

The Curious Case of Environmental Refugees: Environmental Refugees May be Better Protected Without Being Declared as “refugees”

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OIDA International Journal of Sustainable Development, Ontario International Development Agency, Canada.

ISSN 1923-6654 (print) ISSN 1923-6662 (online) www.oidaijsd.com

Also available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

Abstract: The debate regarding legal rights of persons migrating due to climate associated events or processes is not new. The debate pre-dates the coinage of the term “environmental refugees” and even until today, it has not reached a logical conclusion. Rather it has remained limited to academic discourses, the layman is still unaware of the legal vacuum that exists with respect to protection of Environmental Refugees. This is because there has not been an official recognition and definition of the term under an international instrument. The use of the word refugees is problematic as the international law on refugees employs a narrow definition of refugees only covers persons fleeing persecution and not being protected by the state. Therefore, until and unless people affected by climate change also face persecution by their state, they will not be “refugees” in the legal sense of the word. There is confusion in the international as to whether the protection of Environmental Refugees would fall under the domain of refugee law, environmental law or migration law or at an interface of all of these. Law on Human Rights provides for certain protection; however, these are not specific to Environmental Refugees but general rights. The argument of the authors is that mere designation of climate change displaced persons as refugees would not grant them enough protection. The approach for their protection should involve a coordinated effort under an interface of migration laws, environmental laws and refugee laws to say the least.

Keywords: Climate Change, Environmental Refugees, International Law, Migration, Protection

“In the long run I do believe very strongly that it will better for us to find that we have been roughly right than precisely wrong”

-Norman Myers

Introduction

Imagine a ferry in the open ocean carrying a family of four from an Island nation to a bigger and safer country. The ocean-waves are fierce and travelling in the ferry could be fatal as there is a cyclone formation a few kilometers away from the ferry’s location. However, the family still decides to go on and takes the plunge because staying back would be as dangerous if not more.

This is not an excerpt from a fictional story, rather, it is the reality of many of the victims of climate change who are forced to leave their homes and livelihoods behind in order to find a safe place for their survival. The details of their journeys may be different, but they are bound by a common thread that is, all of them are taking refuge from the vagaries of nature and in doing so, they leave their homelands and move to far off places. It is not an easy decision to leave your motherland, however, many victims of climate change linked disasters or effects are forced to make this choice as the last resort.

Such is the story of Ioane Teitiota who was deported from New Zealand to Kiribati as his plea for grant of refugee status was rejected by the courts in New Zealand [1]. He had moved to New Zealand with his wife legally but had overstayed his visa. After his arrest, he applied for grant of “refugee status” as his story grabbed the attention of the world community and highlighted the legal vacuum in international law for protection of persons

forced out of their home country due to climate change. Although he lost the legal battle but there is a silver lining in the words of Justice Wild (who delivered the judgment), would be: *“No-one should read this judgment as downplaying the importance of climate change. It is a major and growing concern for the international community. The point this judgment makes is that climate change and its effect on countries like Kiribati is not appropriately addressed under the Refugee Convention”* [2].

Justice Wild’s concern is absolutely valid at a time when global warming is happening at an. As early as in 1990, the Inter-governmental Panel on Climate Change (“IPCC”) had highlighted that the *“gravest effects of climate change may be those on human migration as millions are uprooted by shoreline erosion, coastal flooding and agricultural disruption”*[3]. Norman Myers’ estimate puts the number of such migrants at 200 million by 2050 which is also confirmed by the Stern Review [4] [5]. As per the World Bank, more than 68.5 million people were forcibly displaced in 2017 alone and at least 140 million people are expected to be displaced globally by 2045 just by desertification [6]. Further, it projected around 150 million climate refugees by 2050 in the three most environmentally vulnerable regions- Sub-Saharan Africa, South Asia and Latin America.

As per the latest assessment by the IPCC, we have barely a dozen years left before the global temperature rise crosses the 1.5-degree mark [7]. After the 1.5-degree threshold is breached, even a slight increase in the temperature would worsen the risk of climate-related disasters, thereby reducing the “carrying capacity” of the planet and pushing an even higher number of people ‘out’ to resettle elsewhere. When people are displaced beyond their national territory, it becomes an issue under the international law to ensure these displaced people are protected. The sad reality is that most climate change induced displacement originates from the least developed parts of the planet such as Pacific Islands, Gangetic delta in South Asia, Nile delta in Egypt, African Sahel, etc. There is hardly any incentive for the developed countries to take up the issue of recognition of environmental refugees on priority. Moreover, there is going to be a paucity of funds to manage these refugees.

