



The Legal Status of Climate Change Refugees

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ABSTARCT

Today, we are all aware that the climate change disaster we are now experiencing is the product of human activity, yet no significant action has been made to address this problem. However, we cannot dispute that certain actions have been made in recent years, but these are insufficient to prevent the issue of climate change from becoming a disaster. Humans have been forced to abandon their homes as a result of the gradual expansion of this issue's reach through time to the point where it has spread to every continent. The term "climate refugees" is not generally or extensively recognised in the international community. As a result, it is not an issue that can be handled by reaching a simple agreement among those involved. The climate change refugee instrument should be unique, even though it should reference current legal frameworks. The "UNFCCC" (which is neither people-centered nor remedial in character) and the Refugee Convention (which lacks an environmental mandate and suitable technical tools) both have limitations as forums for a potential climate change refugee protocol. Instead, a convention to lessen the issue should emerge outside of those systems, drawing on useful clauses but modifying them to fit the needs of a climate change refugee situation. This Article examines the status of Climate Change Refugees.

Keywords: Climate Change refugees, UNFCCC, Refugee Convention.

INTRODUCTION

Climate change is a human catastrophe that we can no longer deny; the effects of climate change are now more visible than ever. There is little doubt that we, as humans, have failed to provide the mother earth with the love and care it needed. As a result of deteriorating living circumstances, climate change has resulted in the displacement of individuals from

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their homes. Due to climate change and natural calamities, those compelled to cross international boundaries require international protection. Refugee law and human rights law consequently play an essential role in this field.

"A refugee is a person who has crossed an international boundary out of a well-founded fear of persecution on account of their race, religion, nationality, membership in a specific social group, or political viewpoint" (1951 Convention relating to the Status of Refugees). However, at this point in time, when climate change has worsened, there is no legally recognised definition of climate change refugees. They have been poorly disregarded by international treaties and legal systems.

For our purposes, we may define climate change refugees as those who are displaced within their own country, as climate change often causes internal displacement prior to displacing people over international boundaries.

Lester Brown was among the first to notice persons who had fled their homes as a result of climate change; he dubbed them "environmental refugees."

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"We must invest now in readiness in order to decrease future protection demands and prevent more climate-related migration. It is not a choice to wait for calamity to hit."

- High Commissioner for UN Refugees Filippo Grandi

In light of the preceding remark, the researcher has attempted to take into account the response of the global society as a whole to climate change refugees. Efforts have also been made to identify a realistic and effective solution for the improvement of the climate change refugees' existing position. A separate convention addressing both the preventative and remedial aspects of the issue of climate change refugees is also necessary, according to the researcher.

EMERGENCE OF CLIMATE CHANGE REFUGEES

Long before the year 1990, the Intergovernmental Panel on Climatic Change (IPCC) made the prognostication that there would be a climate catastrophe that would influence the human race

in such a way that would lead to the widespread relocation of populations from their homes. According to the Intergovernmental Panel on Climate Change (IPCC), which published its most recent assessment in 2014, "warming in the climate system is unambiguous and human activity is quite likely to have been the major cause of the observed warming since the middle of the twentieth century." The issue at hand is not simply the relocation of people from one area to another but also the quantity of people moving and the rate at which they are moving. Those who are migrating do so since it has become their last remaining option for ensuring their own existence.

This trend started in the 21st century, when people all over the globe were preoccupied with the issue of refugees and the numerous types of refugees that emerged for a variety of causes. During this time period, people also began to recognise environmental refugees. In 1985, El Hinnawi from the UNEP provided one of the earliest definitions of environmental refugees. He qualified these migrants as people who are affected by any kind of environmental disturbance and, as a result, are forced to leave their habitats, putting their lives in jeopardy. This definition was one of the first definitions regarding environmental refugees.

The developing nations are the most negatively affected by the displacement of climate change refugees since these governments are unable to provide sufficient food and resources for their own inhabitants, let alone for the climate change refugees. In spite of the fact that developing countries are also responsible for the climate crisis, it is impossible to deny the fact that the current predicament calls for more long-term and effective solutions, especially when taking into account the ability of developing countries to host displaced people.

This threat is magnified for areas with fewer and smaller islands. One such example is the island nation of Kiribati, which is not only one of the countries with the lowest height in the globe but also a place where the legend of Atlantis could really be genuine. The island Republic of Kiribati, which spans the equator and comprises of 32 coral atolls and one island, is located in the middle of the Pacific Ocean, exactly midway between the continents of Australia and Hawaii. The atolls rise to a maximum of three to four metres above sea level, which is higher than the majority of the state, which is just one to two metres above sea level. The ability of the land to support human settlement is being put to the test by climate change, which is manifesting itself in the form of more frequent storm surges, coastal erosion, and heightened salinity. Climate experts are in agreement that the sea level will only continue to rise near Kiribati due to the fact that the rate of sea level rise in the western Pacific is

four times faster than the average for the entire planet. According to studies conducted by the World Bank, if new laws are not put into place, the majority of Tarawa would be flooded.⁷²

A man from Kiribati took his claim to be a "climate change refugee" all the way to the High Court of New Zealand and the Court of Appeal of New Zealand in the case known as *Ioane Teitiota*, Chief Executive of the Ministry of Business Innovation and Employment. Teitiota's application was the first to reach these two appellate tribunals, despite the fact that other immigrants had made claims that were comparable in the past.

