

Climate Refugees: A Lacuna in A Nonexistent Refugee Law

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Abstract

In a technological advancing world, climate-induced displacement has been escalating for years now, yet climate refugees still lack legal recognition under both Indian and international frameworks. Although the 1951 Refugee Convention defines refugees as those individuals who are fleeing persecution based on race, religion, nationality, social group, or political opinion, the convention has failed to including those displaced by climatic events such as floods, droughts, rising sea levels, etc. The title of this paper, “Climate Refugees: A Lacuna In A Non-existent Refugee Law” is a rhetorical emphasis to address the significance of the subject matter that has been ignored for far too long. Thus, the title is deliberately provocative to address the dual failure in the part of the policy-makers of the country, leading the readers to engage with the rhetoric with their own suggestions as this paper examines the absence of refugee laws in India, which has not ratified the 1951 Convention, leaving refugees without formal recognition or protection. It would also highlight the legal gaps concerning climate refugees through an analysis of international conventions, regional agreements, and case studies, underlining the urgent need for legal reforms in the subject. The paper further highlights potential solutions for the same including climate humanitarian visas, the Model International Mobility Convention, and human rights law that protect displaced populations. By focusing on the complexities and challenges present in addressing climate-induced displacement, this paper aims to find potential solutions for those seeking refugee from displacement due to climate change.

Keywords: Citizenship, Refugees, Climate Refugees, 1951 Convention and Refugee Protection

Statement of Problem

Although climate change and climatic disasters make up a huge factor that displaces a person from their country of origin or forces a person into moving from their country of origin, it is yet to be appropriately recognized as a ground to attain refugee status. And India being a country that has not even ratified the 1951 Refugee Convention, it has not recognized the status of climate refugees either. These are all impacts of climate change leading to climate disasters due to which millions of people are displaced or forced to be displaced. Climate-induced displacement is influenced by countless factors, including socio-economic, political, and environmental dynamics and thus has to be comprehensively captured. A lacuna in the existing international and national law on this area leads to various complexities since communities facing climate induced displacement widely vary due to different cultural, social and geographical backgrounds. While regional policies exist on this subject in other countries, India’s policy has turned a blind eye to this issue like it had not ratified the 1951 Convention leading various challenges for those who take up refuge in India due to climate change.

Scope and Limitation

The scope of this paper covers the lacuna in the law with respect to climate refugee and the need for such

policies that can be taken from existing international conventions and other continental conventions pertaining to refugees. It also encompasses probable definitions and conceptualizations of climate refugees, including their characteristics, causes, and implications that are derived from existing concepts and definitions. The paper aims to analyse existing national and international policies and legal frameworks related to climate refugees, as well as gaps in addressing their needs and rights while devising mitigation strategies aimed at preventing or mitigating the issues faced by climate refugees and provide them with appropriate viabilities of resettlement. The paper has its limitation in the both conceptualizing and contributing to this issue due to the inadequate availability and reliability of data, particularly in regions where climate-induced displacement is prevalent. With respect to these scope and limitations, the paper altogether aims to provide a comprehensive understanding of the term climate refugees while recognizing the complexities and challenges inherent in addressing it.

Research Objectives

The research objective of this paper is to identify and critically examine the concept of Climate Refugee in the context of Indian legal system and the lacuna that exists in the current framework with respect to the recognition and protection of individuals who were displaced due to climate change. The paper's objective further aims to study relevant instances, understand the practical implications of the subject and explore viable policies and legal solutions to recognize and protect climate refugees, addressing the growing challenges posed by climate-induced displacement.

Research Questions

1. Whether definition and conceptualization of the climate refugee with respect to existing international and regional convention is sufficient in India?
2. Whether there exists a lacuna or gap in law with respect to climate refugee affected by climate change at national, regional, and international levels in order to address the challenges present in it?
3. Whether potential solutions exist to protect climate refugees and address the need for international cooperation and policy development with a focus on the rights of climate refugees?

Methodology

The paper uses both primary and secondary data while dealing with the emergence of climate refugee and the lack of legal frameworks on the same area. Its uses primary data such as regional and international conventions. And for secondary data it uses a detailed analysis of existing research paper and qualitative cases studies, seeking to provide insights into the emergence of climate refugees and explore policies that could address their plight.