However, certain beginnings have been made as the international community officially recognized climate change induced migration with the adoption of the Cancun Outcome Agreement at the Conference of Parties of United Nations Framework Convention on Climate Change (“UNFCCC”) in 2010 [8]. Further, in 2011, with the Nansen Conference on Climate Change and Displacement, Oslo, countries resolved to undertake a more comprehensive approach to the issue [9].

The countries at Paris Climate Conference in 2015 urged the Warsaw International Mechanism on Loss and Damage to prepare recommendations for addressing climate change induced displacement [10]. In 2016, the United Nations’ members through New York Declaration decided to protect the rights of Refugees and Migrants [11]. A logical consequence to this was the inclusion of climate change related international displacement in the Global Compact on Refugees (2018) and Global Compact for Safe, Orderly and Regular Migration (Marrakech Compact on Migration, 2018)[12][13].

However, the assumption that all the persons affected by climate change and forced to migrate should be designated as refugees is rather troublesome. At the very outset, it may be stated that the authors are of the view that all persons displaced due to climate change deserve the highest form of protection under the law but not necessarily under the refugee law. To make this point, first and foremost, we need to dispel the misnomer of “environmental refugees” and study the various definitions of climate refugees or environmental refugees. Then, the existing protections under the international law will be discussed. Thereafter, we will present the different possible models of protection and demonstrate how mere designation as “refugees” may not be the protection they deserve.

Even today, many countries, including India which attracts large number of refugees, have not even ratified or signed the Convention relating to the Status of the Refugees, 1951 (“Refugee Convention”) to protect people fleeing state persecution [14]. Thus, merely declaring the displaced persons as refugees may still not protect them adequately. A viable model would require an interface between the migration and environmental laws, among other things.

Materials and Methods

The present study is the result of doctrinal research conducted on the basis of various academic materials such as books, journal articles, online blogs and so on. We have employed the method of critical enquiry to understand the problem of Environmental Refugees and how they can be protected in the best way possible. Due to the limitation of time and resources, an empirical study would not have been possible. However, we have made an attempt to thoroughly understand the available literature on the topic to come up with a constructive solution for protection of Environmental Refugees under international law.

Explaining the Misnomer

The term 'Environmental Refugees' was initially popularized by Lester Brown of Worldwatch Institute in the 1970s but it received worldwide recognition in 1985 when Essam El Hinnawi used it in a United Nations Environment Programme ("UNEP") Publication [15][16]. He defined it 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."*

However, Sadako Ogata, a former United Nations High Commissioner for Refugees ("UNHCR") and scholars like Gaim Kibreab consider it a misnomer as these "environmental refugees" are not actually refugees under the Refugee Convention [17][18]. As per Article 1A of the Refugee Convention, only a person who crosses international borders due to a *"well-founded fear of persecution based on race, religion, nationality, membership of a social or political organization"* is considered to be a refugee [19]. As environmental refugees do not fulfill this criterion, they are not refugees *stricto sensu*.

They may be protected under the Refugee Convention if, in addition to the environmental disruption, the people are faced with some form of persecution. For instance, an armed conflict arising due to climate change where the state fails to protect the individuals, or a situation of environmental disruption caused by the state or its agencies endangering the safety of the individuals. These situations are covered under "nexus dynamics" but in absence of such a nexus, the displaced persons would not be protected under the Refugee Convention [20]. Thus, the term "environmental refugees" is not endorsed by the UNHCR, instead, it uses the term "persons displaced in the context of disasters and climate change" [21]. (For the purpose of this paper we will refer to the forced climate migrants as 'environmental refugees')

Apart from the fact that environmental refugees do not qualify as refugees under the Refugee Convention, the majority of such refugees remain within the state and do not cross borders ("internally displaced persons") and designating them as refugees would be misleading in that respect. Moreover, there is an element of "return" in case of political refugees as they are to return to their country of origin once the fear of persecution subsides. However, in case of environmental refugees, it may not be a possibility if the migration is permanent viz., attributable to destruction of habitat like submergence of islands in the Pacific Ocean. This is the reason why International Organisation for Migration ("IOM") suggests using the term "forced climate migrant" be used instead of environmental refugees [22].

