

Vulnerability Of Environmental Refugees Sans A Legal Regime

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ABSTRACT

Climate change has in recent times been a major cause of migration, leading to climate refugees. It has bearings not only on the displaced peoples but impact the local populace, their economy, language and religion to mention but a few. With the increasing impact of climate change many environmental refugees are facing an existential crisis, being threatened of their lives or mode of livelihoods, resulting in cross border displacement. They are in a vulnerable position for want of any legal protection under any international instrument or even any comprehensive policy.

The present endeavour has been to search for measures at redressal of the identified problem of climate induced forced migrants due to displacement on the environmental footprint. The role of different organizations including that of the Human Rights Council has been discussed. The Global Compact on Refugees (GCR) and Global Compact for Safe, Orderly and Regular Migration (GCM) besides clean development mechanism and COPs and the Nansen protection agenda merit mention.

While stressing on the necessity of a holistic international legal regime, the article suggests extension of the non- refolement doctrine since environmental refugees is ubiquitous and an issue of critical importance. Inundation and extinction can certainly be considered as a well founded fear for undertaking such an exercise as submergence of islands, coastlines and swathes of lands becoming unlivable are likely to increase flow of climate refugees.

Keywords: Environmental refugees, climate induced refugees, migration, vulnerability, legal regime, international instruments, UNFCCC.

INTRODUCTION

The world today has been fast changing in both positive and negative sense of the term. One cannot ignore the developments it had beheld due to human discovery and invention has resulted in the increase in span of life of humans, but plants and animals alike. However it has also witnessed catastrophic events on nature that functions contrarily to existence of life on this planet. Nature has time and again retaliated to its abuse by humans resulting in severe damage and destruction. These devastating instances have made men realize that their fate rests on the mercy of the environment surrounding them.

Due to such natural disasters, humans have been forced to abandon their homes and move to different places, either owing to natural occurrences on the environment or human interventions, further aggravating the damages that have already occurred and become an inevitable truth in today's natural environment. This has led to mass movement of people leaving their places of residence to faraway places, temporarily or at times permanently with a hope of better chance for survival. A considerable percent of such migration may be attributed to the 'human climate niche'. However, one cannot ignore the impact that mass displacement has on the society including delayed rate of development, over-population, extreme poverty, humanitarian crisis and exigencies. These form of shifting of communities from one location to another owing to environmental degradation has

been given recognition under the category of "environmental refugees" or "environment migrants". The first formal definition of environmental refugees was given in the year 1985 by a researcher from the United Nations Environment Programme, Essam- El- Hinnawi. He 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 jeopardized their existence and/or seriously affected the quality of their life”.¹ By “environmental disruption” in this definition is meant any physical, chemical and /or biological changes in that occur in the ecosystem (or the resource base) that render temporarily or permanently unsuitable to support human life.² Though the first document relating to climate refugees was published during 1988, the term ecological refugees first appeared in the 1970s.³

Different authors have put forward their own understanding as definitions for this term. “Myers and Kent conceptualized ‘environmental refugees’ as persons who can no longer gain a secure livelihood in their traditional homelands because of environmental factors of unusual scope; notably drought, desertification, deforestation, soil erosion, water shortages and climate change, also natural disasters such as cyclones, storm surges and floods”.⁴ These may be considered useful, nonetheless an uniformly acceptable definition is an urgent necessity to identify persons who may be considered as environmental or climate induced refugees. Environmental Justice Foundation⁵ has adopted the definition of climate refugee defines them as “[p]ersons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely affects their lives or living conditions, are obliged to leave their homes either temporarily or permanently, and who move either within their country or abroad”.⁶ Despite the absence of any such legal recognition, the external climate migrants though to a limited extent at present came under the ambit of the Nansen initiative of 2012.

PROBLEMS IN SOCIETY DUE TO RISE IN ENVIRONMENTAL REFUGEES

Since the concept of Environmental Refugees is relatively new and was developed mainly during the twentieth century, it has not been able to attract any codification of laws. Yet the rapid rise in their numbers, has given rise to various concerns. One of them is to prevent their human rights violation and offer them safety and security to carry on their lives smoothly. Another area of concern is with regard to the disruption that the rise in their number brings to the society. The latter, however, cannot be taken as a plea or excuse at denial, but can at best be factored in respect of any policy measures.

The mass migration of people to newer locations leads to scarcity of resources for the already existing population. This thereby intensifies intra-and inter-state competition for basic essential necessities like life sustaining water, food, shelter and other resources essential for one’s survival. With this, there is also the rise in the frequency of health issues and diseases which have become very prevalent due to increasing migration and easier communication amongst people. The influx of population brings with it the issue of deforestation that is done to meet their shelter or other developmental ‘needs, which in turn adds to the

¹Rajendra Ramlogan, “Environmental Refugees: a review”, Vol.23, No., 81- 88 (1996).