Introduction

Over 376 million people have been dislocated due to the result of climate disaster since 2008. The IDMC (Internal Displacement Monitoring Centre) is one of the world's leading source of data and analysis on internal displacement and its 2019 report pointed out that over 5 million people were displaced in India and Bangladesh due to the cyclones Fani and Bulbul and droughts while floods in Afghanistan have displaced over 1.2 million people in the past few years. 36.8 million people were displaced because of natural disaster caused by climate change in the year 2022 alone, where many found refugee within their

own country while some were forced to move abroad.¹ This clearly indicates that climate change can be considered as one of the world's highest contributors to refugee crises and with that arises the need for addressing the issue of climate refugee that is people who become refugees due to climate change and climatic disaster. Although the number of climate-induced displacements grow larger day by day, the term 'climate refugee' still lacks any kind of legal recognition either under Indian or international law. This leaves those displaced individuals without adequate legal protection or support systems. It is crucial to recognize climate refugees in India not only to ensure the protection of these displaced population but also to cover the broader necessity for national security, resource management and social stability. Lack of legal framework for climate refugees, deprive them of accessing fundamental rights such as shelter, health, and education. To bridge this gap a whole policy reforms, both at the domestic level and international level is needed, to give climate displacement legal status.

The term climate change refers to the periodic shift in weather patterns and temperatures. Normally these changes would be due to the changes in the sun's activity or a large volcanic eruption, but since the 1800s, human activities have been the main cause of such climatic changes, commonly due to the usage of fossil fuels. Burning of fossil fuels for energy releases a variety of greenhouse gases including carbon dioxide and methane which trap the sun's heat inside the earth and raises its temperature. Further the cutting down of forests is also another reason which combined with other factors contributed by the pursuit for energy, industrial growth, transport, building infrastructure and other have led to the effects of climate change that persists in the contemporary world.²

Climate change is also having severe impacts in India with multiple problems that influence both the dimensions of environment and socio-economic stability in India. And thus, the need to shelter Indian refugees of climate change in neighbouring countries would raise the question of whether India itself shelters climate refugees or ignores their plight hiding behind bilateral decision similar to the way it has delt with the plight of refugees seeking shelter in India. Sources have shown that soon western India which includes Gujarat and Rajasthan will be facing severe water scarcity which would impact the livelihood of millions who depend on agriculture and groundwater.³ Similarly coastal regions are equally at risk since the rising water levels have shown to submerge a large tract of land which would endanger the densely populated areas such as Mumbai and Kolkata since they are particularly vulnerable to floodings and storm surges.⁴

Climate refugees are people or groups who have been compelled to flee their homes as a result of abrupt or slow environmental changes brought on by climate change. The issue of climate-induced displacement is becoming more and more important in India as the nation deals with growing environmental problems such resource scarcity, harsh weather, and rising sea levels. India is especially susceptible to the many effects of climate change because of its varied topography, which includes hilly areas, dry plains, river deltas, and coastal belts. And similarly, nations that are near India are also susceptible to such changes which leads to the migration of climate refugees from there to India. Although the term climate refugees

¹ Part 1 Internal Displacement in 2019, <https://www.internaldisplacement.org/globalreport/grid2020/downloads/2020-IDMC-GRID-part1.pdf>, (5:00 PM, 10TH February 2025).

² UNITED NATIONS: Climate Action, <https://www.un.org/en/climatechange/what-is-climate-change>, (5:00 PM, 10TH February 2025).

³ National Communication (NATCOM) (2004): "Vulnerability Assessment and Adaptation", Chapter 3, India's Initial National Communication to the UNFCCC, Ministry of Environment and Forests, Government of India.

⁴ Dasgupta, S, B Laplante, S Murray and D Wheeler (2009): "Sea-level Rise and Storm Surges: A Comparative Analysis of Impacts in Developing Countries", Policy Research Working Paper No 4901, World Bank.

still being undefined without proper recognition, there is a major lacuna in the law to treat climate refugee or provide them with the same rights that refugees are usually given

CHAPTER: 2

INDIAN CITIZENSHIP AND CLIMATE REFUGEES IN INDIA

Climate Refugees and India

The term 'climate refugees' came to prominence in 1985, introduced by Essam El-Hinnawi, an expert associated with the UN Environment Programme (UNEP). El-Hinnawi's definition describes environmental refugees as people who are compelled to leave their traditional homes, either temporarily or permanently, due to significant environmental disruptions, whether natural or human-induced, which threaten their livelihoods or seriously diminish their quality of life.⁵ However, legally and practically, the status of these individuals remains uncertain. The 1951 Refugee Convention⁶ clearly addresses the plight of those who are being persecuted based on their race, religion, nationality or political opinion but fails to set up any provision that recognizes those who are displaced solely due to climate-related issues. Thus, it can be noted that the term 'climate refugee' lacks any kind of legal recognition or definition leading to it facing various legal and practical challenges both in Indian and international forums.

