

CLIMATE CHANGE AND HUMAN DISPLACEMENT: THE NEED FOR A NEW LEGAL REGIME

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ABSTRACT

At present climate change is a reality that is bound to cause the largest exodus of its victims. It has been predicted that almost 200 million climate change victims will be displaced from their homes, which might even escalate, as the global anthropogenic emission continues to increase. However, national, regional or international governance system is not well adept to deal with this menace. Lacuna in the existing international legal and policy framework dealing with climate change and events associated with it, for most of its part leaves out the issue of climate refugee, thereby rendering the whole idea invalid at law. Adherence to the definition of refugee as provided by the United Nations High Commission for Refugees (UNHCR) through its 1951 Refugee Convention, at the time when the issue of climate refugee was almost non-existent. Climate Change and its consequences are more conspicuous than ever before and have been alarmingly high. In this regard, the definitional debate that is still existent would further delay the redressing of the problems associated with climate refugees thereby worsening their condition and making the problems severe. For this end, it is exigent that a new instrument dealing with the issue of climate refugees be drawn in light of the existing climate change regime. This however is a daunting task and calls for co-operation and joint action from various international actors at global and local levels.

I. INTRODUCTION

United Nations Framework Convention on Climate Change (UNFCCC) 1992 refers to climate change as a change of climate that is attributed directly or indirectly to human activity which alters the composition of global atmosphere and in addition to natural climate variability it is observed over comparable time periods.¹ Stern further asserts that climate change threatens the basic elements of life for people around the world i.e. access to water, food production, health and use of land and the environment.² The Intergovernmental Panel on Climate Change (IPCC) in its fourth assessment reports published in 2007, held

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¹ United Nations Framework Convention on Climate Change, Art.1(2), 1771 U.N.T.S. 107. (May.9, 1992), at https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf. Last visited on December 22, 2015.

² Stern, N., Economics of Climate Change: The Stern Review, HM Treasury, 2007, pp.55-143.

that human induced climate change is increasing and is already threatening several areas including an increase in certain natural hazards.³In its recent report of 2014, IPCC further states that human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history.⁴ Recent climate changes have had widespread impacts on human and natural systems.⁵The rate of increase in disasters induced by climate change has increased over the course of past 20 years; nine out of ten natural disasters have been associated with climate change.⁶ IPCC reaffirms the negative impacts of human induced climate change stating that warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia.⁷ The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen.⁸ This has significantly affected the lives of millions. As an estimation given by Holmes, since 2001, approximately 200 million people are being affected by natural disasters each year.⁹ Similarly, it was reported that in 2008 alone around 36 million people were displaced by ‘sudden onset’ disasters¹⁰ like flood,

³ IPCC, 2007: Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Parry, M.L., Canziani O.F., Palutikof, J.P., Linden, P.J., and Hanson, C.E., (eds.), Cambridge, UK, 2007, at p. 212-228, at <https://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4_wg2_full_report.pdf>. Last visited on December 25, 2015.

⁴ IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, Pachauri, R.K. & Meyer, L.A., (eds.) Geneva, Switzerland, 2014, at p. 39-112, at http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf. Last visited on December 22, 2015.

⁵ *ibid.*

⁶ Bradley, M. and Cohen, R., “Disasters, Displacement and Protection: Challenges, Shortcomings and Ways Forward”, in Faist, T. and Schade, J. (eds.), *Disentangling Migration and Climate Change*, Netherlands, 2013, pp.207-228, at p.212. [Examples of such natural disasters include the 2013 flash flooding caused by heavy rain in Pakistan that killed millions. Furthermore, the events of drought that hit Russia in 2010 and again in 2012 are another succinct example of such events. Likewise, the 2013 Typhoon Haiyan that struck the Philippines was one of the strongest tropical cyclone recorded.]

⁷ *supra* note 4 at p. 113.

⁸ *ibid.*

⁹ Holmes, J., “The need for collaboration”, 31 (2008) *Forced Migration Review*, at p.4.

¹⁰ Internal Displacement Monitoring Centre, “42 million displaced by sudden natural disasters in 2010” (June 2011), at <http://www.habitants.org/news/global_info/42_million_displaced_by_sudden_natural_disasters_in_2010_report>. Last visited on December 21, 2015.

hurricanes, landslides, cyclones etc. Likewise, millions more were displaced by 'slow onset' disasters, like desertification, rising sea levels, drought, land degradation, extreme temperatures and so like. IPCC states that climate change is projected to increase displacement of people and is most likely to manifest in low income developing countries.¹¹ One of the major reasons is their lower adaptation capacity attributable to their economic standing and pressing need to address poverty. Likewise, displacement and forced migration was mostly temporary up until now, however with increasing climate risks, displacement is more likely to take the form of permanent migration.¹² This then is due to the adaptation capacity barriers which could be overcome much more effectively through migration i.e. migration as an effective adaptation strategy. Such strategy is most widely acknowledged and considered as an effective alternative in case of low lying coastal areas where the threat of climate change induced natural disaster leading to forced displacement, is high.¹³

The rate of out flux both within and across borders is increasing with the increasing events of such disasters, be it sudden or slow. In the context of climate change, most of the movement taking place is rather forced than voluntary. Taking note of the nature of such movement, the distinction between internally displaced person (IDPs) due to conflict and natural disaster is blurred.¹⁴ Likewise, in the absence of a definition addressing human displacement attributable to climate change and environmental issues under the 1951 Refugee Convention, the plight of such forced migrants has been heightened. This raises a pertinent question about the human rights of those who have been forced to migrate due to circumstances beyond their control and calls for a more clear and structured international legal regime that addresses the issues of human movement attributable to climate change. In this regard, Walter Kälin, the former Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (RSG) rightly asserts that it is equally important to view the issue of displacement induced by natural disasters through a 'protection lens' as it is to address the issue of displacement by conflict.¹⁵ At least in theory, internally displaced people are still able to receive the protection of their state, which is quite opposite in the case of

¹¹ *supra* note 4 at p.16.

¹² *supra* note 4 at p.71.

¹³ *ibid* at p. 98.

¹⁴ International Alert, "Climate Change, Conflict and Fragility" (November 2009), at <http://www.international-alert.org/resources/publications/climate-change-conflict-and-fragility>. Last visited on December 25, 2015.

¹⁵ Kalin, W., "Natural Disasters and IDPs Rights", Tsunami Special Issue (2005) *Forced Migration Review*, pp.10-11, at p.11.