<http://unstats.un.org/unsd/environmentgl/gesform.asp?getitem=473> accessed on 2.1.23 at 9.57 pm

² ibid

³Refugee Studies Centre ‘Environmentally displaced people, Understanding the linkages between environmental change, livelihoods and forced migration’ (University of Oxford, November 2008) <http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCPB1-Environment.pdf> accessed 09 November 2023

⁴ Richard Black, Environmental refugees: myth or reality? NEW ISSUES IN REFUGEE RESEARCH, <https://www.unhcr.org/sites/default/files/legacy-pdf/3ae6a0d00.pdf> accessed on 23.11.2023 at 2.52 pm

⁵ <https://www.un.org/en/civil-society/environmental-justice-foundation> accessed on 23.11.23 at 0.14 pm

⁶Environmental

Migration,

[https://environmentalmigration.iom.int/environmentalmigration#:~:text=%E2%80%9CEnvironmental%20migrants%20are%20persons%20or, and%20who%20move%20either%20within%20\(IOM, 2007:33\); NO SHELTER FROM THE STORM THE URGENT NEED TO RECOGNISE AND PROTECT CLIMATE REFUGEES, EJF_CLIMATE-Refugee-Report_2021_final.pdf](https://environmentalmigration.iom.int/environmentalmigration#:~:text=%E2%80%9CEnvironmental%20migrants%20are%20persons%20or, and%20who%20move%20either%20within%20(IOM, 2007:33); NO SHELTER FROM THE STORM THE URGENT NEED TO RECOGNISE AND PROTECT CLIMATE REFUGEES, EJF_CLIMATE-Refugee-Report_2021_final.pdf) accessed on 20.11.2023 at 9.29 pm

problem of environment in the host country, owing from greenhouse gas emissions. Besides it, a major concern or bone of contention has been the economic disparity apart from population imbalance that has been witness to imbalance by way of language and religion. Many an instance of ethnic conflict results as a consequence of such new settlements.

A striking common feature amongst these refugees is marked mostly among them who belong from developing jurisdictions that are predominantly agriculture based economies.⁷ This in turn gives rise to the peril of them being ignored as economic migrants who lack protection from any legal mechanism.⁸ With increasing numbers, there will be additional pressure on agricultural land for more production. This will thereby result in depleting the soil, resulting in its degrading quality. Shortage of water is another pressing concern that will emerge with the influx of environmental refugees to a new location. It was estimated that people in chronically water-short countries are to reach a total three billion, a 10-fold increase over 1990.⁹

Push factored migrants¹⁰ cannot afford the luxury to decide the choice of being located, but in most cases have to move desperately to neighbouring countries, further putting a stress on those countries. In other words, cross –border displacement resulting from environmental disasters as a outcome of climate event stressors is at the core of present day migration discourse. To borrow the words of António Guterres, Secretary General of the United Nations who had previously served as the UN High Commissioner for Refugees “[c]limate change [is] now found to be the key factor accelerating all other drivers of forced displacement. These persons are not truly migrants, in the sense that they did not move voluntarily. As forcibly displaced not covered by the refugee protection regime, they find themselves in a legal void”.¹¹

One must not ignore the reality of the vulnerability of these groups, more so due to the absence of any specific laws for their protection. The lack or want of them being awarded a refugee status denies them access to various rights that refugees in general are entitled to. The matter stands compounded as climate induced displacement compel many from the small island nations to leave their hearth and homes on account of submergence of their lands and habitat. Moreover increased salinity of their farms lands, grazing grounds as well as loss of mangroves and unsustainable life support systems make them very much vulnerable. Their increasing numbers have resultantly posed several problems in the host countries wherever they are forced to relocate, seeking shelter and livelihood. Apart from environmental degradation, people residing in those countries, or if one may use the term, host countries, may experience disparities in income, resource strain affecting local development and overcrowding in sectors like health and education and the long term affect of pollution and poaching of animals and nature reserves. However in a recent article based on research , Paolo Verme¹² in a co-authored meta analysis stated that it does not indicate visible impact of forced displacement on employment and wages. This study premises the findings on the assumption of humanitarian aid being received on a priority basis.

The issue calls for being addressed on a priority basis. The urgency emerges from the fact that according estimates projected in the Groundswell report , the World Bank states that roughly 216 million people are likely to become climate change refugees by the year 2050.¹³ Had the warning by the Intergovernmental

⁷ Asma Hussain, “Status of Climate Refugees – Need for a Revised Legal Framework”(November 1, 2019) available at: SSRN: <https://ssrn.com/abstract=3836551> or <http://dx.doi.org/10.2139/ssrn.3836551> (last visited on 31 Oct, 2023)

⁸ This puts them at a distinct disadvantage of not being able to eke out their existence, rather being pushed to the verge of a perilous existence.