Two major factors set apart climate refugees and other refugees that leads to the lack in the recognition of climate refugees. The first factor is that, while some climate refugees are displaced due to specific disasters, others are displaced due to gradual impacts of climate change like global warming or rising sea levels. This gradual onset makes it challenging to establish a direct link between climate change and their refugee status. Secondly, a majority of climate refugees are prone to internal displacement which is not covered in the global refugee status which is more about those who cross international borders. And with that before opting to attain refugee status from another country, they have the option to resettle themselves in their own country. Similar options are not available for those recognized under global legal framework, which sets up the second distinction.⁷ Consequently, those who are displaced due to climate change and climatic disasters, known as climate refugee in normal parlance are mostly overlooked in discussions regarding global migration. Despite facing various threats, they are still overlooked and lack any kind of formal definition or recognition under the 1950 Refugee Convention or any other Indian or international provisions.

Climate change will cause more people to move across borders from nearby countries especially Bangladesh, into India. Experts think that by 2100 rising sea levels could leave up to 120 million people without homes in both India and Bangladesh. Because Bangladesh is so close to India, many of these people who lose their homes might move to Indian cities. This is a problem because these cities already lack sufficient resources, face overpopulation, and struggle with inadequate infrastructure.⁸ The anticipated influx of climate migrants will put immense pressure on India's urban centres. This will worsen current issues, including housing shortages, water scarcity, food insecurity, and high joblessness.

Indian Citizenship and Climate Refugees

⁵ Shreya Singh, Climate Migration and Displacement: Challenges and Responses, Indian Council of World Affairs, 2024.

⁶ 1951 Refugee Convention.

⁷ The slow onset effects of Climate Change and Human Rights Protection for cross-border migrants, Platform on Disaster Displacement, UNHR.

⁸ Rajan, Chella S (2008): "Blue Alert", Greenpeace India Society

Indian Citizenship is governed by the Constitution of India and the Citizenship Act that has been amended on various occasions. The concept of Citizenship means “a person who enjoys full civil and political rights”⁹ and it is of utmost significance since it recognizes the legal relationship between an individual and the State. And through this recognition, the individual is conferred certain rights, duties and privileges by the State. With respect to the Constitution of India, the provisions related to citizenship are laid down under Part II, from Article 5 to Article 11. While Article 5¹⁰ provides for citizenship of individuals domiciled in India at the commencement of the Constitution, Article 6¹¹ confers the rights of citizenship of certain persons who have migrated to India from Pakistan and the rights of citizenship of those who migrated to Pakistan in Article 7¹². Further Article 8¹³ establishes the rights of citizenship of persons of Indian origin residing outside India and Article 9¹⁴ revokes an Indian’s citizenship if they acquire the citizenship of a foreign state.

With advent of Article 11¹⁵ which gives the power to regulate the right of citizenship by law to the Parliament, the CA, 1955¹⁶ was promulgated which provided for the acquisition and determination of Indian citizenship. The Act has been amended several times from then including the CAA, 2019¹⁷ provided a path to Indian citizenship for persecuted religious minorities from Afghanistan, Bangladesh, and Pakistan who entered India on or before December 31, 2014. The Act was also subject to significant legal and political debates although it failed to cover the lacuna in refugee rights. While citizenship in India is a dynamic legal concept influenced by constitutional provisions, statutory laws, and judicial interpretations the plight of refugees, particularly climate refugees has been duly ignored.