Although such displaced persons are not legally refugees, the UNHCR still has a role to play in protecting people against climate change displacement in certain situations like disruption of public order, internal displacement of persons, etc. For instance, it was involved in humanitarian work in Afghanistan, Philippines, Samoa, etc. among people displaced by disasters. Moreover, under some regional agreements like Cartagena Declaration (1984), Organisation of African Union Convention (1969), etc., the definition of refugees is more liberal as persons leaving the country due to the disturbance in public order and not strictly state persecution are also granted refugee protection. However, as far as cross-border or international displacement is concerned, UNHCR does not have a fixed role as in the case of refugees under the Refugee Convention. Moreover, as will be explained in the later part of this paper, UNHCR is already over-burdened and expanding its scope significantly may be counter-productive.

Defining Environmental Refugees

As is clear from the above discussion, 'environmental refugees' is not a legal term. There are various terms that are used interchangeably, such as climate refugees, forced climate migrants, environmentally displaced persons, etc. to refer to persons that are displaced beyond international borders due to environmental disruptions. As there is no official definition yet, we have analysed the definitions put forth by various scholars and international organisations and tried to understand why it is difficult to formulate a common agreeable definition. To get an idea of the magnitude of the problem, we need to know how the term is defined by the scholars as every estimation is to be seen in the context of the conception of the term provided by the author.

First and foremost, we will examine Hinnawi's definition as it is one of the most popular definitions available. It does not specify if the movement is internal or international and includes both types of displacements. It has been supported by empirical data that most displacements occur within the national boundary of a state i.e. internal as it is only in extremely dire situations that people undertake a migration to another country. Further, it includes temporary as well as permanent movements caused due to environmental disruptions. By "environmental disruption", Hinnawi means *"any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life."* The definition also does not

distinguish between natural and man-made environmental disruptions and therefore, even a chemical disaster like Chernobyl or Bhopal Gas Leak would be covered in its ambit.

It can be said that Hinnawi's definition is over-arching and comprehensive as it captures all possible circumstances of environmentally induced migration. On one hand, it includes climate events of sudden nature or natural or man-made disasters like cyclones, earthquakes, floods, chemical leak and so on, while on the other, it also covers slow onset climate processes such as sea-level rise, desertification, coastal erosion, drought, etc. Based on this definition, Hinnawi had estimated that there were 30 million refugees in 1985 [23].

Hinnawi's definition is broad enough to cover Ioane Teitiota's case as well. As opposed to Teitiota's case, Siego Alasena's case came for consideration before New Zealand's Immigration Tribunal [24]. His family was fortunate to have been granted permission to stay on ground of the harm that would befall their children if they were made to return to Tuvalu, an island which is slowly receding into the ocean [25][26]. Therefore, countries' policy and courts' attitude towards the climate migrants is in a confused state at present partly due to the absence of a common acceptable definition.

Another popular definition is the one provided by the IOM defined environmental migrants as *"persons or groups of persons, who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad"*. IOM's working definition is on similar lines as it also includes internal and external; temporary and permanent movements induced due to sudden or gradual environmental changes.

David Barker, who worked with the United Nations Development Programme, defined environmental refugees as *"individuals whose movement is caused by a combination of environmental and political and/or who are unable or unwilling to avail themselves of the protection of their own countries in dealing with the impacts of environmental disruptions"*[27]. This definition is broader as it covers movement caused by a mix of environment related and political factors. It also covers all those cases where the state fails to protect its citizens or where such protection is inaccessible to people and, in this way, unlike Hinnawi's definition it is closer to the definition of refugees. Barker's definition is closer to reality as per many scholars who argue that environment is rarely the "only reason" or push factor when it comes to migration as most often than not, migration is triggered by a combination of factors[28].

