



CLIMATE REFUGEES-LEGAL IMPASSE

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Abstract

Climate refugees are increasing in number and set to rise further due to climate change¹ and inadequate mitigation and adaptation measures. This is attributed to the impact of climate change.. The indisputable causes of coastal inundations, submerging islands, desertification, and natural disasters among others fall into one category.² However, the cause for concern has been the anthropogenic factors responsible for greenhouse gases primarily caused due to increased carbon dioxide emissions.³ Climate induced displaced numbers as projected by the World Bank and other international agencies are estimated to increase several fold by 2050. Being placed in a very vulnerable position and suffering from climate injustice their human rights too are put to peril. In the absence of any acceptable definition of climate refugees nor international instrument recognizing them as refugees they are unwelcome, rather pushed back from new territories making life harder for those already forced to flee. The article addresses the plight of climate induced displacement, though different terms have been employed, in the absence of any comprehensive legal pathway and policy framework. The present write up explores their plight following their forced exit from their hearth and homes resulting in a grave existential threat. In this context issues of adaptation and loss and damage too have been touched upon towards climate action. Hence the need for a global agenda to address climate refugees has gained in added significance.

The article addresses the causes and consequences of climate change leading to their forced migration. Besides analyzing ⁴the contributory factors, role of different organizations including that of the Human Rights Council has been discussed. The manner of approach undertaken by the Intergovernmental Panel on Climate Change (IPCC) and the Conference of Parties(CoPs) have been analysed in brief, leading to certain suggestion proffered towards amelioration of their plight.

Key Words: Climate Refugees, forced displacement, climate change, migration, UNFCCC, POA

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¹ a threat multiplier

² Gregory White “Climate Refugees”—A Useful Concept, *Global Environmental Politics* (2019) 19 (4): 133–138.

³ It as Eunacia Foote who first noticed the effect of carbon dioxide in 1856

⁴ Camilla Schloss, Cross-Border Displacement Due To Environmental Disaster A proposal for UN Guiding Principles to fill the legal protection gap in Simon Beeraman & Avidan Kent (ed) *Climate Refugees Beyond The Legal Impasse?* Rutledge , London, 2018

Introduction

Climate change resulting from green house gas emissions has had a devastating impact on planet earth. It's severity has consequently resulted in grave threat not only to the quality of life but to the very existence of human and other life forms, particularly in the small island states and mega deltas. Small islands and

low lying nations are likely to experience massive dislocations. Such migration has been categorized by some as binary, climate induced and non climate induced . At times it is considered to be implied binaristic separation. '

As far back as 1992, the Intergovernmental Panel on Climate Change (IPCC) warned that climate change may gravely affect people leading to migration of millions, displaced by severe drought, shoreline erosion and coastal flooding."⁵ Irrespective of the contestations and the legal niceties or their absence, the magnitude of the problem can be judged or imagined from the fact that about 70% of the displaced peoples the world over come from vulnerable countries and therefore can be considered to be within the ' human climate niche'.

Cross-border displacement due to environmental disasters is at the heart of today's international migration discourse. Submergence of land mass due to rising sea levels among others has compelled people to migrate even to the extent of cross border migration. Stressors caused by climate events are attributed as drivers of human migration. Some among the climatic factors as mentioned above have compelled people to migrate without choice of exercising options, leading them to their fate sans any legal protection or recognition, least of all assertion of their rights. In the realm of climate change the issue of climate refugees cannot be shoved under the carpet. The words of António Guterres, the present Secretary General of the United Nations best sums up the predicament . He then observed "[c]limate change [is] now found to be the key factor accelerating all other drivers of forced displacement. These persons are not truly migrants, in the sense that they did not move voluntarily. As forcibly displaced not covered by the refugee protection regime, they find themselves in a legal void".

Forced migration or forced displacement across borders has given rise to a commonly applied term of climate refugees .But such people have to lead a perilous existence for want of legal recognition as they are still to be brought within the ambit of the refugee convention or other similar legal instruments. The gravity of the problem can be realized from the fact that almost every second a person stand displaced on account of human migration. With the likely increase in numbers, their situation is likely to worsen; the gravity of the situation can be gauged from the fact that an

⁵ Kerilyn Schewel, Migration information source, online journal, JULY 20, 2023

estimated 216 million are projected to be displaced by 2050⁶ and by the turn of the century rising seas will wipe out many islands besides leading to submergence due to tidal surges and storms. In addition, many others will be subjected to soil contamination and reduced water availability resulting in exodus of stateless climate refugees.

