

Climate Change Migrants: Barriers to a Protection Framework and the Requirement for Migration Inclusion

Shruti Gattani

Student, Christ, Deemed to be University

ABSTRACT

This research paper delves into the critical importance of how miserable climate change has made the life of the people who are continuously migrating from the place of their livelihood. Despite the increasing climate change, there isn't a framework for international agreement or a plan to address the anticipated sharp rise in migration. Climate change is a major driver of migration, forcing people to leave their homes in search of better livelihoods and safety. Migrants who are displaced by climate change are at increased risk of human rights violations throughout the migration process, including before, during, and after migration. This study looks at the requirements for migration inclusion and the obstacles to a protective framework for climate migrants. It makes the case that the existing international legal frameworks pertaining to human rights and refugees are insufficient to meet the demands of climate migrants. The paper advocates for the creation of a new international legal framework that guarantees the involvement of climate migrants in efforts for climate change adaptation and mitigation, as well as their specific protection. This paper highlights the important but unexplored relationship between ongoing pressures between the migrants and the climate change. It posits that the rise in climate change puts pressure on the migrants to move from one place to another. This uncertainty challenges of climate change achieve effective and equitable change in the lives of the migrants. To aid protection for the people who are displaced or induced to migrate by the impacts of climate change, however the priority cannot remain entirely on barriers. Climate change is a chance for local leaders and the world community to plan for its effects, meet their human rights obligations, and help those who are already being hurt by it and those who will be in the future.

KEYWORDS: climate change, framework, human rights, migration, protection

1. INTRODUCTION

The increasing number of global migrants is simultaneous along with the climate change seriousness worldwide. Currently, neither international nor regional law talks about the environmental drivers of migration and there are severe barriers in legal protection for this type of migrants. The effect of climate change is no longer scientific conjecture. Environmental landscapes are changing as a result of desertification, rising sea levels and temperatures, and an increase in climate-related calamities.¹

¹ Intergovernmental Panel on Climate Change (IPCC), Fourth Assessment Report of the IPCC, 'Climate Change 2007: Impacts, Adaptation and Vulnerability' (IPCC 2007) 14, 35, 110; IPCC, Summary for Policymakers in 'Climate Change 2013: The

Repeatedly changing climate can induce migration. It is expected to cause or contribute to the displacement of millions of people.²

We sit at the edge of an ecological crisis.³ It is a compound challenge. Climate change impacts everything from the access of food and water, public health, land use, mobility, city planning and biodiversity, to basic human security to human rights. Ultimately, addressing climate change requires us to rethink who we are and how we coexist.

Debates are centred on whether climate change migrants are legally distinct groups or not, and if so how to expand environmental law to encompass climate change migrants, and whether a new international framework or agreement is needed. Advanced calls or solutions are yet to produce meaningful agreement on how to proceed.⁴

This paper will explain why vigorous measures to label climate change-induced migration have not occurred and what can be done to subsume migration issues into the climate change disquisition. If proper protection is to be achieved for climate change migrants, then a classification and estimation of the barriers such an effort faces is the first necessary step.

One prospect is to provide climate change migrants by redefining the definition of “refugee” by which the migrants who move from one place to another, state to state, country to country, basically crossing the borders can be eligible for refugee status and international status. But the majority of environmentally displaced people are unlikely to benefit from a legal redefinition because: (1) Many will remain domestically displaced and unable to access global safeguarding, (2) Climate change frequently has gradual consequences that don't always require migration, and (3) A variety of reasons to be granted refugee status would be challenging to separate from one another, making the process of determining one's status more complex.⁵

Instead of this, it should implement proactive measures to provide other safer paths of migration. Such measures should include planned relocation options for environmentally vulnerable populations.

In light of this objective, Part 2 covers the legal loopholes in the current international refugee, environmental, and human rights law regimes that affect the protection of migrants affected by climate change.

Part 3 look at the reasons these legal loopholes continue and talks about the obstacles creating a framework of protection for migrants affected by climate change. International and National action till now didn't take place in most of the places just because of the absence of political desire to generate legal obligations.⁶

Physical Science Basis, Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC 2013) 4-12.