Fabrice Renaud creates a distinction between forced migration and environmentally motivated migration [29]. While in the former case, the migration is involuntary, in the latter situation, the migration is a voluntary choice. However, in both circumstances, there is an environmental stressor that pushes people out of their traditional homes. The difference lies in the severity of the stress faced as in forced migration; the stress is sufficient to leave the migrants with no other choice but to move. Such a distinction is difficult to identify as there is no objective threshold as to when migration becomes forced.

Further, we look at Norman Myers' definition who states that 'environmental refugees' are *"people who can no longer gain a secure livelihood in their erstwhile homelands because of drought, soil erosion, desertification, and other environmental problems. In their desperation, they feel they have no alternative but to seek sanctuary elsewhere, however, hazardous the attempt"*[30]. Myers' definition is centered on the economic consequence of climate change or environmental problems i.e. lack of livelihood availability. Myers' estimation of the number of environmental refugees is also based on this conception. However, Myers' estimation is questioned by scholars like Gaim Kibreab and Oli Brown as there is no empirical support to support the extrapolated figure.

Due to the absence of an official definition, no empirical study can be undertaken to determine the exact number of forced migrations. Moreover, a structure for protection would not be possible. Now is the time to formulate a definition because in the coming years, the magnitude of the problem would be so huge that it might be too late for policy formulation or lawmaking. However, reaching a definition has not been possible for various reasons.

Problems in arriving at an agreeable definition

Irrespective of the label used i.e. refugee, migrant or displace, etc., the definition needs to contain certain basic elements to ensure protection to those who need it the most.

Place of Displacement- Internal or External

As most of the climate associated displacement is internal, not including the internally displaced persons in the definition would imply not recognizing the problem in its entirety. However, the protection of internally displaced persons is primarily the responsibility of the respective state and international organisations can only play a limited role. Presently, they are supported by the UNHCR. However, as far as the international law is concerned, it would only consider international migrants.

Duration of Displacement- Temporary or Permanent

Permanent displacement is often result of the most extreme manifestations of climate change and is generally associated with severe factors of causation like submergence of island, perpetual droughts, flooding due to melting glaciers, etc. For example, recently, Lohachara Island in Sundarbans was washed off. It was the first time that a habitable island was submerged due to rising sea-level [31]. Yet, a definition that doesn't cover temporary migrations would leave out a significant proportion of displaced persons as element of return is present in case of reversible environmental disruptions.

Nature of Displacement- Voluntary or Forced

Determining the factors inducing displacement is the most problematic part. The reason for migration is a mix of environmental disruptions that push people out and the availability of opportunities in other countries/places acts as a pull factor. As per Suhrke, "*when perceived from a broader development perspective, environmental degradation represents a proximate rather than ultimate cause of migration*" [32]. Those who oppose the expansion of definition of refugees under the Refugee Convention also argue that environmental migration is often a result of a complex mix of factors of which the climate event or process is only a proximate cause.

Theoretically, only forced migration should be protected because in voluntary movements, there is always an alternative available. However, it is difficult to determine whether the migration is caused by "push factors" or "pull factors". There is a very thin line between forced and voluntary migration in such cases. Even migration which may appear voluntary prima facie, may be caused due to climate processes that gradually push people away from that region.

Thus, although it is clearly established that climate change has a direct relation with human mobility and displacement, yet the causative link is not adequately established as other factors like social, political, economic, etc. also play an important role in mobility decisions. As argued by Richard Black, it is almost impossible to delineate the reason for displacement in most cases as it is a mix of economic, political, environmental and other such factors.

An ideal definition should be formulated keeping in mind all the above factors. Man-made disasters cannot be kept out of its purview as an environmental that may have anthropogenic origin may acquire huge proportion like human induced forest fires. Further, instead of focusing on livelihood aspect, habitability should be the determinant of any environmental disruption or stress. Thus, Hinnawi's definition except the man-made triggers, is comprehensive to cover all incidences of climate change induced displacements.

As migration is often considered to be an act of last resort, as per the International Organisation of Migration it is perceived as a 'failure of adaptation' by the states. However, with climate events becoming more and more frequent, there is a need for states to acknowledge migration as part of the adaptation strategy. Many Pacific Island nations are preparing national policies for planned migration over time as no amount of mitigation and adaptation can help keep the islands habitable in the time to come [33]. The following section of the paper will discuss the possible models of protection for environmental refugees in the realm of international law.