Though migration is not a new phenomenon, having being in existence through the centuries, refugees as understood in current parlance is not very old, dating back to the period during the world wars, particularly the World War II. However, migration and displacement on account of climate change, accounting for green house gases in particular is considered to be of recent origin; with their numbers increasing very fast, affecting the process of human mobility. In fact, it can be said to be rapidly increasing. It is almost tautological that in the Anthropocene, human mobility is being affected by our impact on the global environment.⁷ Yet absence of an effective legal regime has compounded the problem and migration in the absence of segregation pose hurdles in proper assessment while exacerbating vulnerabilities.

To date, the relevant international regulatory framework is patchy and certain gaps seem to exist.⁸ However of late at the regional level, the EU despite not formally recognizing the refugees, due to growing concern has taken action to support and help such countries impacted by climate-related stress towards developing resilience.⁹

Definition of a Refugee

A precursor to arriving at the definition of the term climate refugee, one has to have proper understanding of the term refugee and how it is being defined and recognized legally. According to the 1951 Convention relating to The Status of Refugees, a person is regarded as a refugee when he or she is compelled to leave or flee the country of origin for fear of persecution. Going by the definition of the Convention, refugee is a person “who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”.¹⁰ Climate asylum does not figure among the five criteria. In contrast, a person forced to flee or compelled to relocate within the country on account of manmade situations or leave on account of natural causes are termed as internally displaced people, although some among them land up as ‘externally displaced

⁶ As per Groundswell report referred subsequently.

⁷ Benoit Mayer, Who are “Climate Refugees”? Academic engagement in the post-truth era, in *Climate Refugees* in Simon Beeraman & Avidan Kent (ed) *Climate Refugees Beyond The Legal Impasse?* Routledge, London, 2018

⁸ Avidan Kent and Simon Behrman, *Facilitating the resettlement and rights of climate refugees* (Routledge 2018)

⁹ The concept of 'climate refugee': Towards a possible definition, think tank European Parliament, [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698753](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698753) accessed on 22.7.2023 at 10.15 am

¹⁰ Article 1

persons'.¹¹Hence, neither persons that are coerced to migrate or displaced on account of climate change qualify or get recognition either under the 1951 Convention or the Protocol of 1967 or for that matter under the wider notions of the regional instruments governing refugees.

Climate Refugees or Climate Migrants

Currently the United Nations or its specialized agencies are yet to arrive at a definition of climate refugees which results in the absence of adequate protection in legal parlance, compounded by being embroiled with political connotations. Neither there is any consensus on defining the term nor on the desirability of a separate instrument humanizing the displaced. Stating that deciphering the notion of the climate refugee is no easy task, it has been argued¹² that anthropogenic climate change is likely to function as one of many compounding factors contributing to human displacement. Despite lacking in recognition, the external climate migrants though limited at present come under the ambit of the Nansen initiative of 2012. As a corollary, in the above context a person having to leave one's place of residence on account of climate change or climate induced factors should be regarded as displaced. In this context, it may be stated that food and water shortages happen to be among the complex contributory causes of migration or displacement

A scenario envisaged for the next quarter of a century or so appears to encounter a situation of over two hundred million having to migrate, leaving their homes. Such displacement differs from the internally displaced as their possibility of return no longer exist. If fact, in their situation, the push factor prevails over the pull factor.¹³ In other words, such displaced people can be said to be the victims of desperate circumstances attributed to severe climatic events resulting from anthropogenic factors rather than natural environmental perturbations.¹⁴ For instance, the populations inhabiting the atolls due to geomorphologic factors may suffer the consequences of climate change much earlier compared to other land mass. They therefore have surfaced as a challenge of increasing proportion. A case in point happens to be the Tuvalu volcanic archipelago that comprises three reef islands and six atolls. Such people are commonly regarded as climate refugees or climate change refugees, which the world bank has termed as 'internal climate migrant'. This newly emerging concept is increasing by the day due to intensification of climate change primarily on account of greenhouse gases. Yet there are no immediate answers in respect to their plight despite the need for support and protection of their enshrined human rights. Of varied

¹¹ European Parliament, *The concept of 'climate refugee' Towards a possible definition*

¹² Jan Selby et al. (2017)

¹³ *the Third Pole*, https://www.thethirdpole.net/en/hub/climate-refugees/?gclid=Cj0KCQjw756lBhDMARIsAEI0AgkJ89u6zI87AY0CAYbBOjkNj-gX542_nN7DMCcoG2aRwrJrsasrWI4aAkkdEALw_wcB accessed on 7/7/2023 at 9.39 pm

¹⁴ Carol Farbotko, Heather Lazrus, *The first climate refugees? Contesting global narratives of climate change in Tuvalu*, *Global Environmental Change Science Direct, Elsevier Volume 22, Issue 2, May 2012, Pages 382-390 (naturally occurring draughts and flooding)*

contestation, it lacks in any agreed definition or an international legal framework, despite the urgent necessity.