If one discusses India specifically, then it is estimated that there would be around 20 million climate refugees looking for sanctuary in India in the next years if the current trend of climate change is allowed to continue.⁷³

WHO ARE CLIMATE CHANGE REFUGEES?

An individual who is forced to flee his home and to relocate temporarily or permanently across a national boundary as a result of a sudden or gradual environmental disruption that is consistent with climate change and to which humans more likely than not contributed may be defined as a climate change refugee. This definition may be used to describe an individual who is a climate change refugee. People who are forced to leave their homes and settle someplace else in quest of a new place to call home should also be included in this definition since they are also compelled to leave the nation in which they were born in order to find a new place to call home. In the end, all of the people who have been displaced as a result of the effects of climate change are deserving of protection and assistance on humanitarian grounds, regardless of whether or not they are now living in another country.

This term may appear to be similar to the definition of refugees that was established in the Refugee Convention of 1951; however, the Refugee Convention of 1951 was updated in 1967 to include climate change refugees, therefore this definition is more accurate. For a definition that is both more exact and more understandable, we can turn to the writers listed below. –

⁷² A NATION GOING UNDER: LEGAL PROTECTION FOR "CLIMATE CHANGE REFUGEES" XING-YIN NI*DATE DOWNLOADED: Mon Sep 26 14:12:52 2022 SOURCE: Content Downloaded from Hein Online

⁷³ See *Teitiota*, NZHC 3125, at 45; cf Tara Brady, *World's First Climate Change Refugee: Pacific Islander Asks New Zealand for Asylum as He Claims His Home Will Be Engulfed BY Rising Seas*, DAILY MAIL (Oct. 17, 2013), <http://www.dailymail.co.uk/news/article-2464282/Climatechange-refugee-Pacific-Islander-asks-New-Zealand-asylum.html>, archived at <http://perma.cc/8HTF3UWM> (describing Teitiota's appeal to the High Court as a claim to be the world's first climate change refugee).

In 2007, 'Biermann and Boas' published a working paper in which they defined a climate change refugee and argued for a global governance mechanism to safeguard climate refugees within the context of the UN Framework Convention on Climate Change (UNFCCC). They defined the term as *"people who are forced to leave their habitats, either immediately or in the near future, as a result of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity."* Sea-level rise is one of the three impacts of climate change.⁷⁴

However, the contribution made by 'Essam El-Hinnawi', who was the first person to propose the definition, is not something that should be overlooked. He did not use the term "climate change refugees," but rather defined environmental refugees as "those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardised their existence and/or seriously affected the quality of their life (sic)." He did not use the term "climate change refugees," but rather defined environmental refugees as "those people who have been forced to leave their traditional habitat, temporarily or permanently, because by "environmental disturbance".⁷⁵

People who are unable to make a living in their home countries due to environmental factors such as drought, soil erosion, desertification, deforestation, and other environmental issues, as well as the associated problems of population pressures and extreme poverty, are considered to be internally displaced persons (IDPs). For a definition that is more recent but otherwise comparable, we can refer to Myers' definition. He defines IDPs as "those people who can no longer gain a secure livelihood in their home countries." These people are so desperate that they believe they have no choice but to try to find safety somewhere else, regardless of how dangerous the endeavour may be. Many of them have been forced to flee their own nations, but others are internally displaced. However, all of them have left their countries of origin on a semi-permanent or perhaps permanent basis, with little possibility of returning in the foreseeable future.

⁷⁴ Frank Biermann & Ingrid Boas, Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees 8 (Global Governance Project, Global Governance Working Paper No. 33, 2007) (calling for a protocol to the UNFCCC to deal with climate change displacement);

⁷⁵ EssAm EL-HINNAWI, ENVIRONMENTAL Refugees 4 (1985); Diane C. Bates, Environmental Refugees? Classifying Human Migration Caused by Environmental Changes

After considering all of the aforementioned criteria, one can come to the conclusion that persons who have been compelled to leave their homes as a result of an environmental or climate catastrophe are considered to be climate change refugees. These include both persons who have voluntarily fled and others who have been compelled to depart for their own safety. Both groups are included below. In addition, the severity of the damage produced by the environmental catastrophe will determine whether their uprooting or relocation would be temporary or permanent.

In the present day, we are able to discover a variety of definitions, including those that have been offered above. Nevertheless, is identifying the refugees caused by climate change really useful in finding a solution to this worldwide problem? Because this has evidently kicked off some conversations on this topic in many parts of the world, defining it could be the first step towards acknowledging it, and then ideally finding a solution to it.