⁹ Norman Myers, “ Environmental Refugees”, Vol 19 No. 2 Population and Environment 167-182 (1997)

¹⁰ They fail to secure a livelihood due to drought , erosion, desertification, sea level rise, disruption of seasonal weather, etc.

¹¹ Climate Refugees, <https://www.climate-refugees.org/why> accessed on 20.11.2023 at 8.03 pm

¹² Theory and evidence on the impact of refuge World Bank Blogs published On Development and Peace March 23, 2023

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

Panel on Climate Change,¹⁴ way back in 1992, been heeded, then migration of millions likely to occur, leading to severe drought, shoreline erosion and coastal flooding could have been avoided or reduced.

Environmental Refugees and their Status

The mass movement of people from one place to another, owing to climatic and environmental conditions, worsening their survival in the country of origin, is not a contemporary concept and has been going on long before environment was given recognition as a ground on the basis of which migration occurs. In an attempt to vouch for a Convention which is based on Climate Refugees it has been given the meaning as- those persons who are compelled to flee to settle in other areas like the national borders due to climatic conditions and disruptions. A few factors have been identified that would help suffice a case of environmental migration. These which includes:

Disruption consistent with climate change

The foremost element that was identified was that of natural disasters and disruptions. A natural disaster is acknowledged as 'an event caused by disruptive changes in the physical environment, concentrated in time and space, in which a community undergoes severe damage and endures such losses to its members and physical appurtenances that the social structure is disrupted and fulfillment of all or some of the essential functions of the society is prevented'.¹⁵

Long term Environmental Degradation

The reason which forces people to migrate from one place of domicile to another should be the outcome of long term degradation of environment. It might be the loss of people's lands, for example, "the sinking Maldives", or the loss of biodiversity, which is essential in order for man to survive. The excessive pollution in certain places, resulting in issues like decline in air quality, pollution of water and soil are also reasons that lead people to take such a decision of moving to some other place. "The area known as the 'Black Triangle' lying in south-western Poland, the north-western part of the Czech Republic and the South-eastern part of Germany, is infamously renowned for the high level of air contamination".¹⁶ These phenomenons of the environment risks survival of human and force them to seek refuge elsewhere.

Developmental Disruptions

Many times human activities have also proved to be detrimental to the climate. For instance the increase in greenhouse gases due to burning of fossil fuels etc. slowly and gradually disturbs the ecological balance. When such developmental activities escalate at an alarming rate, it causes natural disruptions that make settlement in those places nearly impossible, thereby increasing the number of refugees that flee a place due to environmental factors.

Despite their vulnerabilities, Climate Refugees are not given 'refugee status' at par with other refugee groups. Some thinkers are of the view that doing so will put limitations on the protection and resources that are available to the others. Already the numbers of refugees around the world are rising and with it has increased the responsibility and obligation of International Organisations to extend their support towards them. However, many still lack protection and adding on 'environmental refugees' in the list of those seeking protection will further diminish the chances of others. Funding for these additional groups is a stressor that needs to be resolved.

"The United Nations High Commissioner For Refugees (UNHCR)¹⁷ fearfully suspects that if the Refugee Convention was to incorporate 'Environmental Refugee' as a legitimate status, the conventional political refugees would face dire consequences. Furthermore, the UNHCR does not have the adequate resources to

¹⁴ Kerilyn Schewel, Migration information source, online journal, JULY 20, 2023

¹⁵ Supra, n.1 Rajendra Ramlogan, "Environmental Refugees: a review", Vol. 23, No.1 Cambridge University Press 81-88 (1996).

¹⁶ ibid

¹⁷The United Nations High Commissioner for Refugees.

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safely harbor even the 14.3 million political refugees from around the world, and so it would be difficult for them to provide protection to the millions of people who suffer from unbearable repercussions of climate change. Here, it is crucial to note that in 1993 the UNHCR recognized four reasons that could account for the refugee flow, namely, political insecurity, economic stresses, ethnic conflict and environmental degradation. However, it states that even though affected people can travel across borders in the case of environmental degradation, they may not necessarily be granted the status of the refugee”.¹⁸ It may be pertinent to state that overall the refugee population as per UNHCR Data base in mid 2023 stands at 36.4 million out of the 110 million forcibly displaced.¹⁹

There is also an additional fear regarding defining the term ‘environmental refugees’ which would lead many people to cross boundaries misrepresenting themselves and under false pretense enter different countries and create problems for the local population residing there. Moreover, the cultural differences would likely create discrepancies amongst different groups which could lead to rise in intolerance against this influx, thereby raising a big question on their safety. “Since the 1951 UN Refugee Convention(as well as the Protocol of 1967) does not recognize climate or environmental refugees under the ambit of legal refugees, the UNHCR denied them the status in 2008.”²⁰ For similar reasons, climate refugees are denied such recognition under article 14 of the UDHR. The concerned agencies, such as UNHCR, unanimously agree that the usage of the term ‘environmental refugee’ should be refrained from. According to the different branches of UN, the term is equivocal and can therefore sabotage the international legal protocols established for the security and protection of refugees”.²¹ Though of late certain developments have occurred, these have not concretised.