The term, environmental refugees coined by Essam El-Hinnawi, an UNEP expert in the year 1985 considered 'environmental refugees' as: "...those people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life'.¹⁵ The said definition is being extended in respect of climate refugees as well whose identity have been deeply impacted for parting ways from their lived experiences with their lands to which they have been emotionally attached.¹⁶ According to Norman Myers, environmental refugees are "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 as cyclones, storm surges and floods."

The first document naming 'climate refugees' however was published by the Worldwatch Institute in the 1988¹⁷ though the term ecological refugees first appeared in the 1970s.¹⁸ Yet, without employing the term refugees, the Office of the United Nations High Commissioner for Refugees moved towards a definition of 'environmentally displaced persons' 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 climatic processes and events";¹⁹ in other words, it emphasises upon some form of international protection. Although international organizations are shying away from recognizing climate refugees, they have been veering around to address the causes, issues and consequences of climate induced migrants or such displaced people

. The International Organization for Migration has proposed a definition for people who are forced to migrate due to climate related changes and environmental consequences. It has termed "environmental migrants" as people or groups of people who, due to a sudden or progressive change in the environment that adversely affects their lives, are forced to leave their habitual

¹⁵ *Supra n.2*

¹⁶ *Liam Ryder Saddington* ^a, Tiger Hills, Geopolitics and humiliation: The 'sinking islands' of Tuvalu, *Political Geography* Volume 105, August 2023, 102938, <https://www.sciencedirect.com/science/article/pii/S0962629823001166#bib31> accessed on 17.7.2023 at 7.54 pm

¹⁷ *infra 11*

¹⁸ Refugee Studies Centre 'Environmentally displaced people, Understanding the linkages between

environmental change, livelihoods and forced migration' (University of Oxford, November 2008)

<http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCPBI-Environment.pdf> accessed 09 December 2012

¹⁹ *id*

homes, either temporarily or permanently, and who move either within their country or abroad.²⁰ Biermann and Boar²¹ have observed that people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alteration in their natural environment related at least to one of the three impacts of climate change: direct impact of climate change to sea level rise, extreme weather events, and drought and water scarcity. They²² have suggested five principles to address the climate refugee problems:

1. planned relocation and resettlement;
2. resettlement instead of temporary asylum;
3. collective rights for local populations;
4. international assistance for domestic measures; and
5. international burden sharing

These may be considered as contributions mooted for addressing the problem of climate change refugees though admittedly easier said than done.

In 2010 Cancun showed the way during COP in the shape of an Agreement on Long-term Cooperative Action where the aspect of climate induced migration was discussed. Explicitly for the first time it foresaw the need for inclusion of climate-related displacement into national plans and the acceptance of the argument that this issue should be solved on the basis of cooperation in order to reach a global and international solution.²³The relevant terms of the agreement and subsequent developments will be reverted to later. Environmental Justice Foundation defines a climate refugee as “[p]ersons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely affects their lives or living conditions, are obliged to leave their homes either temporarily or permanently, and who move either within their country or abroad.”²⁴ It has to be borne in mind that climate related hazards have exacerbated situations in countries like Somalia, Yemen and Syria leading to severe strife and armed conflict which does not bode well, for such situations may result in many other jurisdictions. With current

²⁰ Khan KA, Zaman K, Shoukry AM, Sharkawy A, Gani S, Ahmad J, et al. Natural disasters and economic losses: controlling external migration, energy and environmental resources, water demand, and financial development for global prosperity. *Environ Sci Pollut Res*.

²¹ 2010: 67

²² *ibid*, “Preparing for a warmer world: towards a global governance system to protect climate refugees”, *Global Environmental Politics*, Vol. 10 No. 1, pp. 60-88.

²³ Climate Change Normative Gaps and Possible Approaches, (2012) p. 50 <<http://www.unhcr.org/cgi>

[bin/texis/vtx/home/opendocPDFViewer.html?docid=4f33f1729&query=Climate%20change,%20natural%20disasters%20and%20human%20displacement](http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4f33f1729&query=Climate%20change,%20natural%20disasters%20and%20human%20displacement)

NO SHELTER FROM THE STORM THE URGENT NEED TO RECOGNISE AND PROTECT CLIMATE REFUGEES,

EJF_Climate-Refugee-Report_2021_final.pdf

policies in place, the world is currently on pace to warm by 2.7°C. A difference between a 1.8°C and a 2.7°C world would mean tens of thousands of more people on the move inside countries, hence the urgency in their legal recognition.

