

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- IV

APRIL 2020

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Climate Crisis and Mass Migration: A Case for Urgent Action

Binusha Binoy K

INTRODUCTION

“Migration is an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very make-up as a human family” - Ban Ki-moon

Human rights are considered as inalienable fundamental rights which are inherent in all human beings regardless of their age, ethnic origin, location, religion or any other status. Anthropogenic climate change is the largest and the most pervasive threat to the natural environment and human rights of our time. It is inducing not only ecological adjustments, but is also impacting the social, economic, political, cultural and legal aspects of societies around the world. According to the United Nations Framework Convention on Climate Change¹, “Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods”. Potential climate induced migration is currently one of the most disputed flow-on effects from climate change. People being displaced due to the impacts of extreme weather events such as coastal flooding, cyclones and hurricanes, or slower-onset processes such as sea-level rise, temperature increase, shoreline erosion and drought, mean that they can no longer remain in their homes and need to seek safety, assistance and protection elsewhere. Experts estimate that, by the year 2050, between 50 million and 1 billion people may be permanently displaced due to these climate induced disasters².

REFUGEE OR MIGRANT?

Movement away from harm is a normal and rational climate change adaptation response. One contentious issue is whether people displaced by climate change should be defined as “climate refugees” or as “climate migrants”. International law places an obligation on countries to protect a very small class of people called ‘refugees’. This means that unless people fall within this category or can migrate lawfully for reasons such as employment, family or education, they run the risk of interdiction, detention and expulsion if they attempt to cross an international border without a legal entitlement to travel. Under the 1951 Refugee Convention, a refugee is someone who, ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality,

¹ Hereinafter UNFCCC

² Baher Kamal, Climate Migrants Might Reach One Billion by 2050, INTER PRESS SERVICE (March. 20, 2020, 10:05 A.M), <http://www.ipsnews.net/2017/08/climate-migrants-might-reach-one-billion-by-2050/>

membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it³

There are a number of problems with the application of refugee law to climate change-related displacement. Firstly, refugees must show that they fear persecution. Persecution entails violations of human rights that derive from human actions, and that are particularly egregious in their inherent nature or cumulative impact. While the adverse impacts of climate change and disasters are certainly harmful, they do not satisfy the concept of ‘persecution’ as it is currently understood in international and domestic law. Secondly, even if it were possible to establish that the impacts of climate change and natural disasters amounted to persecution, it must be for reasons of an individual’s race, religion, nationality, political opinion, or membership of a particular social group. The impacts of climate change and natural disasters are largely indiscriminate, rather than tied to particular characteristics. Thirdly, categorization as a refugee is reliant on crossing an internationally recognized border. Someone displaced within their own country is called an “internally displaced person”. Given that the majority of people displaced by climate change will likely stay within their own borders, restricting the definition to those who cross international borders may seriously understate the extent of the problem. Fourthly, the concept of a “refugee” tends to imply a right of return once the persecution that triggered the original flight has ceased. This is, of course, impossible in the case of sea level rise and so again the term distorts the nature of the problem.

In exceptional cases, the refugee definition might apply – for instance, if it is a government induced climate change, or if the government has restricted the access to fresh water supplies or agricultural land, or to humanitarian assistance in the aftermath of a disaster. However, in such cases, it would be the act or omission by the government that would constitute the harm, rather than the disaster or resource scarcity itself.

³ Convention Relating to the Status of Refugees, art 1 (189 U.N.T.S. 15022, April 1954)

CLIMATE CRISIS AND DISPLACEMENT: GLOBAL SPECTRUM

'Displacement' describes the forced movement of people from their homes. It may be temporary or permanent, small-scale or large-scale, and may occur within a country or across an international border. While disasters can occur anywhere, displacement that follows a disaster stems not just from the event itself, but also from a lack of adequate responsive capacity. Estimates by the Internal Displacement Monitoring Centre indicate that the vast majority of displacement occurred in developing countries of Asia and Africa. Many of these countries are not only more susceptible to disasters, but they lack the technical, financial and political capacity to cope with them once they have occurred, especially in the densely populated areas.⁴