Sufferers of Abuse and Exploitation

The Climate Refugees stand among the most exploited classes of refugees. Unlike other groups, they lack legal recognition and so very few laws are entitled to their protection. Most of such people with the intention to make ends meet, end up working as prostitutes, or end up as victims of slavery. This comes to them by fate or force. But they are exploited largely since their case doesn’t fall under any definition of a refugee. “The problem is that international climate policy is concerned with mitigation (reducing global warming) and adaptation (adapting to climate change), but focuses little on loss and damage – the damage and losses caused by severe weather events such as droughts, floods and rising sea levels. Thus, climate-related migration, displacement and subsequent resettlement are also disregarded by international policy”.²² It is evident that international policies on climate are more focused on saving the planet rather than addressing all the sufferings that extreme climatic conditions cause to the people. Developments of late that primarily find reflection through efforts of a few countries during the Conference of Parties at Paris and after, but much more is called for to provide meaningful respite through recognition of the need of environment or climate refugees.

No International body, by and large, wants to expand the horizons of their responsibility to include climate refugees under the protection that a refugee enjoys, but the influx that will result due to this will be

¹⁸ Supra, n. 6 Asma Hussain, “Status of Climate Refugees – Need for a Revised Legal Framework”(November 1, 2019) available at: SSRN: <https://ssrn.com/abstract=3836551> or <http://dx.doi.org/10.2139/ssrn.3836551> (last visited on 31 Oct, 2022).

¹⁹ Refugee Data Fact Finder, May- 2023 IDPs account for 62.5 million besides 6. Million asylum seekers

²⁰ *European Parliament, The concept of 'climate refugee' Towards a possible definition*

Going by the definition of the Convention, refugee is a person “who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”. Climate asylum does not figure among the five criteria. In contrast, a person forced to flee or compelled to relocate within the country on account of manmade situations or leave on account of natural causes are termed as internally displaced people, although some among them land up as ‘externally displaced persons’. Hence neither persons that are coerced to migrate or displaced on account of climate change qualify or get recognition either under the 1951 Convention or the Protocol of 1967 or for that matter under the wider notions of the regional instruments governing refugees.

²¹ Supra n 12.

²² Geert Van Dok, “Climate Refugees are Increasingly Victims of Exploitation”, *Helvetas*, Nov. 11, 2021.

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something out of bounds to be regulated. This can be seen from the Tetiota Case²³ where Tetiota claimed an asylum status in New Zealand on the ground of being a climate refugee. In this case, due to submergence of Island where the claimant stayed, he moved to New Zealand for better chances at survival. He was given work visa and provisional residence there. But after it expired, he was left compelled to go for asylum status derived from the evidences. His advocate, Michael Kidd fought his case and the decision stated that the evidence were all in place and the claim was authentic but their claim doesn't fit under any legal instrument.²⁴ He went to higher courts and authorities but all in vain since every authority stated decision with the same reasoning that his life as not at imminent risk due to protection measures initiated by in Kiribiti.

Even though his contention was not accepted, even the United Nations Human Rights Committee in January, 2020 upheld the same decision “holding that a receiving state is not expressly proscribed from returning an individual requesting refuge based on impacts of climate change”.²⁵ It acknowledged that “without national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights.” However cases like these set a precedent for the future of climate refugees who abandon their country of origin owing to climatic conditions. This problem needs urgent attention because sufferings of climate refugees are much larger than the war victims and this can be seen from the World Migration Report of 2020.²⁶ According to the report, by end-2018, there were a total of 28 million new internal displacements across 148 countries and territories. Nearly 61% (17.2 million) of these new displacements were triggered by disasters, and 39% (10.8 million) were caused by conflict and violence”.²⁷ “The Global Compact on Refugees holds that ‘climate, environmental degradation and natural disasters’ are not in themselves causes of refugee movements, but increasingly interact with the drivers of such population movements”.²⁸

Environmental Refugees Statistics

Maximum number of migrants who fled their homes due to climatic conditions and reasons related to the environment are seen to have fled from places which are mostly rural, since they are dependent on the environment for making their ends meet. But this phenomenon is not just restricted to rural areas; such refugees may also belong from developed areas, particularly urban areas where issues like sea level rise pose threat to human life. The statistical data is proof of the worsening situations around the world due to rise in various climatic issues that result thereby in the rising number of environmental refugees. “An estimated number of about 25 million climate refugees are on the move around the world as a result of environmental disturbances, 50 million are rendered homeless due to various natural calamities like floods and earthquakes, while around 90 million people are displaced as a consequence of infrastructural projects. To make matters worse, experts predict a sharp hike in the aforementioned figures as a result of global warming and rise in sea-levels by 2050”.²⁹ According to the UNHCR, a yearly average of 21.5 million people has been compelled to move, flee and resettle in faraway places owing to extreme climatic conditions and environmental factors which include floods, storms, wildfires and extreme temperatures – since 2008.³⁰

²³ *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 .