International Instruments

Article 14 of the Universal Declaration of Human Rights recognizes the right of refugees to seek and enjoy asylum in other countries. However the provision does not extend to climate refugees. They are unable to avail of the said provision as it does not relate to climate refugees in general or such displacement in particular.

Similarly they are outside the ambit of the refugee Convention as mentioned earlier. The Convention as well as the Protocol does provide for grant of refugee status to such people. Under international law it has a mandate to consider refugee status to others than on account of armed conflict leading to their migration if so covered under the provision of 'Legal Considerations' as provided for by United Nations High Commissioner for Refugees.

It is considered instructive to refer to the Cartagena Declaration on Refugees which extends the definition to persons fleeing "events seriously disturbing public order". This seems to be in accord with the present situation relating to climate refugees. However the Cartagena Declaration is limited in scope and extent besides being of non-binding character.

There have been certain important developments bordering on events worth consideration since they have the propensity to provide direction towards any international regime addressing climate refugees. Worth mention are the Nansen initiative, Legal Consideration and Global Compact, other than the COPs advances besides the significant observations of the IPCC.

Forced Displacement

Persons flee sudden-onset disasters and at times due to slow onset. The undermining factors that compel people flee from their place of habitual residence are on account of climate change, primarily resulting from anthropogenic factors, whether legitimized or not on account of certain compulsions. Mostly they comprise globally vulnerable and disempowered communities as a consequence of human induced factors and have become subject of increasing attention worldwide (Reuveny, 2007, Bettini, 2013). Therefore compelling circumstances, like consequences or impact of climate change being uneven and fragmented, attributed droughts or floods, soil or sand erosion, or droughts and water insecurity in certain places, glacial melts, rising seas, salinity in farms or desertification, deforestation, various hazards and damaged ecosystems resulting from extreme weather events cause significant changes on account of climate change happen to be the leading cause of migration driven displacement or can be termed as triggering human mobility. The issue has been summed up by the António Guterres in the following words "[w]hat we are now seeing are more and more people that are forced to flee because of lack of

water, because of lack of food, because of extreme poverty and many of these situations are enhanced by climate change.”

Besides many refugee communities also reside in ‘climate change hotspots’ making them vulnerable at all times which force them into jeopardising their security. Such people will very likely be compelled to relocate.

The portends does not auger well for such people being in legal limbo and critics have gone on to term it as an apocalyptic narrative.²⁵ Every second a person is said to be displaced, with passage of time their figures look set to arise. As per Groundswell report, the World Bank estimates a staggering 216 million by the year 2050²⁶ with hotspots likely by 2030. In the year 2020 alone 30 million people were displaced²⁷ in search of safety and have emerged as an undeniable reality. The causes or stressors leading to climate refugees, a discursive category²⁸ are also a result of storms, draughts and increasing frequency hurricanes in addition to those already mentioned. However the silver lining is that adequate measures like effective mitigation and adaptation including measures at clean development mechanism could reduce such migration by 80 percent.²⁹

Climate activist have been vouching to treat them as refugees, hence the said terminology or identifying trait. On the other hand, climate change has assumed catastrophic proportions, a consequence of that being increasing displacement. The United Nations General Assembly in relation to the Global Compact on Refugees (GCR) observed that “climate, environmental degradation and disasters increasingly interact with the drivers of refugee movements”.³⁰ The UN through the Global Compact for Safe, Orderly and Regular Migration (GCM), acknowledges under its Objective 2 the urgent situation of migrants being displaced because of climate change.³¹ Despite certain shortcomings the GCR has stated that if found appropriate the UNHCR will advise on measures to protect those displaced by climate change.³² However it has to be borne in mind that due to the nature of its non binding character and the absence of their recognition as refugees they largely stand excluded from the global compact on refugees. This does not undermine the

²⁵ a culminating or decisive event

²⁶ Climate Change Could Force 216 Million People to Migrate Within Their Own Countries by 2050, World Bank Press Release , 13, Sept, 2021

²⁷] International Federation of Red Cross and Red Crescent Societies (2021) Displacement in a changing climate: Localized humanitarian action at the forefront of the climate crisis. cf,

²⁸ Karen Elizabeth McNamara ^a, Chris Gibson We do not want to leave our land’: Pacific ambassadors at the United Nations resist the category of ‘climate refugees’ *Geoforum* Volume 40, Issue 3, May 2009, Pages 475-483 <https://www.sciencedirect.com/science/article/abs/pii/S0016718509000335> accessed on 17.7.2023 at 8.46pm

²⁹ *ibid*

³⁰ https://www.unhcr.org/gcr/GCR_English.pdf accessed on 7.7.2023

³¹ *Supra* n 2

³² *Supra* 16

need for durable solutions to the climate induced displaced from being recognized as refugees through a separate international instrument.