² See, eg, A Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law' (2008) 30L & Policy 502, 506 (noting that estimates for climate change displacement range from 50-200 million by 2080); C Beyani, 'Report of the Special Rapporteur on the human rights of internally displaced persons' A/66/285 (9 Aug 2011) (citing IPCC estimate that climate change could displace 150 million by 2050).

³ Cinnamon Carlarne, Climate Change, Human Rights, and the Rule of Law, 25 UCLA J. INT'L L. FOREIGN AFF. 11 (2020)

⁴ Eg, while the issue of migration entered into UN Framework for Climate Change Convention (UNFCCC) discussions and draft negotiations text in 2008, and was included in the Cancun Adaptation Framework in 2010, further concrete action or incorporation of migration induced by climate change under the UNFCCC or into regional and international planning has stalled. See, K Warner, 'Climate and environmental change, human migration and displacement: Recent policy developments and research gaps' UN/POP/MIG-9CM/201 1/10 Ninth Coordination Meeting on Int'l Migration (UNU-EHS 12 Feb 2011) 4 (outlining initial mobilization of the humanitarian community and subsequent UNFCCC delegate and Party discussions that brought migration issues into the UNFCCC climate change negotiations process)

⁵ Kimberly A. Erickson, Filling the Protection Gaps for Climate Change and Disaster-Induced Migrants, 25 HUM. Rts. BRIEF 131 (2022).

⁶ J McAdam, 'Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer' (2011) 23 JRL 2,4.

The current scenario is the International and National community is unable to come to an agreement to protect climate change migrants.

Protection initiatives are often hampered by institutional capacity limitations. The millions of people who are expected to be displaced by climate change are not well served by the United Nations High Commissioner for Refugees (UNHCR), nor does it seem to have the will or the means to take up their cause. Because of the multifaceted transition of climate change, civilization is unable to process around climate change-induced migration issues.⁷

Part 4 examines activities that can and should be made to solve the issue of climate change migrants while keeping these obstacles in mind. Most of the drivers of migration have wide reaching consequences. The requirements of climate change migrants vary based on the economic factor, type of displacement, the political and cultural conditions of affected populations. For all these reasoning, regional approaches must come into programmes or policies that direct climate change-induced migration.⁸

Climate change will affect all countries in all parts of the globe. But its impact will be distributed differently among generations, regions, age classes, occupation, gender and income groups. On researches base on conclusiveness, it is accepted that anthropogenic activity dictated by the tracking of development have led to the crisis of climate change.

There are still many questions and uncertainties concerning climate change. This paper does not provide a comprehensive plan for the development of a new international framework, nor does it address every issue brought up by migration and climate change. Rather, it examines the barriers to protection and backs a strategy that views intentional migration as a viable adaptive mechanism in spite of the lack of political room. By placing more emphasis on problem-solving than on national security worries, a more fruitful conversation about climate change and how it relates to migration can happen.⁹

2. THE LEGAL LOOPHOLES THAT AFFECT THE PROTECTION OF MIGRANTS AFFECTED BY THE CLIMATE CHANGE

There are number of violations which occurred in human rights affected by climate change-induced migration. The legal frameworks such as human rights law, refugee, climate change does not give solutions for the climate change-induced migration. Their protection does not even fall under the ambit of International Environmental Law Agreements.¹⁰ Climate change constantly giving rise to the severity of the natural disasters.

2.1 Climate Change, Migration and the defence of Human Rights

Climate Change is expected to deteriorate a number of human rights such as basic rights of livelihood that is right to life, food, water, health, etc which certainly gives an adequate living standard. Difficulty is seen to access these rights and it is the major fundamental for the displacement. In fact till date there is no

⁷ B Docherty and T Giannini, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees' (2009) 33 Harvard Environmental Rev 349, 359.

⁸ Beyani, above n 2, para 28; Hartmann, above n 7, 238 (arguing that climate change needs to be viewed together with socioeconomic pressures)

⁹ Lauren Nishimura, 'Climate Change Migrants': Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies, 27 INT'L J. REFUGEE L. 107 (2015).