In addition, let's investigate whether or not the drafting of laws in the form of treaties or conventions is contributing in any way to finding a solution to this problem.

ARE LAWS THE SOLUTION?

An advantage of having a separate climate change refugee convention is that it would allow for the consolidation of several regulations into a single specialised instrument. The basic difficulties produced by the climate change refugee crisis will be addressed by a bespoke treaty, which will also seal the present legal gap with the degree of specificity that governments and communities demand ²⁶. The problem extends into a variety of subfields, including those pertaining to human rights and the environment. Through its foundational components, the proposed convention would bring together all of these different aspects and concepts of humanitarian aid. The problem of climate change refugees not only encourages such connections but also benefits from making them explicit and prominent in a new treaty. Historically, these three subjects—human rights, humanitarian aid, and international environmental law—haven't been combined into a single convention. However, the issue of climate change refugees not only encourages such connections but also benefits from making them explicit and prominent in a new treaty. Because the nature of the issue encompasses both individual rights and state-to-state obligations, a new treaty should draw from legal frameworks that include both vertical responsibilities (i.e., between governments and communities, as under the human rights system) and horizontal obligations. Vertical responsibilities refer to the responsibilities that exist between governments and

communities, while horizontal responsibilities refer to the obligations that exist between states (i.e., between states, as under the international environmental regime). It is likely that either a "Refugee Convention 62" or a "UNFCCC protocol" would result in one set of obligations being subsumed under the other; however, a new convention presents the best opportunity for these sets of obligations to receive treatment that is balanced, rather than having one set of obligations subsume the other. As was shown in Part IV's analysis of the fundamental components of the climate change refugee instrument, a new treaty also maximises the freedom to create particular instruments that draw on different disciplines. This was done in order to combat the effects of climate change on refugees. An independent convention, for instance, ought to make improvements to the current refugee framework and employ models of international environmental law for finance methods, international collaboration, and shared state accountability. It should look to refugee law, which already has powerful corrective measures, humanitarian underpinnings, and rights for individuals who are impacted, in order to assist it overcome the limited state emphasis of the environmental system. Taking such an interdisciplinary approach is necessary in order to solve an issue that affects a wide range of people, and it is most likely to happen within the context of the freedom offered by an autonomous convention.

To begin, the term "climate refugees" is not generally or extensively recognised in the international community. As a result, it is not an issue that can be handled by reaching a simple agreement among those involved. Both the International Dialogue on Migration in 2011 and the most recent approval of the Global Compact for Safe, Orderly, and Regular Migration highlight the protracted and complicated nature of the process of creating conventions. A further issue is that, for the most part, there is no mobility of the climate within the region. Thirdly, there is the concern that enlarging the scope of the Refugee Convention from 1951 might be detrimental to the status of those who have already been given refugee status. In the context of migration or relocation, it is vital to consider whether or not environmental or climatic considerations should be ignored.

CONCLUSION

Regarding the developing issue of climate change refugees, there is a gap in the global legal and policy framework. Tens of millions or possibly hundreds of millions of people may evacuate their homes as a result of climate change during the course of the twenty-first century, bringing the problem to crisis levels. For humanitarian and logistical reasons, a global reaction is

required in the face of potential displacement on this scale. Furthermore, the international community must assume responsibility for reducing the harm to which it has contributed given the connection between global human activity and emissions and climate change. The best course of action is to create a new piece of legislation that has been carefully drafted to address the issue of climate change refugees. For people forced to flee their nations due to climate change, it should ensure that their human rights are protected and that they receive relief. It should distribute the responsibility for delivering such aid among the international community and the affected nations. It should create administrative organisations, such as a global fund, a coordinating agency, and a group of scientific specialists, to carry out the instrument. The climate change refugee instrument should be unique, even though it should reference current legal frameworks. The “UNFCCC” (which is neither people-centered nor remedial in character) and the Refugee Convention (which lacks an environmental mandate and suitable technical tools) both have limitations as forums for a potential climate change refugee protocol. Instead, a convention to lessen the issue should emerge outside of those systems, drawing on useful clauses but modifying them to fit the needs of a climate change refugee situation. The Oslo Process, the most recent instance of fruitful discussions for a standalone convention, resulted in the signing of a ban on cluster munitions by 96 governments as of this writing in December 2008. 2 w° The Oslo Process and its complete treaty illustrate the strength and promise of this strategy for creating international law, even if they deal with a different humanitarian issue. This model should be followed by those worried about the consequences of climate-induced migration and the treatment of climate change refugees. They ought to work to make the climate change refugee convention the following such success tale.

While certain countries have taken individual steps in their respective capacities such as the “African Union Convention for the Protection and Assistance of Internally Displaced Persons, 2009” that recognized natural factors of climate as a reason for displacement and provides protection thereof, or the “Swedish Aliens Act 2005” that grants asylum to the persons displaced due to an environmental disaster yet, internationally the term has not been given its requisite importance.