Usually, in order to establish a claim for refugee status, the claimant must be at genuine risk of persecution. Courts in various countries have developed legal tests to determine the standard of proof needed to demonstrate this risk or a well-founded fear of persecution. These tests help assess whether the claimant’s fear is credible and reasonable. The burden of proof changes depending on where you are, but the main goal is to check if the risk is real and serious making sure those who need help get it.¹⁸

In India, they decide whether to give someone refugee status by looking at each case. The Indian government typically addresses refugee matters individually. For example, Afghan refugees with Indian heritage and those who arrived in India via Pakistan without the necessary documentation were permitted to cross the border between India and Pakistan until 1993. After that, the government changed its policy, restricting the free entry of Afghan refugees and although many Afghan Sikhs and Hindus fleeing persecution met the criteria for refugee status, they were not officially recognized as refugees. In contrast, during Myanmar’s 1989 pro-democracy suppression, around 3,000 people from Myanmar sought refuge in India and the government of India following international norms, accepted them as refugees. Similarly, when Sri Lankan Tamil refugees were fleeing to Tamil Nadu, they were permitted entry despite the fact that they lacked travel documents. While the government of India may not have officially declared any

⁹ Halsbury Law of India, Vol. 34, 80.017, 2007

¹⁰ INDIA CONST. art. 5.

¹¹ INDIA CONST. art. 6.

¹² INDIA CONST. art. 7.

¹³ INDIA CONST. art. 8.

¹⁴ INDIA CONST. art. 9.

¹⁵ INDIA CONST. art. 11.

¹⁶ The Citizenship Act, 1955, No. 57, Acts of Parliament, 1955 (India).

¹⁷ The Citizenship (Amendment) Act, 2019, No. 47, Act of Parliament, 2019 (India).

¹⁸ Mary Crock, “Apart from US or to Part of US? Immigrant’s Rights, Public Opinion and the Rule of Law”, 10, IJRL. 49, 59-76, (1998).

refugee policies, recognized refugees in India generally face minimal interferences. There have been cases where recognized refugees have faced prosecution for illegal entry or overstaying, prompting intervention from the National Human Rights Commission in situations involving Sri Lankan Tamil refugees.¹⁹

In India, the term "refugee" is not fully recognized, and "climate refugees" lack legal acknowledgment even under international law, which complicates the situation for those displaced by climate-related events. The 1951 Refugee Convention defines refugees as people who have crossed international borders because of persecution related to their race, religion, nationality, or membership in a particular social or political group. However, it does not account for those who are displaced due to environmental issues.²⁰ This situation highlights serious issues regarding the rights and protections for climate migrants, particularly in nations such as India. India is not only dealing with internal displacement but is also expecting an increase in migrants from neighbouring countries like Bangladesh due to rising sea levels and environmental decline.²¹ The lack of legal recognition restricts access to fundamental human rights, such as housing, education, and healthcare, worsening the challenges faced by displaced communities.

Need for an Enactment

The term climate refugee has been subject to various debates specifically due to the absence of an appropriate definition. The lack of a clear definition has created a significant number of challenges in deciding who would qualify to be recognized as a climate refugee. And without a proper criterion, it has become tedious to establish a legal framework that would recognize and protect those who are displaced due to climatic issues and are in vulnerable situations without any support. The ambiguity has also complicated the responsibility of the states and international organizations in addressing the needs of such groups. Numerous legal scholars have argued on the issues that could be potentially misleading due to the term 'environmental or climate refugee'. And these stem from an assumption that suggests that environmental factors are not the only elements responsible for displacement. This is because Migration is usually driven by multiple reasons such as economic, political, social and environmental factors. Thus, it is believed by a few that categorizing individuals solely as environmental refugees would overlook the reasons that are interconnected behind their displacement, leading to the failure in capturing the entire context. And this has sparked various ongoing discussions among scholars and policymakers about the need for recognizing the terminology for to frame a terminology that would be inclusive to tackle the issue of environmentally induced displacement.²²

Given the rising threats from climate change, there is an urgent requirement for specific legal frameworks to safeguard and rehabilitate climate refugees. The current absence of a universally accepted definition or status for climate refugees leads to institutional gaps and insufficient response strategies. Legal professionals and green activists are advocating for the development of new international protocols, perhaps under the United Nations Framework Convention on Climate Change, to guarantee proper

¹⁹ T. Ananthachari, Refugees In India: Legal Framework, Law Enforcement And Security, WorldLII, (2001) http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html#Footnote_auth, (5:00 PM, 10th February 2025).

²⁰ Barnett, Jon and Webber Michael (2009, March): "Accommodating Migration to Promote Adaptation to Climate Change", The Commission on Climate Change and Development, www.ccdcommission.org, (5:00 PM, 10th February 2025)

²¹ Brown O., "Climate Change and Forced Migration: Observations, Projections and Implications", Human Development Report, (2007).