¹⁰ See, Docherty and Giannini, above n 8, 358 (noting UNFCCC focuses on state-to-state relations)

specific right for the safe and healthy environment.¹¹ As of now, climate-change migrants contemplate expansion of their inclusion.

Many think that only by conveying about the climate change will consider human rights, this is a wrong conception as there is no development until and unless making this as a legal requirement.¹² The international community have to enforce rights steadily and a clarity on what circumstances the actions would be considered as violations.¹³ Nevertheless, there are obstacles in creating a universal framework for the rights of the migrants therefore no new protection for climate-induced migrants and may not happen soon.

2.2 Immigration due to climate change is not ‘refugee’

There is a major problem regarding the international refugee law. For the protection under the refugee law, one must have to prove that he/she has a real agitation of being mistreated for the specific reasons such as social groups, political beliefs, race, religion or nationality.¹⁴ People who are compelled to migrate for the environmental reasons do not come under the ambit of the international refugee law. Therefore, automatically they are not protected by the rules of the refugee convention. For the protection, they have to show that they are agitated in addition to climate change effects and crossed international borders. Then only they will get the protection under the international refugee law.¹⁵

In the culture of migration there is a division which is seen. One is where the refugees get the local protection and the other one is that where they don't get any kind of protection and they have to seek help from the other means.¹⁶ Many countries want this division to carry forward as it reduces the cost, responsibilities and any other legal obligation. But, people can seek help from the rule of non-refoulement,¹⁷ it defines that people can't go back to the places where they would face harm. It is up to the migrants to prove themselves that they are in danger if they are sent back.¹⁸ There are concerns that by expanding the definition of ‘refugee’ will actually hamper the ones who are traditionally recognised as refugees.¹⁹

Some people think that the “Guiding principles on Internal Displacement”²⁰ can be a good starting point for the protection of the climate change migrants, even these principles are not the actual laws and it is not accepted in all the countries.²¹ These principles are actually defined for the internally displaced persons (IDPs) the ones who are forced to live their livelihood because of war, violence, human right abuses within their own country and didn't crossed the border.²²

¹¹ See, UNHRC, Report of the OHCHR on the relationship between climate change and human rights' A/HRC/10/61 (15 Jan 2009) para 18

¹² Hartmann, above n 7,238.

¹³ UNHRC, Report of the OHCHR, above n 79, para 70 (climate change impacts human rights but 'it is less obvious whether, and to what extent, such effects can be qualified as human rights violations ...')

¹⁴ Refugee Convention, above n 48, art I(A) (2)

¹⁵ *ibid*; Protocol Relating to the Status of Refugees, adopted 31 Jan 1967, entered into force 4 Oct 1967, 606 UNTS 267 (removes geographical and temporal limits of Refugee Convention)

¹⁶ Betts, above n 28,362.

¹⁷ Non-refoulement is provided for under the Refugee Convention and has arguably risen to the level of customary international law. See, Docherty and Giannini, above n 8, 358

¹⁸ *Ibid*

¹⁹ See, NRC, above n 15, 18

²⁰ UN Economic and Social Council (ECOSOC), Guiding Principles on Internal Displacement (Guiding Principles), E/CN.4/1998/53/Add.2 (22Jul 1998) accessed 5 Feb 2013.

²¹ See Beyani, above n 2, para 39.

²² Guiding Principles, above n 60, Introduction, para 2 (emphasis added).

2.3 Migration and climate change are not sufficiently addressed by UNFCCC.

The way in which climate change migrants are addressed under the United Nations Framework Convention on Climate Change (UNFCCC) is constrained.²³ Although the UNFCCC admits that climate change can lead to migration, the agreements and measures pertaining to this are optional, vague, and don't result in any tangible policies or activities.²⁴ It is challenging to take individual rights and protection into account because the UNFCCC concentrates on relations between nations.²⁵ Without a significant shift in priorities and interest in the subject, it is unlikely that the issue of migration and displacement brought on by climate change would be sufficiently addressed. It is evident that nations are reluctant to impose particular rights responsibilities under the UNFCCC.