Although there are many instances of climate change as the sole factor in migration, the Pacific Islands are one of the most dangerously affected. The sea level is rising at a rate of 12 millimeters per year and has already submerged eight islands. Two more islands are on the brink of disappearing, prompting a wave of migration to larger countries. By 2100, it is estimated that 48 islands overall will be lost to the rising ocean. Similarly, islands in the Federated States of Micronesia have drastically reduced in size, washed down to an uninhabitable state and their fresh water has been contaminated by the inflow of seawater. In Australia, it has been found that human-induced climate change had an impact on the recent devastating wild fires, making the extremely high-risk conditions that led to widespread burning at least 30 percent more likely than in a world without global warming. 50 million acres were burned, and nearly 6000 homes and other structures were destroyed. As a result, thousands of families were forced to leave everything behind and displace from the region. Across North Africa, people are facing rising sea levels, drought, and desertification. In South Asia, increasing temperatures, sea level rise, more frequent cyclones, flooding of river systems fed by melting glaciers, and other extreme weather events are exacerbating current internal and international migration patterns. Compounding this, many of the expanding urban areas are located in the low-lying coastal regions, already threatened by sea level rise.

Diminishing living conditions on this scale and intensity will prompt mass migration - possibly at an unprecedented level. These conditions will only add to the already substantial number of seasonal migrants and put added strain on the country of origin, as well as on the destination

⁴ John Podesta, *The Climate Crisis, Migration and Refugees*, BROOKINGS (Feb.10, 2020, 3:24 PM), <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/>

countries and the routes migrants travel. The destabilizing effects of climate change should be of great concern to all those who seek security and stability in the region.

LOCALE IN INDIA

India is highly vulnerable to climate change impacts such as drought, flood and sea-level rise. Measured by the Environmental Vulnerability Index, India is considered extremely vulnerable because of both its climate and its population density. Climate-induced migration in India can be broadly divided into two categories.

The first category belongs to the climate-induced migrants who move to India from the neighboring countries like Bangladesh in search of a better life. Bangladesh is one of the world's most natural disaster prone countries where 25% of its land is just five feet above sea level while two-thirds is less than 15 feet above sea level. Particularly the Sundarbans, a low-lying delta region in the Bay of Bengal are highly vulnerable to climate change where some 13 million impoverished Indian and Bangladeshi citizens live. Climatologists say that the seas are rising in the Sundarbans more than twice as fast as average due to which much of this delta could be submerged in as early as two decades. Earthquakes and water-induced disaster in Nepal, draughts in Pakistan and Afghanistan, and rise in sea levels around the Maldives are also likely to cause large-scale climate induced migration into India in the future.

The second category of migrants are those who are forced to move from rural to urban areas as a result of an environmental disaster that might have destroyed their homes and farms. They often seek refuge in mega-cities in search of opportunities for livelihood and settlement. A large number of migrants from the South have moved as a result of land degradation and desertification at their native places while migrants from the North have largely moved owing to drought. According to the National Disaster Management Authority, twenty seven out of the total thirty seven states and union territories in India are disaster-prone. In 1998 described as super El Nino year, eight million people were displaced in India due to floods across twelve northern states. If places like Sundarbans in the east of India face the threat of sea-level rise, the mountains of North India are susceptible to floods, cloud bursts and landslides. The Aila cyclone of 2009 in Bay of Bengal or Kedarnath floods of 2013 in Uttarakhand are testaments to this fact. India experiences high levels of displacement along its east coast, where communities are exposed to tropical storms from the Bay of Bengal. In 2014, the worst floods to hit Jammu and Kashmir in 50 years displaced around 812,000 people in urban areas of the state. *In 2018 and*

2019, more than 2.7 million people were internally displaced in the country due to the tropical storms and floods in the states of Assam, Kerala, Karnataka and Maharashtra. Apart from floods and cyclones slow onset disaster such as drought is also a major reason for displacement in India and might intensify in future due to climate change and desertification. Climate change is expected to increase the severity of drought especially in western India. About 25% of the area of Gujarat and 60% of the area of Rajasthan are likely to experience acute physical water-scarce conditions. This will lead to further immiserization of the landless and small and marginal farmers, who are typically forced to migrate more often to cities.