Models for Protection of Environmentally Displaced People

As important as it is to determine a concrete and clear definition of environmentally displaced people, it is also pertinent that the international community analyses the existing models for protection of such environmentally displaced people and the lacuna existing therein. This section aims at assessing the existing conventions and instruments that address the plight of environmentally displaced people and provides suggestions that may help fill the loopholes in the prevailing legal regime.

The Existing Model for Protection of Environmentally Displaced People

The United Nations instruments pertaining to climate change are the key conventions and instruments that deal with and address the problem of environmentally displaced people. In order to understand the protection offered by these instruments, it is vital to analyze the key provisions of the United Nations Framework Convention on

Climate Change (UNFCCC), the Cancun Adaptation Framework, the Warsaw loss and damage mechanism and the Paris Agreement.

I. The United Nations Framework Convention on Climate Change

The UNFCCC [34], in its preamble, acknowledges that ‘the global nature of climate change calls for widest possible cooperation by all countries’ but the convention does not make any explicit reference to environmentally displaced people. However, certain provisions of UNFCCC can be read together to understand the obligations of the international community toward the environmentally displaced. Article 4(4) of the UNFCCC requires that the developed country Parties included in Annex II of the Convention assist the developing country parties that are vulnerable to adverse effects of Climate Change. In addition to this, Article 4(3) provides obligations that are more detailed in nature and requires that the developed country Parties mentioned in Annex II assist the developing country Parties in meeting their obligations under Article 12(1) [35] by providing them with adequate funding and transfer of technology. Article 4(9) of the UNFCCC obliges the Parties to take cognizance of the special needs of the least developed countries while deciding upon matters relating to funding and transfer of technology.

An analysis of these provisions demonstrates that the UNFCCC considers financial and technological support to be the most appropriate response to address the issues faced by countries vulnerable to adverse effects of climate change. Notably, the convention does not touch upon the issue of migration of population affected by climate change and other environmental factors [36].

II. The Cancun Adaptation Framework

The Cancun Framework is a very important step toward international recognition of the issue of environmental migration. The Cancun Framework made it clear that not only does the international community recognize the issue of migration induced by adverse environmental factors but also acknowledges that the issue percolates the national borders. Paragraph 14(f) [37] of the Cancun Framework calls the country parties to take measures to enhance understanding and cooperation with respect to climate change induced displacement, migration and planned relocation both locally and internationally.

This paragraph effectively illuminates the UN’s stance regarding climate change induced migration and makes it clear that, internationally, the member states understand and agree that citizens from countries affected by climate change may not only have to relocate nationally but also internationally.

III. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts

The Warsaw loss and damage mechanism [38] is relevant in the context of climate migration. The primary focus of the Warsaw loss and damage mechanism is on institutional development, information gathering and capacity building to help affected countries effectively respond to loss and damage suffered as a result of environmental factors and climate change [39]. The basis of the Warsaw loss and damage mechanism can be found in Article 4(8) of the UNFCCC that calls for member parties to take necessary action through, funding, support and technology transfer to assist countries affected by climate change. Further, the Cancun Framework further created a need to establish a loss and damage mechanism by requiring Parties to formulate early warning systems and risk assessment framework.

The initial work plan under the Warsaw loss and damage Mechanism emphasized on nine action areas. Action 6 was specifically related to climate change induced migration and, called the parties to observe, analyze and submit data with respect to projected migration and displacement. Thus, the Warsaw loss and damage mechanism aimed at creating a governance forum to assess the readiness to deal with climate induced migration.

IV. The Paris Agreement

The Paris Agreement [40] does not directly refer to climate change induced migration nor does it provide any clear-cut solution to the problem of environmental displacement. However, the preamble of the Paris Agreement requires parties to respect and promote the human rights of the vulnerable population, indigenous people, children and migrants. Thus, this language targets to safeguard the human rights of climate change induced migrants and aims at ensuring their safety and rehabilitation. The Agreement gives power to the Conference of Parties to undertake work to address the loss and damage mechanism for environmentally displaced population.