3. OBSTACLES TO INTERNATIONAL REMEDIES

International cooperation and remedies are more important than ever in this increasingly interconnected world of complex global challenges. Global cooperation is needed to address problems like public health crises, economic inequality, climate change, and conflict resolution. However, there are numerous obstacles and difficulties that frequently make it difficult to reach successful global remedies.

Obstacles to an International framework includes -:

3.1 The militarization of assistance and the security rhetoric

Climate change-induced migration is increasingly being presented as a national security issue rather than a human right issue.²⁶ There are several consequences of this approach such as :-

3.1.1 Blaming migrants – This cause shifts the focus from the climate change effects to the migrants itself and their home countries. It transfers accountability from addressing the environmental problems that cause migration and displacement. It actually makes the shortage of the resources to deal with the environmental issues.

3.1.2 Militarized responses – This describes the negative consequence with a militarized mindset. It involves armed forces, strict border controls to control migrants. This approach is more troublesome as it harms vulnerable people, create tensions and challenges. And, it is not even beneficial for the climate change migrants as it leads to human right violations making the situation even worse.

3.1.3 Resource scarcity narrative – It focuses on the problem of population and poverty as the chief wrongdoer. By this it draws attention away from the necessity of holding powerful individuals and industries responsible for their contributions to resource depletion and environmental degradation.

Although addressing security concerns is crucial, putting too much emphasis on national security may compromise the protection of migrants due to climate change and minimize the wider effects of the phenomenon on humankind. In the context of climate-induced migration, it is critical to strike a balance between addressing security concerns and defending human rights.

²³ UNFCCC, above n 34

²⁴ Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, in Report of the Conference of the Parties on its sixteenth session, Addendum, Part Two: Action taken by the Conference of the Parties, FCCC/CP/2010/7/Add.1, 15 Mar 2011 (Cancun Adaptation Framework) para 14(f).

²⁵ Docherty and Giannini, above n 8, 358.

²⁶ Id

3.2 Insufficient political resolve

It is one of the most significant obstacles to a protection regime for climate change. It signifies the challenges such as –

3.2.1 Reticence of states - Certain developed nations are reluctant to address climate-induced migration because they are content with the status quo and are apprehensive about the responsibilities and difficulties that coming up with a solution would bring.²⁷

3.2.2 Legacy of the refugee regime - States that choose to be bound by these obligations voluntarily are part of the international legal framework for protecting refugees. This voluntariness factor affects how nations react to migration brought on by climate change because, absent new agreements that they voluntarily enter into, they are not inherently required to protect and aid migrants brought on by climate change.

3.2.3 Political decision – It emphasizes how political considerations play a role in the decision to offer international protection to migrants, including those who have been forced to flee their homes due to climate change. Governments assess the possible costs and benefits of providing protection, and their willingness to take on new responsibilities regarding migration brought on by climate change may be influenced by these political factors.

To put it briefly, creating a legal framework for migrants affected by climate change necessitates overcoming perceived, political, and economic barriers that have been difficult to resolve internationally. These complexities must be taken into account in realistic solutions.

3.3 The constraints of civil society

Although civil society is effective in addressing many issues, it is difficult to advocate for migration caused by climate change because of the complexity of the issue, the lack of a shared narrative, and the difficulty of identifying the precise causes and accountable parties. Because of this complexity, protecting migrants impacted by climate change requires a more concentrated and well-coordinated effort.

4. IN ORDER TO PROGRESS CONSERVATION EFFORTS, REFRAME THE CONVERSATION AND INCORPORATE MIGRATION INTO A STRATEGY FOR ADAPTATION TO CLIMATE CHANGE

To attain conservation for climate change migrants, it is necessary that we should take necessary actions that will be effective for the refugee. There are certain ways which can be followed such as-

1. Understand that as there are multiple causes and impacts of climate change in different places, protection measures must be customized for each circumstance.
2. Take into account these migrants' capacity to adjust to their new surroundings and unique situations in light of climate change.
3. Address migration brought on by climate change through local and regional strategies.²⁸

Knowing that climate change will force some people to relocate is an opportunity to prepare ahead of time and develop support systems for those affected. Nevertheless, developing a system to safeguard these migrants is not without its difficulties. It argues that we should see migration as an adaptive response to climate change rather than seeing it as a danger to national security. This allows us to prioritize the rights

²⁷ See, Refugee Convention, above n 48.