²² Castles, S (2002): "Environmental Change and Forced Migration: Making Sense of the Debate", New Issues in Refugee Research Working Paper 70, United Nations High Commissioner for Refugee, Geneva.

recognition, protection, and resettlement of climate change displacements.²³ National law is also crucial to help cater to the specific needs of internally displaced persons by targeting preventive efforts like risk reduction, emergency assistance, and rehabilitation efforts on a long-term basis and therefore the necessity of an enactment has arrived.

CHAPTER: 3

EXISTING CONVENTIONS AND CLIMATE REFUGEES

Existing conventions dealing with climate refugees are within the purview of international refugee law and environmental laws. In the absence of a current legal convention solely for climate refugees, existing organizations such as the United Nations High Commissioner for Refugees serve as a basis to tackle their issues. These frameworks assist in advocating and providing protection for permanently displaced climate refugees. In regards to modern frameworks like the 1951 refugees agreement, the UNHCR does place emphasis on these frameworks not applying to climate refugees and acknowledges the need for a more holistic approach to tackle the issue. A combination of regional arrangements such as the OAU²⁴ and the Cartagena Declaration offer a way to manage cross-border environmental displacements. However, there is still an argument on whether or not these instruments do enough to serve as protection for climate refugees. In the case that such instruments are deemed inefficient, the implementation of new laws will be a necessity. Regardless of the aid these conventions do or do not provide for the climate refugees problem, they do attempt to address and approach the issue somehow.

1951 Refugee Convention and 1967 Protocol

The core of the 1951 Refugee Convention and its 1967 Protocol is the customary principle of non-refoulement, established in Article 33(1) of the 1951 Convention.²⁵ Accordingly, under the Convention with respect to this principle, signatory states are obligated to refrain from returning or expelling refugees to their country of origin if their life or freedom is endangered there. And this way the non-refoulement principle ensures that refugees are protected from being sent back to situations where they face persecution or harm, thus upholding their fundamental human rights and safety.

Persecution of climate refugees in regions that are vulnerable to climate change or in the aftermath of natural disasters, based on factors such as race, religion, nationality, political opinion, or membership in a particular social group, may constitute persecution under the 1951 Convention. For instance, natural disasters can severely restrict access to land, natural resources, livelihoods, and individual rights, posing threats to life, physical integrity, adequate living standards, health, and sanitation. And with respect to differences among the communities within the State, the impacts of the change would also vary with some having their rights violated and discriminatorily persecuted more than others. In addition, persecution, in regard to states or non-state actors, is usually acts of violence that are conducted by a person or a group, but in this case, the state does not perceive it as of discrimination though one may argue otherwise. This can happen by the unequal distribution of aid or coverage, or by the use of the effects of climate change as a guide to target specific groups. Therefore, even if the neglecting of the directly intended persecution is not aimed at violence, the discrimination and lack of action that is taken by the governing powers in

²³ Biermann F & Ingrid Boss, "Protecting Climate Refugees: The Case for a Global Protocol", 50, *Environment*, 8, 10-17, (2008)

²⁴ Organization of African Unity (OAU), Charter of the Organization of African Unity, 25th May 1963

²⁵ 1951 Refugee Convention, art. 33(1).

regards to those people who have shifted due to climate changes can be interpreted as violation of the refugee protection conventions.²⁶

In Accordance, since resources have become scarcer as a result of climate change, governments can resort to strategies like withholding resources, refusal of aid, or failure to adopt sufficient protective measures, mainly targeting vulnerable groups. Furthermore, journalists and environmental activists who promote the cause against climate change are targeted and persecuted for their efforts to inform the people. The strongest argument for the protection of climate refugees under existing legal frameworks stems from the 1951 Convention, particularly when the negative effects of climate change combine with conflict and violence. Under these circumstances, the consequences of climate change have the effect of increasing the pre-existing tensions and violence and it becomes impossible for the state to properly protect people.²⁷

As a consequence, victims of persecution on account of nationality, race, religion, political opinion, or membership in a social group for the same reasons may be eligible for protection as refugees. Such is the result of a well-founded fear of persecution since people cannot depend on their native states for protection. The coupling of environmental pressures due to climate change with war and violence means that people are put in a situation where their basic human rights and security are violated, driving them to cross international borders seeking asylum under international refugee law.²⁸

Regional Agreements: The Organization of African Unity Convention and the 1984 Cartagena Declaration