²⁴ [2015] NZSC 107

²⁵ Aleksandrova, Mariya / Benjamin Schraven / Diogo Serraglio, THE IMPLICATIONS OF THE UN'S RULING ON 'CLIMATE REFUGEES', <https://www.idos-research.de/en/the-current-column/article/the-implications-of-the-uns-ruling-on-climate-refugees-1/#:~:text=The%20UN%20Rights%20Committee,the%20impacts%20of%20climate%20change>. accessed on 22.11.202 at 3.28 pm

²⁶ International Organisation for Migration, “World Migration Report” (2020).

²⁷ *Ibid.*

²⁸ Geert Van Dok, “Climate Refugees are Increasingly Victims of Exploitation”, *Helvetas*, Nov. 11, 2021.

²⁹ *Supra*, n.6 Asma Hussain, “Status of Climate Refugees – Need for a Revised Legal Framework”(November 1, 2019) available at: SSRN: <https://ssrn.com/abstract=3836551> or <http://dx.doi.org/10.2139/ssrn.3836551> (last visited on 31 Oct, 2022).

³⁰ United Nations High Commissioner for Refugees, available at: <https://www.unhcr.org/news/latest/2016/11/581f52dc4> (last visited on November 5, 2022)

This problem is one that has raised concerns around the world and the statistics show the alacrity of the situation. “In April 2020, the UNHCR released data showing that the number of people displaced by climate change-related disasters since 2010 has risen to 21.5 million, pointing out that in addition to sudden disasters, climate change is a complex cause of food and water shortages, as well as difficulties in accessing natural resources.”³¹ Sea-level rise is another threat.

Over a period of the last three decades, the number of people residing in coastal areas who are at high risk of rising sea levels has increased from 160 million to 260 million, 90% of whom are from poor developing countries and small island states.³² For example, in Bangladesh it is predicted that 17% of the country will be submerged by the rise in sea level by 2050, and 20 million people living there will lose their homes”.³³ These figures call for urgent attention to be focused on protection of these vulnerable refugees and adopting measures to trim down the growth in their numbers.

International Initiatives

When migrants, due to climatic conditions unsuited to survival, flee from their country of domicile to traverse international borders and settle elsewhere, it becomes an obligation on the international law to cater to their needs and the international community to extend their support for their security, safety and protection. It is seen in many instances that despite a country being environmentally conscious, activities of another country at close proximity might affect the conditions in that country as well. One is very much noticeable in respect of developing countries which are facing the brunt in the name of development by north. The significance of international law principles on environmental protection can be seen here, particularly the Polluter Pays Principle. This can be interpreted in case of environmental refugees to bind developed countries who are the highest polluters to bear their responsibility and ensure their safe resettlement across national or international borders. The same reason which is provided for application of the Polluter Pays Principle is also considered applicable in case of another important principle in Environmental Law, and that is the Principle of Common but Differentiated Responsibility. According to this principle, different states will be eligible with variation in contribution towards the environment in accordance with the degradation that a particular state has caused.³⁴

There was no specific policy in the global arena that was dedicated entirely for safeguarding the environmental migrants until 2015. Then came the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, 2015 .

The same year, the SDG Agenda 2030 was adopted. Emphasis has been laid through Goal 13 on climate action,³⁵ on the relation that exist between damage on the environment and the fleeing from that territory. An analysis of Goals 6,³⁶ 7,³⁷ 14³⁸ and 15³⁹ stresses upon measures to address the issue of climate induced migration. But no such policies would be of any help unless the international community comes forward to

³¹ Tetsuji Ida, Climate refugees – the world’s forgotten victims KYODO NEWS | JUNE 21, 2021, <https://climatechampions.unfccc.int/climate-refugees-the-worlds-forgotten-victims/> accessed on 20.9..2023 at 0.22 pm

³² ibid

³³ World Economic Forum, available at: <https://www.weforum.org/agenda/2021/06/climate-refugees-the-world-s-forgotten-victims/> (last visited on November 5, 2022).

³⁴ Ana Zdravkovic, “International Status of Environmental Migrants” 3 *eudaimonia* 27-54 (2019)

³⁵ 13.1 Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries

³⁶ Ensure access to water and sanitation for all .Access to safe water, sanitation and hygiene is crying human need for health and well-being.

³⁷ Ensure access to affordable, reliable, sustainable and modern energy, which is the key to the development of agriculture, business, communications, education, healthcare and transportation.