²⁸ See, McAdam, above n 4,4

and needs of migrants and incorporate migration into larger climate change plans and discussions—it does not imply that we should disregard security issues.

4.1 Including migration in plans for adapting to climate change.

The way we consider and prepare for the migration brought on by climate change needs to alter. It makes numerous crucial suggestions:

- Instead of seeing migration as a negative, we should see it as a constructive and necessary reaction to climate change. It is crucial to adopt this new viewpoint in order to develop better policies.
- One important component of our overall plans for addressing the effects of climate change should be migration.
- To ensure that this movement is as secure and advantageous as possible, we must prepare for it and oversee it. Examining the unique requirements of those who must relocate is part of this.
- Prioritizing local and regional methods is crucial when formulating strategies about migration and climate change.
- It's critical to comprehend how local economies are impacted by climate change and the factors that influence migration decisions. This will support their need and livelihood planning.
- Managed migration provides a means for people to adjust to changing circumstances while also lessening the damage caused by climate change.
- Plans for migration should be conducted with the permission of the impacted communities, in accordance with human rights principles.
- Decision-makers must be aware of the advantages and disadvantages of migration in order to include it in adaptation strategies for climate change.
- When addressing migration brought on by climate change, planned migration should be taken into consideration since it can provide longer-lasting answers than conventional methods.
- Property rights, compensation, and community identity are only a few of the issues that climate change-related migration raises, all of which require a methodical approach.
- Since climate change migration is a global issue requiring local solutions, regional agreements and cooperation are crucial.
- Collaboration between nations and local stakeholders is essential for a climate change migration policy to be effective.

It simply, talks about how we should reconsider and adjust our plans for those who will have to relocate due to climate change. It implies that we ought to see migration as a constructive reaction and include it into our climate change mitigation plans. To ensure that this migration is a safe and advantageous process, we must prepare for it, uphold people's rights, and collaborate both locally and globally.

4.2 The distinct problem that climate change presents

Although climate change is a global issue, its effects will be felt more strongly in some places than others, particularly in underdeveloped nations where populations that are already vulnerable are most at danger.²⁹ People may be forced to relocate as a result of these effects, either as a last resort or as a preventative

²⁹ See, Foresight, above n 21, 9, 12; V Kolmannskog, 'Climate change, disaster, displacement and migration: initial evidence from Africa', New Issues in Refugee Research (UNHCR 2009) Research Paper No 180,4 (highlighting the importance of protections for those who remain behind in the wake of climate change events).

action before things get really bad. In contrast to migration resulting from conflict or persecution, which is frequently erratic, migration brought on by climate change is anticipated to be extensive and prolonged. Because it affects different communities differently and is influenced by a variety of issues like politics, society, and the economy, it needs international cooperation and planning. It is difficult for activists to use current laws and conventions to protect these migrants because of their complexity. As a result, we need to reconsider migration and protection since there's a chance that the conventional approaches won't work and that those who have been uprooted by climate change won't be able to go back home.

4.3 Putting off the security conversation

The close relationship between migration and climate change, especially in developing nations where the effects of climate change are most severe. It also highlights the security issues surrounding this migration, including the security of food, energy, and resources.³⁰ Though these worries dominate conversations, they frequently result in politically and militarily motivated responses that impede efforts to safeguard migrants impacted by climate change.³¹ By emphasizing security above all, aid to migrants and their needs is no longer seen as a duty but rather as a humanitarian gesture. Additionally, it enables states with large emissions to evade accountability and refuse refugee requests by using security and sovereignty as justifications.

The section proposes a reframe of the security discourse to emphasize a planned and proactive approach, while highlighting the benefits of migration as an adaptive mechanism, in order to tackle these difficulties. Transnational advocacy networks have the potential to reshape the narrative by prioritizing the needs of migrants and their home nations. In areas where there is a dearth of support for civil society or campaigns centred around rights, this change may open up additional political opportunity.