RIGHT TO LIFE – A FUNDAMENTAL HUMAN RIGHT

“...in dealing with sustainable development issues, unless you deal with the issues of climate change, life, particularly of the most vulnerable, will continue to be threatened and compromised, and life is already compromised and threatened on most island countries...” - Enele Sosene Sopoaga, Prime Minister, Tuvalu

International cross- border migrants and also people displaced internally, in an irregular situation tend to be disproportionately vulnerable to discrimination, exploitation and marginalization, often living and working in the shadows, afraid to complain, and denied their fundamental freedoms. It has been established beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. It has profound impacts on a wide variety of human rights including the right to life, self-determination, development, food, health, water and sanitation and housing. These rights are enumerated in the core conventions of [international human rights law](#), though not all Human Rights Council members or UNFCCC parties are signatories of these conventions. The denial of these rights is often closely linked to discriminatory laws and to deep-seated attitudes of prejudice or xenophobia. Among these, right to life is regarded as the most important and crucial since it is inextricably linked to the measure of fulfillment of other rights. According to article 3 of the Universal Declaration of Human Rights⁵ “everyone has the right to life, liberty and security of person”. The International Covenant on Civil and Political Rights reiterates that “every human being has the inherent right to life”. All States have committed to respect, protect, promote, and fulfill the right to life. This entails, at the very least, that States should take effective measures against foreseeable and preventable loss of life.

⁵ Hereinafter UDHR

In the Indian context, the right to life enshrined in article 21 has been held to be the most organic and progressive provision in the constitution. It says that “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” In *Sunil Batra vs. Delhi Administration*⁶, the Supreme Court has held that the “right to life” included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person’s tradition, culture, heritage and all that gives meaning to a man’s life. It includes the right to live in peace, to sleep in peace and the right to repose and health. The courts in the plethora of cases has embarked and declared that the right to life is not merely a physical right but includes within its ambit the right to shelter, right to livelihood, right to social security and protection of family, right to health, right to proper medical care, right to clean environment, etc.⁷ This right guaranteed under article 21 is not limited to Indians alone. In *Chairman, Railway Board vs. Mrs. Chandrima Das*⁸, the Supreme Court held that Article 21 is applicable to foreigners and observed that the rights contained in various international human rights laws, in particular the UDHR, cohered with the scheme of fundamental rights guaranteed under the Indian Constitution. Even though the UDHR is a non-binding resolution, India is a signatory to it and therefore has taken great precaution to be in accordance with the norms and guidelines laid down by the declaration.

However, despite the massive statutory framework and judicial pronouncements, the rights of these climate migrants are often violated. They often lack representation, residency rights or social entitlements and hence find themselves clubbed into the category of illegal immigrants, with little or no effort made by the authorities to discern their motivation for migration. In a country like India where competition for jobs and resources is already very high, the issue is also repeatedly exploited for political gain. Politically, there is little indication that the government has any sustainable or long-term plans to deal with climate migrants from neighboring countries. Even those displaced internally due to climate crisis should be protected from the misery they are likely to fall into.

⁶ 1978 AIR 1675, 1979 SCR (1) 392

⁷ Francis Coralie Mullin v. Union Territory of Delhi, 1981 AIR 746, 1981 SCR (2) 516; *Shantistar Builders v. Narayan Totame* AIR 1990 SC 360; *Parmanand Katara v. Union of India*, 1989 AIR 2039, 1989 SCR (3) 997; *Milk Men Colony Vikas Samiti v. State Of Rajasthan*, AIR 2007 SC 1046

⁸ 2000 SCC 465

Currently, the future of the people in India is at stake due to the implementation of latest legislations like the Citizenship (Amendment) Act, 2019⁹ and National Register of Citizens¹⁰. The CAA is incongruent with Articles 14 and 21 of the Indian Constitution and fails tests of both constitutionality and humanitarianism. *As a result of concomitant processes like the NRC, thousands of climate migrants in the northeastern state of Assam who have been forced to displace because their lands have been swept away by erosion or floods, are struggling to prove their citizenship rights.* The NRC, a registry maintained by the Government of India containing names & certain relevant information for the identification of genuine Indian citizens in Assam, has a long history. A series of anti-migrant agitations over six years led to an agreement called the [Assam Accord](#) in 1985. One of the main clauses of this accord was that anybody who had entered the state “on or after March 25, 1971” would be detected, disenfranchised, and expelled. The NRC was set up to process this documentation. *The fear of statelessness haunts thousands in Assam who are rejected by the NRC.* Their right to life is seriously infringed and most of the families and their children often live in poverty, dispersed in areas where they face violence and exploitation.