³⁸ Conserving and sustainability using the oceans, seas and marine resources. Healthy oceans and seas are essential to human existence and life on earth.

³⁹ Protect, restore and promote sustainable use of terrestrial ecosystems, sustainability manage forests, combat desertification, and halt and reverse land degradation and halt bio diversity loss.

address such matters.⁴⁰ Assisting environmentally displaced people happen to be challenging task in the present day world as much awaits to be done in this respect. Measures need to go a long way before these set of people get the protection they are seeking.

Chiara Scissa “identified five proposals between the 20th and early 21st century “to define and assist environmentally displaced that people gained particular attention. These were: 1) extending the 1951 Convention Relating to the Status of Refugees; 2) adding a protocol on climate refugees to the United Nations Framework Convention on Climate Change (UNFCCC); 3) adopting a new legal framework; 4) promoting the Guiding Principles on Internal Displacement; and 5) using temporary protection mechanisms”.⁴¹

In important development that can go a long way in facilitating climate change measures that can have an impact on environmental refugees happen to be the UNHCR's Refugee Environmental Protection (REP) Fund. This is an initiative undertaken that will result in reforestation⁴² and clean cooking programmes in areas around the world where climate refugees have relocated and resettled through innovative financing mechanism by establishing a linkage between refugees and host communities to global carbon markets.⁴³ The carbon generated through these policies would add up to carbon credits of environmental refugees who would be able to benefit from the selling of these credits. This will also lead to achieving more sustainability. It will also lead to generation of employment for the vulnerable refugees and also the population of the host country.⁴⁴ In addition it will help check soil erosion and landslides.

The non-refoulement principle in Customary International Law binds every country within its ambit, with a few exceptions is worth mention. According to the principle, no country should expel or send back any person to their country of origin, if in doing so, they will be exposed to threat in relation to life, cruel inhuman and degrading treatment. Although the Refugee Convention⁴⁵ enshrines the Principle of Non Refoulment and is considered to be a major premise governing repatriation of refugees, the definition of refugee under the Convention doesn't encompass environmental refugees. Hence environmental or climate refugees are deprived of the protection.

Article 3 of the Convention Against Torture⁴⁶ also prohibit refouling a person if he has well founded fear of persecution in his country of origin or if there are situations that threaten his life. These can be indirectly interpreted to encompass the case of environmental refugees as well, since refouling very much poses a threat to their life due to environmental conditions prevalent in one's country of origin. The said principle to a certain extent can be deduced from articles 6 and 7 of the International Covenant on Civil and Political Rights that ensures or guarantees the right to life and prohibition from any form of inhuman or degrading

⁴⁰ Chiara Scissa. Recognition and Protection of Environmental Migrants in International Law, <https://www.e-ir.info/2021/06/24/recognition-and-protection-of-environmental-migrants-in-international-law/> accessed on 9.11.2023 at 0.51 pm.

⁴¹ *ibid*

⁴² According to UNHCR estimates 90 percent of the 20-25 million trees are cut down every year in and around refugee settlements for meeting the need for cooking fuel. www.hip.innovationnorway.com The Humanitarian Innovation Programme accessed on 20.11.2023 at 11.39 am

⁴³ *ibid*

⁴⁴ United Nations High Commissioner for Refugees, available at: <https://www.unhcr.org/refugee-environmental-protection-fund.html> (last visited on November 5, 2022).

⁴⁵ Convention Relating to the Status of Refugees, 1951, art. 33 states that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom could be threatened....

⁴⁶ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984, art. 3 lays down prohibition to extradite, expel or return endangering his life or being subjected to torture.

treatment of punishment. Hence a climate refugee so long as he or she is abroad should be able to claim the said protection of the Covenant, it being considered a non derogatory basic human right.

The OAU convention of 1969 happen to be the only other instrument on refugees, but it has regional jurisdiction and does not provide for climate refugees. That aside the silver lining as in case of the Cartagena Declaration is that it mentions about ‘events seriously disturbing public order’. It is considered instructive to refer to the Cartagena Declaration on Refugees which extends the definition to persons fleeing “events seriously disturbing public order”. This seems to be in accord with the present situation relating to climate refugees. However the Cartagena Declaration is limited in scope and extent besides being of non-binding character. Aside from these to treaties other instruments does not have even such a provision.⁴⁷

The United Nations General Assembly in respect of the Global Compact on Refugees (GCR) observed that “climate, environmental degradation and disasters increasingly interact with the drivers of refugee movements”.⁴⁸ The Global Compact on Safe, Orderly and Regular Migration of 2018, the first intergovernmental agreement, prepared under the auspices of the United Nations, provides 23 objectives for safe and effective migration. Under Objective 2 the urgent situation of migrants being displaced because of climate change has been considered.⁴⁹ It addresses the environmental reasons that compel people to flee from their countries. Other relevant points from the objectives related to Environmental Refugees include the right to a legal identity, protection of one’s right to life in relation to migration of any kind etc.⁵⁰ The GCR has stated that if found appropriate the UNHCR will advise on measures to protect those displaced by climate change.⁵¹ The GCR provides that if found appropriate the UNHCR will advise on measures for the protection of those displaced by climate change.⁵²