V. The Convention relating to the Status of Refugees

Due to the gap in the UN Climate Change regime in addressing the issue of climate change induced migrants, the international community often turns towards the Refugee Convention to afford protection to people displaced by

climate change. The primary issue with designating climate change induced migrants as 'refugees' is the very definition of the term 'refugee' as per the Refugee Convention and the objective of the Refugee Convention.

As previously discussed in this paper, refugees are migrants who have been forced to leave their country due to a fear of persecution. Hence, a migrant can only qualify as a refugee if he or she fled his or her own country in the backdrop of a political injustice. Climate migrants can hardly fulfil this criteria and their profile does not fit the definition of refugee as per the Refugee Convention [41].

Further, the Refugee Convention was formulated because of the Second World War and the primary objective of the convention is to provide asylum to people facing political atrocities and injustices in their own country. The objective of the convention was never to address any other category of migrants. Due to the narrow objective of the refugee convention, it cannot be interpreted to provide any relief to population migrating because of environmental factors.

Pitfalls in the Existing Model for Protection of Environmentally Displaced People

After a close look at the UN Climate Change regime and the Refugee Convention, it becomes clear that the existing model for protection of environmentally displaced people is inadequate and ineffective. Firstly, the structure of governance established by these instruments does not lay down clear parameters for determining the accountability, transparency and compliance by the member states. All these instruments do is create a moral responsibility of the parties and an obligation to provide financial assistance, which too, is not properly demarcated. Secondly, there has to be a concrete acknowledgement of the fact that the problem of climate change induced migration may not have in-situ solutions. International intervention and accommodation are key aspects of any instrument targeted toward rehabilitation of displaced population. Thirdly, accurate profiling of the migrants is important to come up with effective solutions. The existing instruments and provisions have failed to consider this. The drivers of migration in case of environmental migration are much more complex and non-linear. It may not be always possible to identify one primary factor for displacement or migration and the migration may be triggered by a combination of factors or slow-onset environmental changes. Fourthly, apart from funding, technology transfer and rehabilitation, the legal framework must focus on mitigating relocation in the first place.

An enhancement in the existing framework to capture the abovementioned principles or a new framework that embodies the essence of these principles may present a more versatile solution for the problem of climate-induced migration. The following section provides an analysis of the possible approaches and available options.

The Possible Models for Protection of Environmentally Displaced Population

Enhancement and modification of the existing instruments

The faster and more efficient approach in this regard could be the modification of the existing instruments to make them more suitable to the problem at hand. Since the UNFCCC is the most extensive convention dealing with climate change and has been enforced by the member states of the United Nations, the most plausible option would be to modify the UNFCCC to include a separate section or create an agreement under the UNFCCC to deal with climate-induced migrants. The basic principles related to climate migration have already been identified in the Cancun Framework, Warsaw loss and damage mechanism and the Paris Agreement. It will be up to the member parties to build upon the already existing provisions and create a concrete framework that not only provides clear guidelines on classification of climate migrants but also provides more action oriented approaches. However, this approach may create more confusion and chaos as the Parties have already done considerable work on these instruments and, yet, have not been able to break much ground. Hence, the effectiveness of these instruments is at present questionable.

Another possibility can be the amendment of the Refugee Convention so that it envisages climate migrants as well but this approach shall not be the most suitable solution. As discussed earlier, the objective and the very basis of the Refugee convention is to safeguard the interest of migrants who migrate in fear of being persecuted. The Refugee convention has been formulated keeping a very specific section of migrants in mind and any modification of the Convention may defeat the purpose for which it was effectuated [42]. Additionally, the human rights basis of the Refugee Convention allows for actions to be taken post facto rather than prior to the violation or, in this case, vulnerability. Any instrument dealing with climate migrants must not only safeguard the interest of already affected population but also of the population that is currently endangered.

A New Framework or Treaty for Protection of Environmentally displaced population

Due the complexity of the issue and the criticality of the problem, it may be more useful for the international community to agree and formulate a new framework for protection and rehabilitation of climate-induced migrants. This framework must acknowledge and identify the basic principles that will govern the migration of people within and outside countries when triggered by climate change. The principles must lay down clear accountability of the neighboring countries as well member state with high emission rates or adverse impact on the climate. Such an instrument should encompass the following principles: (1) an early and sustainable response, (2) respect for individual and collective rights, (3) a global approach to climate change migration and (4) burden sharing [43].