The developments are also associated with the term ‘climate reductionism’ which refers to ‘the increasing trend to ascribe all changes in environment and society to climate change’ (Hulme Citation2011, 255–256) – a climate reductive translation of migration represents migration as caused by climate change.

The present effort is to address the issue of climate change refugees since they are very delicately situated in the absence of any specific legal recognition. In fact, at times they are considered in contradistinction to environmental refugees as mentioned above, further exacerbating their plight. Climate refugees being forced to leave their place of residence and domicile on account of severe climatic events are at times deprived from any adaptation policies and measures in their original settings. They happen to be among the most vulnerable people in the world, being subjected to extreme weather events.

It would be instructive to refer to the Intergovernmental Panel on Climate Change. According to the IPCC, three consequences of climate warming appear to be the most threatening potential causes of forced migration. If no effort is made to protect the groups of people at risk, then they have no alternative but to emigrate. Recurring incidents. of a) Hurricanes, torrential rains and floods³³ b) Drought and desertification³⁴ and c) Rising sea levels^{35 36} are considered to be among the prime attributable factors.

Initiatives at Conference of Parties

Climate-fuelled crises are already a devastating reality, forcing people to flee and making life more precarious for people already uprooted from their homes³⁷ fearing epochal impact, harbouring on gloom and doom. The elephant in the room largely remained untouched and unattended to.³⁸ The situation has come to such a pass that in the present day world climate induced displacement has surpassed those affected by war and conflict Their increasing numbers has drawn the attention worldwide. Yet until 2010 no concerted efforts seem to have been made by the international community. In terms of Paragraph 14(f) of COP Decision 1/CP.16 , Cancun for the first time

³³ The impact of hurricanes and floods in population displacement is among the easiest to identify, as they manifest themselves in a brutal and direct manner

³⁴ Freshwater availability in Africa and Asia is projected to decrease due to climate change, which can adversely affect more than a billion people by the 2050s.

³⁵ An increase in sea level is irreversible and manifests itself over a long period of time. The projected sea level rise makes populations living at an altitude of less than 1 metre directly vulnerable

³⁶ Etienne Piguet, ‘Climate change and forced migration’ (New Issues in Refugee Research, Research Paper No. 153, January 2008) <http://www.bvsde.paho.org/bvsa/cd68/newissues153.pdf> accessed 09 December 2012

³⁷ UNHCR, Climate change and disaster displacement

³⁸ Avidan Kent and Simon Behrman, Climate-induced migration: Will tribunals save the day?

called for measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels'.³⁹ The following year CoP 17 held at Durban did not have much to offer.

COP 18 in 2012, under Paragraph 7(a)(vi) of Draft Decision 3/ CP.18 acknowledged the need and desirability to study the patterns of climate migration, displacement and human mobility in more detail.⁴⁰

During CoP 19 the Warsaw International Mechanism for Loss and Damage was adopted calling for measures at mobilization of funds towards technology and capacity building initiatives in countries vulnerable to global warming. This was followed up at Paris during CoP 21 asking the Executive Committee of the Warsaw International Mechanism on Loss and Damage to work towards creating a task force to “develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.”⁴¹

Among these, the Paris Agreement is considered a breakthrough for migration, as it specifically referred to migration and human mobility, calling for respecting and promoting rights of migrants, besides deciding on a mandate to establish the Task Force on Displacement. However the primacy of a legal mandate was found to be wanting. Without legal protection to the climate displaced their problems stands compounded with displacement having become very much a complex issue. Efforts to address the drivers that compel people to leave their places of origin call for intervention and coordination.

The 2019 UNFCCC also known as CoP 25 held in Madrid, Spain too considered climate change and migration focusing around the review of the Warsaw International Mechanism for Loss and Damage, and the role of the Task Force on Displacement. The second phase of the task force was launched as a side event in 2019 that included an approach at strengthening inclusion of human mobility. Discussions were also building on the 14th Conference of the Parties (COP14) of the United Nations Convention to Combat Desertification (UNCCD), which took place in New Delhi from 2 to 13 September 2019. The International Organization for Migration contributed to the migration-related discussions throughout the negotiations.