It gives an illustration from the Lower Mekong Basin, an area that has been severely impacted by climate change.³² It demonstrates how stakeholders in areas with little political room for advocacy may be drawn in by focusing on issues like food, energy, and human security. It is possible to create a foundation for change by include migration as a beneficial adaptive mechanism. Recognizing moral and ethical duties to vulnerable populations and assigning some accountability to the states that produce the greatest amount of greenhouse gas emissions while also benefiting from them should be part of this shift. The arguments for restorative justice and humanitarianism, which emphasize either historical accountability or international duty, might be used to categorize these moral imperatives.

These moral obligations must be balanced with national security considerations, though, as they are not going to go away from the conversation about climate change. The passage highlights the necessity for the international community to acknowledge its responsibility to protect those displaced by climate change and to prioritize the rights and needs of migrants in order to develop meaningful advocacy and solutions for these individuals.

³⁰ See, Stimson Report, above n 159

³¹ Hartmann, above n 7,240

³² Food and Agriculture Organization of the United Nations (FAO), 'Mekong Basin' (FAO 2011) accessed 14 June 2014. In Vietnam, the Mekong Delta supplies more than 50% of the country's rice, 65% of its fish, and 75% of its tropical fruits. Can Tho University IOM, UN Development Programme, 'Climate Change Adaptation and Migration in the Mekong Delta (Can Tho University, 4-5 June 2012) 25 accessed 20 Mar 2013 (Mekong Report).

CONCLUSION

The interconnected problems of climate change and human migration are coming together at this pivotal point in human history to produce a dangerous situation. Rising temperatures, changed landscapes, and an increase in natural disasters are all consequences of climate change, which is becoming more and more destructive. Human migration is increasing as a direct result, with millions of people predicted to be displaced. Regrettably, groups that are already vulnerable and underprivileged are disproportionately affected by these climate change effects. Notwithstanding these obstacles, the predictable character of climate change offers the international community and decision-makers a chance to act decisively and safeguard the rights of those who are suffering and will continue to suffer.

But before any meaningful action is taken, it is imperative to comprehend the challenges facing the creation of a protective framework as well as the existing political and social environment surrounding the discussion of migration brought on by climate change. Protection efforts are hampered by the complexity of defining who is a climate change migrant and resolving the gaps in international refugee, environmental, and human rights law safeguards. There are several institutional and political obstacles that keep these legal gaps in place. Developed countries frequently lack the political will or motivation to take on more protective duties because they may view doing so as admitting responsibility for the effects of climate change. Furthermore, the discourse around national security has redirected focus from the concerns of migrants affected by climate change, normalizing the reasons behind environmental degradation and elevating mass migration to the forefront of policy and legal debates. Efforts to improve protection for these migrants are further complicated by issues with institutional capacity, budget limitations, the complex causal causes of climate change, and the limitations of civil society's climate activism.

The majority of environmental and human rights efforts encounter opposition, and for migrants affected by climate change, attaining effective protection requires a fundamental transformation in the way governments see migration. This shift will necessitate shifting the main emphasis from worries about national security to the many and distinct needs of migrants. In contrast to other migration drivers, climate change-induced migration has worldwide implications that are locally affected by a variety of cultural, political, and social factors as well as geography and adaptation capacity. Acknowledging the expected consequences of climate change is a chance to plan ahead for future migration and environmental shifts. In order to conduct planned migration programs rather than depending on the reactive management and governance methods that are generally used for displaced populations, this proactive approach necessitates realizing that migration can serve as a beneficial adaptive mechanism. Additionally, given the challenges in establishing an all-encompassing worldwide framework and the fact that the effects of climate change would differ throughout local populations and areas, preliminary solutions had to be developed at the regional or multi-level. All regulated migration programs, though, have to respect for fundamental human rights.

Although changing the way that people view migration and concentrating on local and regional solutions might not be enough to address all of the root causes of legal gaps, these adjustments are an essential first step in furthering the protection of migrants from climate change. We can start tackling the difficult problems that lie ahead by adopting these shifts in viewpoint and strategy.