UNHCR has been operating for long towards lessening the affects of climate on people which compel them to move and relocate as refugees. “Initiatives such as solar farm establishment in refugee camps in Jordan etc, opting for renewable energy sources solutions, Global Strategy e Sustainable Energy, Green Refugee Camp Project in Cameroon etc” are worth emulation.⁵³ UNHCR in a decision had also stated that just as non adherence to the principle of non refolement is a violation of human rights in case of refugees, same is the case for environmental refugees as well.⁵⁴ Various regional laws were also made to address issues of migration occurring due to environmental factors and it’s regulation. The Alien Act of 2004⁵⁵ in case of Finland grants temporary protection to displaced people owing to climatic conditions. Another development was seen in Argentina with provision for temporary residence in case of any kind of refugees. Despite laws

⁴⁷ Tyler Bergeron, No Refuge for ‘Climate Refugees’ in International Law 30.1.2023

https://www.lclark.edu/programs/environmental_and_natural_resources_law/ accessed on 23.11.23 at 3.50 pm

⁴⁸ https://www.unhcr.org/gcr/GCR_English.pdf accessed on 7.11.2023

⁴⁹ Gregory White “Climate Refugees”—A Useful Concept, *Global Environmental Politics* (2019) 19 (4): 133–138.

⁵⁰ Office of the High Commissioner for Refugees, available at: <https://www.ohchr.org/en/migration/global-compact-safe-orderly-and-regular-migration-gcm> (last visited on November 5, 2022).

⁵¹ Liam Ryder Saddington ^a, Tiger Hills, Geopolitics and humiliation: The ‘sinking islands’ of Tuvalu, *Political Geography* Volume 105, August 2023, 102938, <https://www.sciencedirect.com/science/article/pii/S0962629823001166#bib31> accessed on 17.11.2023 at 7.54 pm

⁵² Liam Ryder Saddington ^a, Tiger Hills, Geopolitics and humiliation: The ‘sinking islands’ of Tuvalu, *Political Geography* Volume 105, August 2023, 102938, <https://www.sciencedirect.com/science/article/pii/S0962629823001166#bib31> accessed on 17.11.2023 at 7.54 pm

⁵³ United Nations High Commissioner for Refugees, available at: <https://www.unhcr.org/news/press/2020/6/5eda46614/unhcr-help-protect-environment-protect-refugees.html> (last visited on November 5, 2022).

⁵⁴ REPORT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION October 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf> accessed on 23.1.2023 at 1.18 pm

⁵⁵ The Alien Act, 2004 (Act 301/2004 of 2004).

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coming up in certain parts of the globe, one cannot ignore the need for a global law on this sensitive topic. Their vulnerabilities require proper addressing and awarding of security and protection.

The Cancun Conference of Parties (COP) of 2010 is considered to be significant for coming to an agreement on Long Term Cooperative Action on the aspect of climate induced migration. It discussed the necessity of inclusion of climate-related displacement into national plans while accepting the argument on the need to solve the issue on the basis of cooperation in order to reach a global and international solution.⁵⁶ In terms of Paragraph 14(f) of COP Decision 1/CP.16, Cancun for the first time called for measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels'.⁵⁷ COP 18 in 2012, acknowledged the need and desirability to study the patterns of climate migration, displacement and human mobility in more detail.⁵⁸

COP 21 at Paris adopted a resolution asking the Executive Committee of the Warsaw International Mechanism on Loss and Damage to work towards creating a task force to “develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change.”⁵⁹ The Warsaw International Mechanism for Loss and Damage along with its Task Force on Displacement have addressed the issue observing that migration may well be considered an adaptation strategy by the migrants. The decision at COP 27 held in Sharm El-Sheikh, Egypt to compensate vulnerable nations for 'loss and damage for people associated with catastrophic effects' from climate-induced disasters awaits development in the forthcoming COP in Dubai. It is considered to be an enabling provision at facilitating meaningful action. This has been considered as “an important step towards justice” as “a result of much homework” as put by the UN Secretary General.⁶⁰

The Nansen Initiative based on key principles,⁶¹ namely, international cooperation and solidarity; standards for the treatment of affected people regarding admission, stay, status; and operational responses, including funding mechanisms and responsibilities of international humanitarian and development actors is considered an important step. This bottom up consensus process facilitates a protection agenda for the natural and climate induced disaster displaced people across geographical frontiers. The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change presents states with useful guidelines and principles on the regulation of climate-induced migration, including criteria for the term ‘cross-border disaster-displaced persons’;⁶² useful practices with respect to individuals’ admission and stay in host states;⁶³ practices concerning the protection of human rights (including on non-return/non-refoulement), and for cases in which long-term stays are required.⁶⁴