THE ROAD AHEAD

Under international human rights law, states have the primary responsibility to promote and protect the human rights of all people within their territory or jurisdiction – both citizens and non-citizens. Where people are displaced within national borders, the obligations of states under international human rights treaties is clear, and are further clarified by relevant law instruments and guidelines such as the Guiding Principles on Internal Displacement¹¹. The Guiding Principles, adopted in 1998, identify and clarify universal rights and guarantees relevant to the protection of displaced persons during all phases of displacement – from pre-displacement through to recovery and return. They relate to protection against arbitrary displacement, access to protection and assistance during displacement, and guarantees during return or alternative settlement and reintegration. The Guiding Principles are also relevant to displacement in the context of disasters and climate change. If people are displaced across an international border,

⁹ Hereinafter CAA

¹⁰ Hereinafter NRC

¹¹ **Guiding Principles on Internal Displacement**, U.N. Doc. E/CN.4/1998/53/Add.2, Commission on Human Rights, Available at: <http://hrlibrary.umn.edu/instreet/GuidingPrinciplesonInternalDisplacement.htm> (Accessed: 14 March 2020)

the receiving state is still obliged to treat them in accordance with its international human rights obligations.

Displacement related to climate change impacts has additionally been addressed to varying degrees in:

- the UNFCCC Paris Agreement
- the Sendai Framework for Disaster Risk Reduction
- the Addis Ababa Action Agenda and
- the 2030 Agenda for Sustainable Development.

Although each of these outcomes emphasizes the importance of human rights in varied contexts, a detailed examination of them reveal that they are lacking importance in certain areas. Firstly, climate change migrants do not have the right to resettle in another country. According to current laws, the only way for climate change migrants to resettle permanently in a foreign country will be by fitting themselves into categories within the immigration laws of their destination country. In general, national laws lack specific provisions to make environmentally-induced immigration easier. Secondly, climate change migrants do not have the right to funding from the international community to help with the relocation costs incurred as a result of climate change. There is, of course, international assistance targeted at increasing development, mitigating climate change and helping communities adapt. However, there is no specific monetary assistance for internal or cross-border migration related to climate change. This lack of funding may prove particularly difficult in the case of poor migrants and developing countries.

The recent landmark judgment by the UN Human Rights Committee says that people fleeing the effects of the [climate crisis](#) cannot be forced to return home by their adoptive countries¹². The Committee's ruling does not bind countries, but it lights a way towards a more equitable future at an urgent moment. It demolished a long-standing practice of denying the legitimacy of climate refugees' rights in international law and acknowledges a legal basis for refugee protection for those whose lives are imminently threatened by climate change. More importantly, the Committee found that without serious national and international action on climate change, impacts could become extreme enough to threaten the right to life, making it unlawful for states receiving climate migrants to turn them away. This ruling may open the door to surges of legal claims by displaced people globally. But regardless of this, states should ensure that all persons-classified as refugees or environmental migrants will receive safeguarding of their basic human

¹² Ioane Teitiota v. New Zealand, CCPR/C/127/D/2728/2016, UN Human Rights Committee, 7 January 2020, Available at: <https://www.refworld.org/cases,HRC,5e26f7134.html> (Accessed: 15 March 2020)

dignity and respect for their fundamental human rights. This assurance is perhaps the best point of departure in trying to expand the definition of refugee.

It is clear that the international community has to face up to the prospect of large-scale displacement caused by climate change. There is a need for international recognition of the problem, a better understanding of its dimensions and a willingness to tackle it. The international community needs to acknowledge formally the predicament of forced climate migrants. A great deal more research is needed to understand the causes and consequences of climate migration and to monitor numbers. Practitioners should develop better communication and working relationships between the different human rights, population, environmental and migration organizations that share a mandate to respond to population displacement.

In the concluding remarks, it is expected that mere passing of an act or judgment is not sufficient. A human rights-based approach should be adopted by all countries, to ensure protection of these people. States must respect, protect and fulfill each of the essential features of the right to life of each individual without discrimination. The need of the hour is a normative shift on the issue of climate induced migration to ensure that those victimized by anthropogenic and natural climate change are met with a compassionate, coordinated global regime. There should be a proper system wherein they can address their problems. Each nation should cautiously implement their policies regarding rehabilitation and reconstruction in the event of climate- induced disasters. Governments should not adhere to policies that isolate or discriminate against those who have sought refuge in their countries. Instead, they should make their future a little brighter by changing problematic laws and policies and work with humanitarian agencies and donors to ensure that each individual lives a dignified life. Development and adaptation policies in potential source countries of forced climate migrants need to address and focus on reducing people's vulnerability to climate change, moving people away from marginal areas and supporting livelihoods that are more resilient. In particular more efficient use of existing resources would offset some of the predicted impacts of climate change. If not addressed in time, the problem of the climate migrants/refugees would result finally into a humanitarian crisis and would take a huge toll from mankind.

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