OBJECTIVE OF THE STUDY

The objective of this paper is to understand how legal gap is posing a threat for climate change refugees whose basic human rights are endangered.

IV. DATA SOURCE AND METHODOLOGY

The paper is qualitative in nature and is primarily designed to document the absence of legal framework for refugees of forced migration due to climate change. Information is collected in all available formats, viz., audio, video, souvenirs, photographs etc. and obtained from published books, journals, international legislation relating to climate change and other secondary sources.

V. FINDINGS AND DISCUSSIONS

A. An Existing Climate Change Refugee Definition

Notably, there has not been any legal definition given for climate change refugee. In the public debate on climate change, politicians, journalists and activists often mention the threat of the increasing number of "climate refugees". The "climate refugee", however, does not exist legally. However, Bergmann and Boas presented a definition of climate change refugee in 2007 working paper, arguing for a global governance system to protect

climate refugees within the UNFCCC frameworks. They Define the term Climate Refugee as “people who have to leave the habitats, immediately or in the near future, because of the sudden or gradual alterations in the natural environment related to at least one of the three impact of climate change (a) Sea- level rise, (b) extreme weather events and (c) drought and water scarcity”. Currently, a central problem with the term ‘climate refugee’ is that it is not an officially recognised category under existing international law. There are no frameworks, no conventions, no protocols and no specific guidelines that can provide protection and assistance for people crossing international borders because of climate change. Existing international humanitarian law may apply in some cases of environmental displacement, but the existing rights guaranteed to refugees specifically those of international humanitarian assistance and the right of return do not apply.

Be that as it may from various perspectives this is not all that shocking. The current assortment of global law, and particularly the 1951 Convention identifying with the status of Refugees and its 1967 Protocol, was drafted during an era when the dangers of environmental change were obscure. The 1951 Convention rather ensures particularly against abuse, and authority’s differentiation of “displaced people” is accordingly constrained to an exceptionally expressed legitimate classification – to be specific just an individual who ‘owing to decently established alarm of being aggrieved for reasons of race, religion, nationality, enrolment of a specific social gathering or political feeling, is outside the nation of his nationality and is incapable, or owing to such fear, is unwilling to profit himself of the security of that national’.

B. Possibility of protection in the existing international legal regime

At present, in any case, there have all the earmarks of being no less than three conceivable outcomes that could propel the universal verbal confrontation about Climate Refugees securities and fill existing loopholes in international law. The principal alternative is to overhaul the 1951 Convention on the Status of Refugees to incorporate climate refugees and to offer lawful securities like those similar to refugees fleeing political persecution. The UNHCR is opposed to this option, claiming that it might undermine the international legal protections for refugees and present a potentially misleading link between climate change and migration. A second, more ambitious option is to negotiate a completely new convention, one that would try to guarantee specific rights and protections to climate or environmental ‘refugees’. The third option will then be investigated, namely the creation of soft laws that may eventually lead to regional hard law treaties. Since this approach overcomes some of the obstacles

of a new convention, it is currently the best option to protect vulnerable people who are internationally displaced due to climate change.

C. Problems with the Existing Legal Regimes

The existing legal regime provides some relief to the refugees of climate change but does not include Climate Change refugees in their definition and contains no legal status to the refugees unlike traditional refugees

D. The Refugee Convention

The Refugee Convention, 1951 and the protocol provide a well respected and well established human rights framework for refugees. States have for long recognised that forced migration and displaced persons pose a significant international challenge to refugees and to host countries that provide asylum. The United Nations met in 1951 to discuss and draft a convention relating to the legal status of refugees. As a result of the meeting, the United Nations adopted the milestone of the international refugee protection, the Convention Relating to the Status of Refugees. The Convention codified the basic rights of the refugees and established the minimum standards for their treatment. The issue that what constitute a “Refugee” has been changing over time. In this way, the United Nations recognised that the emergence of new refugee situation requires changes in the Convention. In the Convention a ‘refugee’ is defined as someone “who owing to 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 formal habitual residence as a result such events, is unable or, owing to such fear, is unwilling to return to it”. Thus, according to this provision, refugees are defined by three basic characteristics:

- they are outside their country of origin or outside the country of their former habitual residence;
- They are unable or unwilling to avail themselves of the protection of that country owing to a well-founded fear of being persecuted; and
- The persecution feared is based on at least one of five grounds: race, religion, nationality, membership of a particular social group, or political opinion.

It is important to stress that the term “asylum seekers” refers to persons, who have applied for asylum, but whose refugee status has not yet been determined. There are similar definitions of refugee in other international documents.

However, a refugee, according to the international refugee convention does not specifically include someone who is displaced by climate change impacts. Well known British environmentalist Norma Myers, described ‘environmental refugees’ as “persons who no longer gain a secure livelihood in their traditional homelands because of environmental factors of unusual scope, notably drought, desertification, deforestation, soil erosion, water shortages and climate change, also natural disasters like cyclone, storm surges and floods”. Avoiding the term ‘refugee’ the office of the United Nations High Commissioners for Refugees has moved towards a definition of “environmentally displaced person” as those “who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climate processes and events”. However, the legal mandate of the UNHCR precludes its formal involvement in their new challenge.

E. UNFCC

The UNFCC is the core legal instrument for climate change. The UNFCC offers possible location for climate change refugee. However, this existing treaty framework with 192 state parties has a broad mandate for tackling issues related to climate change. Some of the UNFCC provisions also relate to the essential components of the climate change refugee components. In particular, the UNFCC establishes a body of scientific experts and funding mechanism and divide the responsibilities according to common but differentiated responsibility. The UNFCC makes its mandate clear in the statement in its core objectives.