CoP 26 came in both for praise and disappointment- human mobility, migration and displacement through several events were held emphasizing on adapting to communities and natural habitats. However despite the pervasive phenomenon CoP 26 failed to connect.

³⁹ UNFCCC Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010. <https://undocs.org/FCCC/CP/2010/7/Add.1>

⁴⁰ UNFCCC Draft Decision 3/CP.18.

http://www.ciesin.columbia.edu/repository/entri/docs/cop/FCCC_COP18_dec03.pdf

⁴¹ UNFCCC Draft decision -/CP.21. <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>

It was only at the recently held Sharm El-Sheikh climate change conference at Egypt in 2022 that agreement could be reached on establishing a fund to compensate vulnerable nations for 'loss and damage for people associated with catastrophic effects' from climate-induced disasters. This has been considered as “an important step towards justice” as “a result of much homework” as put by the UN Secretary General. Towards this end the recommendation by the transitional committee set up for the purpose will come up before CoP 28 to be held at Dubai during fall of 2023. This ensures some follow up measures though considering past experience immediate outcome may take some time.

It has been observed that in terms of the adaptation framework climate induced displacement and migration are eligible for billions of dollars pledged by the Global Environmental Facility (GEF). Despite the marginalization, the issue of climate refugees or as termed, forced displacement requires to be considered as a wide component of adaptation towards minimizing the adverse impact.

Nansen Initiative

Initiated under the aegis of the IOM, Nansen Initiative can be regarded as a bottom up consensus built up process, providing for a protection agenda for the natural and climate induced disaster displaced people across geographical frontiers. It has been launched in 2012 and operationalised in the year 2015 based on three pillars or key principles⁴², namely, international cooperation and solidarity; standards for the treatment of affected people regarding admission, stay, status; and operational responses, including funding mechanisms and responsibilities of international humanitarian and development actors.⁴³ It resulted in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change that supports efforts at integration of effective practices by the states and sub regional entities.⁴⁴ The initiative as based on the outcome of the Nansen Conference on Climate Change and Displacement in the 21st Century was hosted by the government of Norway in Oslo in June 2011.⁴⁵ The Nansen Protection Agenda presents states with useful guidelines and principles on the regulation of climate-induced migration, including criteria for the term ‘cross-border disaster-displaced persons’;⁴⁶ useful practices with respect to individuals’ admission and stay in host states;⁴⁷ practices concerning the

⁴² “to guide responses to some of the urgent and complex challenges raised by displacement in the context of climate change and other environmental hazards” (Preamble)

⁴³ <https://environmentalmigration.iom.int/nansen-initiative> accessed on 19.7.2023 at 12.2 pm

⁴⁴ <https://disasterdisplacement.org/the-platform/our-response/> accessed on 19.7.2023 at 1.33 pm

⁴⁵ Nansen Principles at www.regjeringen.no/upload/UD/Vedlegg/Hum/nansen_prinsipper.pdf

⁴⁶ The Nansen Initiative, *Agenda for the protection of cross-border displaced persons in the context of disasters and climate change* (2015) <<https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>> 22.

⁴⁷ Nansen Agenda, Ibid, 26

protection of human rights (including on non-return/non-refoulement), and for cases in which long-term stays are required.⁴⁸

Building upon the initiative, the World Humanitarian Summit held in 2016 launched the state led Platform on Disaster Displacement. The European Union and Kenya led Platform builds partnerships between policymakers, practitioners and researchers and constitute a multi-stakeholder forum for dialogue, information sharing as well as policy and normative development⁴⁹towards such displaced peoples even across international borders. It is a continuing initiative that held its fourth meeting in March 2023.

The UNFCCC-led Taskforce is a cross-institutional body with an objective “to develop recommendations for integrated approaches to avert, minimise and address displacement related to the adverse impacts of climate change.”⁵⁰In its report of 2018, it addressed issues such as governance structure, preparedness and the streaming of migration into other related policies.⁵¹However, these have not gone far enough to provide for any regulatory framework to fill up any gaps from the perspective of climate refugees. Yet they have their value in providing blueprints and guidelines.

Legal Considerations

Adverse effects of climate change and disasters lead to diverse consequences for states, societies and individuals as well as relationship between climate change and human rights. These legal considerations are intended to provide guidance for governments, legal practitioners, administrative and judicial decision-makers and UNHCR staff in applying international refugee and human rights law to claims for international protection made in the context of the adverse effects of climate change and disasters-a broader view is the need.