The expansion of the criteria for refugee status to cover internal displacement as legitimate grounds for protection, as well as the incorporation of climate change and natural disasters into the definition of "events seriously disturbing public order," is found in two regional refugee conventions, that being the 1969 Organization of African Unity Convention (OAU Convention) and the 1984 Cartagena Declaration on Refugees. The OAU Convention broadens refugee protection to include persons who are forced to flee their normal residence as a result of events seriously disturbing public order in part or the whole of their country of origin or nationality.²⁹ Likewise, the Cartagena Declaration is non-binding and safeguards individuals who are fleeing their country on the grounds that their lives, security, or freedom is being threatened by circumstances that seriously disturbs public order.³⁰ Both compacts expand the classical concept of refugee status by acknowledging the multifaceted drivers of displacement, such as internal conflict, environmental stress, and other types of social upheaval. In including these factors, they establish a model for providing protection to those compelled to leave their homes for a range of reasons short of persecution alone.

These regional accords fill an important lacuna in international refugee treaties by providing protection for internally displaced persons. The OAU Convention provides coverage for those persons who are the victims of circumstances affecting either part or the whole of their state of origin. In order to qualify for protection by both the OAU and the Cartagena Declaration, an individual must be able to prove that a

²⁶ Bonnie Docherty & Tyler Giannini, Symposium: Confronting a Rising Tide: A Proposal for a Climate Refugee Treaty, 33 Harvard EVITL L. Rev. 349, 372, 385 (2009).

²⁷ Sussman, C.M., 'A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?', 2, Chi. J. Int'l L., 41, 43-68, (2022), <https://cjl.uchicago.edu/sites/default/files/2023-04/2ChiJIntlLOnline41%20%28C.%20Sussman%29.pdf>.

²⁸ Joanna Apap & Sami James Harju, "The concept of 'climate refugee' Towards a possible definition", European Parliament, (October 2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI\(2021\)698753_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI(2021)698753_EN.pdf).

²⁹ OAU Convention, 1969.

³⁰ The Cartagena Convention of 1984.

climate-related disaster or climate change threatened their place of habitual residence, forcing them to leave. Further, claims to refugee status only hold up if the state, despite international assistance, is either unable or unwilling to stem the effects of the disaster on its people and governance.

Although regional accords do not have a specific definition of "events seriously disturbing public order," a general understanding that includes climate change and natural disasters would make the claims of climate refugees very much stronger. By broadening the meaning of this term to include environmental disruptions, like intense weather conditions, sea-level rise, or prolonged droughts, regional organizations can recognize the destabilizing effect of climate change on societies and communities. Through recognizing the relationship between climate change and social unrest, regional accords can be the legal grounds upon which protection may be given to climate displacement migrants. And through encouraging a comprehensive interpretation for the phrase "events seriously disturbing public order," regional agreements can contribute to a more robust legal framework for protecting climate refugees.

According to the United Nations, the term "disasters" involves complex disruptions that arise from hazardous events and vulnerability that eventually lead to various losses.³¹ The OAU Convention and the Cartagena Declaration have defined "public order" as the effective operation of the administrative, social, political, and moral aspects of a society, with respect to compliance with the rule of law and dignity of human beings to ensure stability and safeguard fundamental rights. And any disruption to this stability that is the public order is considered a "disturbance." Given the prolonged and severe impacts of climate change on national and global security, updating the 1951 Convention with the public order aspect of the regional agreements' refugee definition could offer legal protection to climate refugees.

CHAPTER: 4

CASE STUDIES

Teitiota vs New Zealand³²

Ioane Teitiota is a resident of the Central Pacific nation of Kiribati, which is at risk of losing its land in the next ten to fifteen years due to sea level rise. In 2013, he applied for asylum in New Zealand after climate change claimed his life and he had to leave Kiribati. Teitiota, who was repatriated, was sent back to Kiribati. In 2016, he sent a letter to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, claiming that New Zealand violated his right to life by forcing him to return to Kiribati. The Human Rights Commission confirmed on the New Zealand's Supreme Court ruling that there was no "threat" to his life.