The Convention establishes its ultimate objective of which is “to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic [originating in human activity] interference with the climate system”. This objective is qualified in that it “should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner”

The UNFCC, though seeks to protect the climate system for the benefit of the present and future generation of humankind, it is however, not designed to provide human rights protections and humanitarian aid to the individuals who are affected by climate change becoming refugees after the disruption of environment. In fact UNFCC is an agreement between states to anticipate, prevent or minimize the cause of climate change and mitigate its

adverse effects. Article 4, 5, 6, and 9 of the UNFCC lays out preventive initiatives, such as the transfer of technologies to prevent emissions, plans research and scientific studies and education, training, and awareness programmes. The only resemblance of a remedial in the UNFCC is mentioned in article 4 of adaptation which does not currently focus on trans-boundary refugee problems. In fact, nowhere in the 1992 UNFCC or the more recent Bali Action Plan of December 2007, the words migrant, migration, refugee, or displacement appears. The word displacement actually occurs twice in the Bali action plan but in the context of displacement of emissions, not displacement of persons. But there is an identification of small island states and those with low lying areas particularly vulnerable countries where the parties to the UNFCC are given full consideration to what actions are necessary under the Convention. This includes actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country, parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

- (a) Small island countries
- (b) Countries with low-lying coastal areas;
- (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest
- (d) Countries with areas prone to natural disasters;
- (e) Countries with areas liable to drought and desertification;
- (f) Countries with areas of high urban atmospheric pollution;
- (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
- (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
- (i) Landlocked and transit countries.

The lack of reference of rights in the UNFCC is also another short coming. The climate change refugee instrument should establish human rights protecting for those who flee climate induced disruptions, but such provision would be seen out of place in the UNFCC. Although a protocol could expand the scope of the treaty, the UNFCC is fundamentally in line with other international environmental treaties that have not incorporated human rights norms directly. The UNFCC in its provision throws light on the impact of climate change on human health and welfare but it does not include any specific rights for the communities or the individual in its provisions. The UNFCC is in short, tailored to address different aspect of climate change than climate refugee.

F. Do the existing legal regimes protect the potential victims?

The existing human rights and humanitarian norms leave a significant segment of the potentially displaced person unprotected. The problem of security arises in the following:

Absence of temporary or permanent status: Persons moving across borders due to the sudden occurrence of the natural disaster or because they are living in high risk zones lack the traditional refugee status. While the United Nations High Commissioner for Refugees (UNHCR) has a mandate to provide assistance in cases where government cannot, there is no requirement for the host states to provide temporary or permanent status to those affected. Thus leaving them possibly without the refuge, if their own countries are unable to assist while crossing borders or remain undocumented, they may be at risk of suffering criminal sanctions, discrimination or being sent back to an uncertain or dangerous environment.

Protection as a consequence of slow-onset climate disaster: Persons moving across international borders as a consequence of on-set climate disaster are not protected. Those moving because of prolonged drought appear wholly unprotected by the humanitarian or migration management regimes in most of the countries.

Statelessness: Person moving across international borders from islands threatens by or inundated from rise of sea level or not protected wholly. International human rights law does not provide clear requirements on the status of such person. The legal protections must accord them on a permanent basis, or host states are to address their potential statelessness. The current treaties on statelessness are insufficient to address the potential for these movements under predicted climate change scenario. Convention relating to the Status of Stateless Persons do not provide specifically in this regard too.

Internally Displaced Persons (IDP) who move voluntarily: The internally displaced persons guidelines requires that a victim be forced or obliged to move in order to avail themselves the standards under the IDP principles. There is no convention for IDPs equivalent to the 1951 Refugee Convention. Under International Humanitarian Law (IHL), people are protected from and during displacement as civilians, provided they do not take a direct part in hostilities. IDPs are defined by the UNHCR in paragraph 2 of the Guiding Principles on Internal Displacement as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed

conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border”. It can be argued that those forced to migrate to other parts of the country due to drought, desertification or other slow-onset phenomenon would be covered, but this is much clear if they move in anticipation of avoiding the impacts of another drought or flood disaster.

The need for a new climate change regime

There has been a proposal to deal with climate change refugees or environmental refugees more generally by expanding the scope of the Refugee convention or the UNFCCC. However, these conventions were not designed for the purpose of climate refugee or environmental refugee. The existing regimes do not include, and in fact clash with, some of the essential components of the climate change refugee. The core and only components of the climate change refugee instrument, which are essential to achieving a comprehensive, integrated solution to the problem, demand the development of new international convention. A convention devoted to climate change refugees offers several advantages over protocols to existing instruments. Firstly, a new treaty would emphasize that this emerging problem deserves serious attention independent of other frameworks. Second, it would establish that this problem is a multidisciplinary one that needs to blend different legal and normative principles, including those of human rights, humanitarian assistance, and international environmental law. In doing so, it would maximise the availability of tools for crafting a solution in this complex situation. Finally, creating an independent climate change refugee treaty requires a new process that offers opportunities to promote, and in turn benefit from the involvement of the civil society and the affected communities.

G. CONCLUSION

There is lacuna in the international legal and policy framework in the emerging problems of climate change refugees. Over the 21st century, the issue may reach crisis levels to tens or even hundreds of millions of individuals fleeing their homes due to climate change. A new legal instrument carefully crafted and drafted to deal with the problem of climate change refugees is the best way forward. It should guarantee human rights protections and humanitarian aid for those whom climate change compels to leave their homes. Instead of attempting to squeeze the climate change refugee instrument in the Refugee Convention or the UNFCCC, both of which have restricted mandates and legal or political obligations, states and advocates should pursue an entirely independent convention. Thus, providing greater relief and protection to the refugees affected

by climate change and equally entitled to avail their basic human rights.

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