Firstly, this instrument would be key is addressing the problem of defining climate migrants. The agreement must lay down a clear definition of climate migrants taking into account factors discussed in the earlier parts of this paper. The agreement must identify the key triggers leading to migration or relocation. A concrete definition and identification of triggers will help in responding to affected population and mitigating the risks for endangered population. Secondly, the agreement should recognize that loss of territory and livelihood would lead to a violation of human rights of individuals as well as populations. Any solution or measures should be conceived accordingly. Thirdly, Climate change is a global phenomenon and should lead to global solutions, as usually the largest climate change inducing countries are often far away from the countries that are most affected [44]. Further, in-situ and national resettlements and solutions are not always successful and smaller countries may even lack the capacity of internal rehabilitation. These countries will require the support of the international community. Therefore, the agreement should be based on the principle that the issue of climate-induced migration surpasses national boundaries. This change is affected internationally and affects internationally. Lastly, the burden of providing funding, capacity building or, in extreme cases, rehabilitation should be equitably distributed amongst developed, developing and least developed countries. Such burden sharing must identify countries contributing to climate change and countries most prone to the adverse effects of climate change. A mechanism that is based on the 'polluter pay principle' will incentivize reduction in emission levels [45].

While such a framework will be the most effective way to address the issue, getting global concurrence on the agreement may take a few years. The issues of climate change are current and require urgent action. It may prove to be tactful if the international community adapts a combined approach, and works with the existing regime to provide immediate response and continues to discuss and move toward a possible comprehensive framework for protection of people displaced by climate change.

Conclusions

"Climate Change knows no borders. It will not stop until Pacific Islands and the whole of the international community here has to shoulder a responsibility to bring about a sustainable development."

– Angela Merkel

Until recently, the international community was oblivious to the effects of global warming, climate change and the rising sea levels and there was not enough focus on climate-induced migration [46]. However, incidents such as submergence of islands of Kiribati in 1998-1999 and complete disappearance of Lohachara Islands drew the attention of the countries to the growing problem of loss of land and the consequent migration [47]. In 2007, the Intergovernmental Panel on Climate Change concluded that the rate of warming of the earth's atmosphere is unequivocal [48]. These incidents and reports should serve as a wakeup call for all the nations and they must rise to the occasion.

A part of the problem is incorrect profiling of climate change-induced migrants. We would have travelled halfway if we agree on a clear and concrete definition of climate migrants. A definition that has legal backing and validation by inclusion in a framework ratified by majority of the international community will lend binding value to such definition. A certainty of classification will truly help in ensuring the protection of people displaced by environmental factors. Another half of the problem lies in the weak governance frameworks that do not provide clear burden sharing mechanism and accountability. A robust framework or agreement that not defines clear responsibilities of all the parties but creates an obligation on them to comply and demonstrate compliance will go a long way in addressing the issue of climate migrants. Such instrument should also contemplate creation of a new and independent institution that will overlook the enforcement of this framework [49]. While the international community explores long-term solutions, they must also turn to the existing legal framework and favorably adapt it for immediate resolution. The nations can very well read the provisions of UNFCCC and sister agreements for the benefit of the climate migrants. The counties can also look at a combined approach that is based on a collective

reading of important instruments pertaining to migration, refugee law and environmental law. A model based on the Nansen Initiative and the New York Declaration may also prove to be a very effective and quick solution to addressing the lacuna in the international law for climate migrants. Cooperative measures between parties that allow easy migration between countries or provide affected people the authorization to stay can be explored by nations [50].

Global warming and rising sea level are complex problems that cannot be easily resolved. However, a thorough analysis of the triggers and the victims will help us in developing a long-term solution. Ownership of the nation states and proactive action will be key in determining the future of many small-endangered countries. The international community must not forget that sooner or later, climate change will affect everyone.

Acknowledgements

We wish to thank our family and friends who supported us throughout the journey of writing this research paper. We wish to thank the faculty members at West Bengal National University of Juridical Sciences, Kolkata especially Dr. TVGN Sudhakar, Professor of law at WBNUJS, Kolkata for his guidance and encouragement. This paper would not have been completed if not for the support of our respective seniors at the University and at Wipro Limited.

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51. refugees/

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