In assessing the merits of the petitioner's complaint, the Law Commission reiterated that the right to life in Article 6 should be interpreted broadly, but that the threshold proved that the actual risk of crime was high. While the Human Rights Commission accepted the evidence put forward on the rising sea levels and rapid population growth in Kiribati which has compromised the supply of potable water to the point where sixty percent of the population has to obtain fresh water separately from rationed supplies, it was decided that although access to potable water and water to grow crops is difficult to obtain, it is not impossible and thus Teitiota's deportation to Kiribati is not violative of Article 6. The Commission had also rejected the argument that the Applicant, Teitiota's right to life was violated in the course of increased violence due to the overcrowding in Kiribati. This rejection was because the risk to life as a ground under Article 6 must be

³¹ Eduardo Valencia Ospina, Protection Of Persons In The Event Of Disasters, Welcome to the United Nations, (5 May 2008), https://legal.un.org/ilc/documentation/english/a_cn4_598.pdf.

³² Ioane Teitiota v. New Zealand, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020.

personal and a general situation of violence is not sufficient. Despite the unfavourable outcome for Teitiota, the decision was celebrated as a landmark for climate refugee protection. It marked the first recognition that nations have a non-refoulement obligation, prohibiting the forced return of individuals to countries where climate change poses a threat to their right to life.

Democratic Republic of Congo Volcanic Eruption, 2002³³

Following a volcanic eruption near Goma, Democratic Republic of Congo, in 2002, thousands fled their homes, resulting in 250 casualties and 120,000 displaced. Seeking refuge in Uganda, many Congolese were denied refugee status as climate refugees due to the eruption, as refugee law doesn't recognize volcanic activity as a defining ground.

0Somalis Drought, 2011³⁴

In 2011, a devastating famine struck Somalia, claiming the lives of approximately 250,000 people, half of whom were children, as a result of three consecutive seasons without adequate rainfall. This crisis was compounded by various factors, including restricted humanitarian access. The climatic disruption prompted many Somalis to flee in search of food and basic necessities. This situation raised questions about whether individuals displaced by climate change and disasters could be classified as refugees. Addressing this legal dilemma, Kenya recognized those fleeing Somalia due to the drought as refugees under Article I(2) of the 1969 OAU Convention.

CHAPTER: 5

POTENTIAL SOLUTION FOR CLIMATE REFUGEES

With the concept of climate induced refugees beginning to raise awareness in the international arena, the need to explore possible or potential solutions to protect climate refugees has arisen. In lieu of this need, the paper further deals with potential solutions that can be used by international and regional authorities to protect climate refugees.

Climate Humanitarian Visas

Climate Humanitarian Visas are an initiative to recognize and protect climate refugees legally could include the issue of climate humanitarian visas. Climate humanitarian visas as discretionary humanitarian visas could be implemented for individuals in flight from disaster or climate events. They would allow host countries to select nationals from climate-endangered nations and provide them protection within their nation, providing access to safety and support for persons displaced by the environment. The use of such visas can be seen when Argentina created a special three-year visa in 2022 for people displaced by disasters in Mexico, Central America or the Caribbean.³⁵

In 2017, New Zealand launched a climate humanitarian visa program aimed at assisting Pacific Island residents displaced by rising sea levels. Originally it had intended to grant as many as 100 such visas, the program was eventually dropped by the government six months after its announcement. The collapse of this program highlighted the intricacy of tackling climate migration and the need to consult with impacted

³³ Tedesco, D., O. Vaselli, P. Papale, S. A. Carn, M. Voltaggio, G. M. Sawyer, J. Durieux, M. Kasereka, and F. Tassi (2007), 'January 2002 volcano-tectonic eruption of Nyiragongo volcano, Democratic Republic of Congo', *Journal of Geophysical*, 112(B9).

³⁴ Eastern Africa Drought Humanitarian Report No. 4 (2011), OCHA.

³⁵ Climate change, disasters and displacement (2023) UNSW.

communities. The program was opposed by some Pacific Islanders, who saw refugee status as a last option and were concerned that it would damage their cultural way of life and heritage.³⁶ This underscores that successful solutions to the climate migration crisis need to involve the active participation and voice of the most climate-exposed groups. In the future, countries need to make it a priority to hear from these groups and create comprehensive strategies that include climate visas along with prevention, adaptation, and mitigation efforts. Through a cooperative and inclusive process, governments are able to address the complex issues presented by climate displacement more effectively while maintaining the rights and dignity of impacted groups.