At the regional level the European Union initiated measures to support and help countries develop resilience

⁵⁶ Climate Change Normative Gaps and Possible Approaches, 50(2012)

<http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=4f33f1729&query=Climate%20change,%20natural%20disa> accessed on 20.11.2023 at 9.22 pm

⁵⁷ UNFCCC Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010. <https://undocs.org/FCCC/CP/2010/7/Add.1>

⁵⁸ Paragraph 7(a)(vi) of Draft Decision 3/ CP.18

⁵⁹ UNFCCC Draft decision -/CP.21. <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>

⁶⁰ Sriparna Rajkhowa, CLIMATE REFUGEES-LEGAL IMPASSE,

<https://www.eurchembull.com/uploads/paper/3c4136e780a0b5e8ade437c67b279c26.pdf>, DOI: 10.48047/ecb/2023.12.8.711 accessed on 23.11.2023 at 1.26pm

⁶¹ “to guide responses to some of the urgent and complex challenges raised by displacement in the context of climate change and other environmental hazards” (Preamble)

⁶² The Nansen Initiative, *Agenda for the protection of cross-border displaced persons in the context of disasters and climate change* (2015) <<https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>> 22.

⁶³ Nansen Agenda, Ibid, 26

⁶⁴ Nansen Agenda, Ibid, 28-29

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in matters relating to climate refugees.⁶⁵

The Human Rights Council has of late come to address the issue of climate refugees. According to Ian Fry the Special Rapporteur of the Human Rights Council on the Promotion and Protection of Human Rights in the Context of Climate Change, “[t]he effects of climate change are becoming more severe, and the number of people displaced across international borders is rapidly increasing”. He observed that “The Human Rights Council should prepare a resolution for submission to the UN General Assembly urging the body to develop an optional protocol under the Convention relating to the Status of Refugees to address displacement and legal protection for people all over the world affected by the climate crisis.”⁶⁶ The initiatives such as the global policy processes such as the Sendai Framework for Disaster Risk Reduction initiative 2015-2030, the World Humanitarian Summit, the New York High Level Meeting to address large movements of Refugees and Migrants and the Global Forum on Migration and Development if pursued in the right direction should offer some solace to the environment refugees.⁶⁷

CONCLUSION

It is an inevitable fact that climate change around the world is affecting the lives of people at large and the problem seems to be multiplying with each passing day. The elephant in the room cannot be left unattended as in the present day world climate induced displacement far exceed those affected by war and conflict. A global issue of such magnitude is not something that can be brought under regulation easily nor can be shoved under the carpet. Yet the Office of the United Nations High Commissioner for Refugees moved towards a definition of ‘environmentally displaced persons’ as those “who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climatic processes and events”,⁶⁸ in other words, it emphasizes upon some form of international protection. Although international organizations had long been shying away from recognizing climate refugees, they have of late been veering around to address the causes, issues and consequences of climate induced migrants or such displaced people.

Climate Changes are on the inclination towards more extreme situations since people are more focused on development and ignorant on how it has been affecting the environment. Moreover, as mentioned the plight of environment affected refugees have not received the deserved priority.

The nature has now begun to expose these vulnerabilities of men forcing him to flee and run for life. The magnitude of the situation calls for a for specific law relating to Environmental Refugees considering the increase in their numbers and statistics show that the graph is not undergoing any remarkable decline anytime soon. The Refugee Convention does not seem to be of significance in matters related to Environmental Refugees. It is therefore the need of the hour to endow them with legal protection and bind countries under obligation to provide security to these refugees. The need for a comprehensive legal pathway and policy is therefore an urgent necessity for removing their existential threat and removing the legal void so that they no longer have to live in a legal limbo. It is time for the international community to find out a mechanism through which climate refugees would stand legally recognized. A protocol to the Refugee Convention at the very least may be considered an instrument to provide some form of legal recognition. An amendment to article 3 of the Convention should provide for an enabling mechanism.

⁶⁵ The concept of 'climate refugee': Towards a possible definition, think tank European Parliament, [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698753](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698753) accessed on 22.1.2023 at 9.38 am

⁶⁶(A/HRC/53/34)

⁶⁷ Sendai Framework for Disaster Risk Reduction 2015 – 2030, https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf accessed on 23.11.2023 at 1.31pm

⁶⁸Refugee Studies Centre ‘Environmentally displaced people, Understanding the linkages between environmental change, livelihoods and forced migration’ (University of Oxford, November 2008) <http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCPB1-Environment.pdf> accessed 09 .1.2023at 8.41 pm

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