Para7-12 of the 1951 Convention requires to be addressed separately in the context of climate change despite adoption of a holistic test.⁵² Therefore it may be recognized that people seeking international protection in the context of the adverse effects of climate change or disasters may indeed lay valid claims for refugee status.⁵³

⁴⁸ Nansen Agenda, Ibid, 28-29

⁴⁹ The Platform on Disaster Displacement , <https://disasterdisplacement.org/> accessed on 19.7.2023 at 1.21 pm

⁵⁰ UNFCCC COP Decision 1/CP.21, para 49.

⁵¹ paras 28,29 and 33.

⁵² AF (Kiribati) [2013] NZIPT 800413, New Zealand: Immigration and Protection Tribunal, 25 June 2013, para. 64, www.refworld.org/cases,NZ_IPT,5dad6b754.html. Teitiota v. New Zealand, note 3 above. Nansen Initiative Protection Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, 2015, nanseninitiative.org/wpcontent/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf, paras. 55 and 56, which is endorsed by 109 States

UNHCR issued Legal Considerations to guide interpretation and steer international discussion on such claims. Regardless, the term “climate refugee” is not endorsed by UNHCR, hence it is more accurate to refer to “persons displaced in the context of disasters and climate change.”⁵⁴

Following the 2016 United Nations Summit for Refugees and Migrants, the Global Compact on Safe, Orderly and Regular Migration ⁵⁵ was adopted at an intergovernmental conference on migration held in Marrakesh, Morocco in 2018. It is the first intergovernmental agreement, prepared under the auspices of the United Nations, to cover all dimensions of international migration in a holistic and comprehensive manner.⁵⁶ The compact clearly states that governments should work to protect climate refugees in the countries of their arrival by devising planned relocation and visa options if adaptation and return is not possible in their countries of origin. It incorporates the concept of human rights protection into the planning and implementation of climate change measures. It recognizes that “climate, environmental degradation and disasters increasingly interact with the drivers of refugee movements”.

It bears mention that the international migration has remained ubiquitous and an issue of critical importance concerning improved migration governance. Grounded on international human rights law, it addresses migrants in desperate situations of vulnerability towards facilitating exercise of their human rights. It is to meet every four years beginning with the year 2022 through International Migration Review Forum involving multi stakeholders and accordingly met from 17th to 20th May, 2022. Among others, it decided upon developing mechanisms and indicators to measure progress during the course of deliberations on two thematic issues.⁵⁷

The mandate of the Special Rapporteur of the Human Rights Council on the Promotion and Protection of Human Rights in the Context of Climate Change should tend to climate refugees. “The effects of climate change are becoming more severe, and the number of people displaced across international borders is rapidly increasing,” said Ian Fry, the UN Special Rapporteur on Human Rights in the Context of Climate Change recently stated so on the 27th June, 2023. Displacement across borders has been termed by him as profoundly worrying. Ian Fry said that “[t]he Human Rights Council should prepare a resolution for submission to the UN General Assembly urging the body to develop an optional protocol under the Convention relating to

⁵⁴ , UNHCR issues these legal considerations pursuant to its mandate included in the Statute of the Office of the United Nations High Commissioner for Refugees (paragraph 8(a)), in conjunction with Article 35 of the 1951 Convention relating to the Status of Refugees, Article II of its 1967 Protocol, Article VIII of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and Commitment II(e) of the 1984 Cartagena Declaration on Refugees

⁵⁵ A/RES/73/195) The Executive Committee is comprised of ILO, IOM, OHCHR, UNDESA, UNDP, UNHCR, UNICEF, UNODC and WHO, with IOM as the Coordinator and secretariat

⁵⁶ <https://www.ohchr.org/en/migration/global-compact-safe-orderly-and-regular-migration-gcm> accessed on 20.7.2023 at 9.45 pm.

⁵⁷ Assessing the progress, gaps and challenges in the implementation of the Global Compact on Migration and on Commitments to advance the implementation of the GCM including in advancing the recommendations of the Secretary-General Report.

the Status of Refugees to address displacement and legal protection for people all over the world affected by the climate crisis”.⁵⁸ Such observation by an expert eminently suited to assess the situation should be given serious thought and acted upon with the the avowed aim of bringing about an international instrument recognizing the right of climate induced refugees replacing the alternate vocabulary of ecological displacement.⁵⁹

The International Law Commission though not directly seized of the matter has taken up the task of considering protection of persons in the event of disasters . In so doing, it has determined that humanitarian assistance is an important element to consider and that a rights-based approach that encompasses the “responsibility to protect” should also be considered. This stand also evocatively considers the rights based approach which through extension can be made applicable to climate refugees.⁶⁰

Mention by way of passing reference may also be made of the following global policy processes such as the Sendai Framework for Disaster Risk Reduction initiative 2015-2030, the 2030 Agenda for Sustainable Development, the World Humanitarian Summit, the New York High Level Meeting to address large movements of Refugees and Migrants and the Global Forum on Migration and Development.