Model International Mobility Convention

The Model International Mobility Convention (MIMC) was developed by an International Mobility Commission at meetings organized by the Columbia Global Policy Initiative. It involved over forty eminent academic and policy experts in the fields of migration, human rights, national security, labour economics, and refugee law. The MIMC sets forth a legal framework for international mobility that is broader than the circumstances for refugee protection outlined in the 1951 Refugee Convention and that could cover climate refugees. Article 192 and 193 of the Mobility Convention³⁷ enumerates a new right to reunification of extended family for refugees and forced migrants, which could assist people separated from their families due to migration in the wake of climate change or a natural disaster.

In addition, the MIMC provides a system of responsibility-sharing among member states, whereby each commits an annual quota of resettlement visas and funding for refugees and forced migrants according to a pre-agreed formula. This system of collective responsibility and pooled funding has the potential to propel global protection action for climate refugees. Nevertheless, challenges related to treaty ratification and implementation, especially in developing nations, pose significant obstacles to realizing the convention's objectives.

Human Rights Law

Human rights law, through its non-refoulement principle, could mitigate some harm to climate refugees.³⁸ The principle of non-refoulement is the cornerstone of asylum and of international refugee law. Set forth in Article 14 of the Universal Declaration of Human Rights, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights.³⁹ Yet, the inaction of international tribunals and resistance from certain governments render human rights law alone inadequate for safeguarding climate refugees. The principle of non-refoulement, which involves human rights conventions and is considered a customary international law, prohibits the forced return of an individual to a country where they can suffer serious, inhumane treatment or other irreparable harm. While being significant in its founding values, this principle alone has its drawbacks in addressing the different facets of challenges from climate displacement.

³⁶ Sussman, C.M., 'A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?', 2, Chi. J. Int'l L., 41, 43-68, (2022), <https://cjl.uchicago.edu/sites/default/files/2023-04/2ChiJIntlLOnline41%20%28C.%20Sussman%29.pdf>.

³⁷ Model International Mobility Convention, https://mobilityconvention.columbia.edu/sites/default/files/content/pdf/mimc_document_web.pdf.

³⁸ Sussman, C.M., 'A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?', 2, Chi. J. Int'l L., 41, 43-68, (2022), <https://cjl.uchicago.edu/sites/default/files/2023-04/2ChiJIntlLOnline41%20%28C.%20Sussman%29.pdf>.

³⁹ UDHR, 1948, art. 14.

In March 2018, the U.N. Human Rights Council recognized the legal ambiguity surrounding individuals displaced by climate-related factors and disasters, suggesting that future non-refoulement claims could be grounded in human rights law.⁴⁰ This would entail considering the harm migrants or refugees might face due to climate change impacts upon returning to their country of origin. Nonetheless, human rights law itself is not enough to properly deal with the case of climate refugees. One of the challenges is based on resistance from some national governments to subjecting climate-induced displacement to human rights law. In 2021, for example, the Biden administration specifically disavowed that its international human rights obligations include safeguarding individuals fleeing climate change impacts.⁴¹ And further, the significant case of *Teitiota v New Zealand*⁴² presents a notable advancement in safeguarding climate refugees within the framework of Human Rights Law.

CHAPTER: 6

CONCLUSION

In conclusion, in order to address the problems of climate refugees, a huge amount of effort need to put in both national and international levels. As time passes many countries are beginning to recognize the significance in addressing this issue and India in the future hopefully does the same. Some examples of these efforts are when in 2012 Switzerland and Norway co-chaired the Nansen Initiative which led to the establishment of the 2015 platform on Disaster Displacement which was supported by 109 countries that offered protection for those who were displaced due to climate-related issues.⁴³ Another example is the Global Compact for Safe, Orderly and Regular Migration, that was ratified in Morocco in 2018 which, under its 2nd objective, recognized the plight of migrants who were displaced due to climate change.⁴⁴ These underscored the necessity for a comprehensive and empathetic approach that would ensure the right and well-beings of those displaced, upholding their recognition in the face of climatic issues that lead to displacement. The same is required of India, that is, legal reforms must be introduced by proactive policy measures, international co-operation and resource allocation that could help in the mitigation of the adverse effects of a climate induced displacement. And ultimately, recognizing climate refugees' position in the society would not only uphold the basic principle of human dignity and justice but also strengthen the resilience that is to be built against the escalating effects of climate change and climatic displacement.

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⁴¹ Report on the impact of climate change on migration (2021), White House Climate Change Report, 2021.

⁴² *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020.

⁴³ Platform on Disaster Displacement, IOM UN Migration, <https://www.iom.int/platform-disaster-displacement>, (5:00 PM, 10th February 2025).

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