An important development worth mention relates to the 29th March ,2023 resolution adopted by the United Nations General Assembly to call on the International Court of Justice (ICJ) to provide an advisory opinion on the obligations of countries to address the climate crisis. The said resolution has been hailed as a win for climate justice of epic proportions facilitating the rule of international law, placing human rights and intergenerational equity.⁶¹ The advisory opinion may have the occasion to address the problems of climate refugees . Once the court proceeds with the matter some light may be thrown.

⁵⁸ (A/HRC/53/34)

⁵⁹ Lydia Ayame Hiraide Climate refugees: A useful concept? Towards an alternative vocabulary of ecological displacement politics Vol 43 issue 2 <https://journals.sagepub.com/doi/full/10.1177/02633957221077257> accessed on 23.7.2023 at 4.29 pm.

⁶⁰ Eduardo Valencia-Ospina, Second Report on the Protection of Persons in the Event of Disasters, Geneva, May 7, 2009, U.N. Doc. A/CN.4/615, available at http://untreaty.un.org/ilc/documentation/english/a_cn4_615.pdf (noting that the ILC presented the question: “How has the United Nations system institutionalized roles and responsibilities, at global and country levels, with regard to assistance to affected populations and States in the event of disasters—in the disaster response phase but also in pre- and post-disaster phases—and how does it relate in each of those phases with actors such as States, other intergovernmental organizations, the Red Cross movement, nongovernmental organizations, specialized national response teams, national disaster management authorities and other relevant actors?”).

⁶¹ <https://www.theguardian.com/environment/2023/mar/29/united-nations-resolution-climate-emergency-vanuatu> accessed on 23.7.2023_at 7.56 pm

Conclusion

The want of an international legal instrument governing climate change refugees has placed people subjected to forced displacement in a very delicate situation as discussed herein fore. There is an urgent necessity to recognize climate refugees providing for a legal regime under an international instrument as at present they do not have any international legal status.

Efforts undertaken leading to the first decade of the present century have not been very encouraging. Yet over the past decade some advance have been witnessed which however fall short of the expectations. Such a state of affairs continue to place the forcibly displaced across international borders at a great disadvantage putting their lives to peril. Of late, however one cannot allege or find fault bordering on procrastination on the part of the international community. Yet it cannot but be emphasized that it is time for the international community to find out a mechanism through which climate refugees would stand legally recognized. Climate refugees face greater political risks than refugees who flee their homes due to conflict or political oppression (National Geographic Society, 2016).

Viewing it as a global problem requiring effective measures, rather a global responsibility, one can vouch for a separate, independent legal and political regime created under a Protocol on the Recognition, Protection, and Resettlement of Climate Refugees to the United Nations Framework Convention on Climate Change. As mooted, one can think of the desirability of well founded fear of inundation and extinction as ground for undertaking such an exercise.⁶² The UNHCR has shown serious concern on accommodating climate refugees in safer places or countries and recognizing them as refugees. The grave threat and injustice faced by climate refugees, unforeseen factors and tipping points have to be addressed. Only thereafter the onus of affixing responsibility for the climate refugees by the polluting countries, and rehabilitating them properly can be undertaken.⁶³ The imperatives of deservingness of climate refugees has to be taken into account as submergence of islands,⁶⁴ coastlines and swathes of lands becoming unlivable are likely to increase flow of climate refugees. Response to climate refugees has to be premised on an adequate understanding and responsive legal action. The question remains where does the remedies lie till such time a

⁶² Frank Biermann and Ingrid Boas ,Protecting Climate Refugees, The Case for a Global Protocol https://web.archive.org/web/20180420130022id_/http://oppenheimer.mcgill.ca/IMG/pdf/climate_change_refugees.pdf accessed on 22.7.2023

⁶³ C Okereke, Climate justice and the international regime, <https://wires.onlinelibrary.wiley.com/doi/10.1002/wcc.52>, accessed on 23.7.2023 at 4.05 pm

⁶⁴ In May 2016, five islands were lost due to sea level rise in the Solomon Islands. Kiribati purchased 20 sq. km of land in Fiji in 2014, and the Maldives are also planning to purchase land in another country (Caramel, 2014). These are some of the examples on how some nations are responding to climate change impacts.

solution by way of any recognition of climate refugees through an international instrument is arrived at.

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