

Climate Refugees: between uncertainty and humanity

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Abstract

The recent hurricanes that hit the coast of the Caribbean have renewed the fears of a global climate refugee crisis. The Hurricanes Irma and Maria have left devastated people and uninhabitable islands in their wake. This has forced the inhabitants of the Islands to move to other places in view of their vulnerability to climate related future environmental disasters. India became a signatory to the Paris agreement on October 2 and it also recently concluded the national summit for refugees and migrants but neither has effectively addressed the issue of growing number of climate refugees in India. With its vast geographical expanse, India has seen floods, drought crisis, inflow of poor Bangladeshi migrants due to the seawater intrusion in mangrove ecosystem and proliferation of various other climate related disasters. Often the climate migrants are internally displaced and so are taken care of by their domestic governments. But cross border migrants face many difficulties especially in face of their non-recognition by the 1951 refugee convention and its 1967 protocol. There is no internationally agreed upon definition for climate refugees and very few countries like Finland even recognise environmentally displaced persons.

Firstly, I will explore the existing legal framework on climate. Next, I will discuss the socio-economic and political implications of a climate refugee crisis and examine how different countries deal with the issue of climate refugees. Proposing the need for a new international regime governing the issue of climate change and its implications for the human rights of vulnerable populations, I'll conclude by pointing how in the wake of the recent talks on climate change at Paris and Bonn and the increasing vulnerability of the small island states, it is expedient to define the term climate refugees and come to an agreement on responsibility sharing and human rights protection.

Introduction

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In the last 20 years or so, there has been an increasing spurt in climate and environmental refugees linked to problems ranging from desertification to salt water intrusion to rising sea levels. The UNHRC has stated that almost 36 million people have been displaced by environment and climate related disasters till 2009 and the number is expected to reach 50 million by 2050². The Sendai framework declared that nearly 1.5 billion people have been displaced by climate related disasters between 2005 and 2015³. But what is more interesting is the fact that only 20% of the world's nations contribute to 82% of the world's carbon dioxide emissions and these do not include the small island nations that mainly get affected by climate change related catastrophes⁴. The UN high commissioner for refugees, Antonio Guterres has pointed out that people have been rendered vulnerable by conditions like lack of food, water etc. which in turn are accentuated by climate change and sometimes even caused because of it. Climate change causes major disruptions in the rich and diverse ecosystems of the world and also displaces the harmony and balance that sustain lives of various species. The normal human reaction to climate change has always been migration resulting in forcible displacement of an entire population. It has been discovered around 3000 species migrated due to the effects of climate change. Many countries world over have been affected by extreme weather events like severe floods and prolonged droughts.⁵

The climate holocaust has been staring in the face of the inhabitants of Sundarbans and other deltaic Islands. The World Bank report has predicted the threat of an imminent crisis the capital of West Bengal is going to face in the near future. In the last 30 years, around 80 Square Km of the land in Sundarbans has disappeared without a trace with the sea level rising at the rate of 3cm/ year.⁶ In 2005, more than 500000 inhabitants of Bhola Islands have migrated to the slums of Dhaka and it is estimated that 70000 out of the 4 million people living in this island are going to be rendered homeless⁷. Maldives, a close neighbour of India in the Indian Ocean region has also been in the news in view of the possibility of complete

²United Nations High Commissioner for Refugees, CLIMATE CHANGE AND DISASTERS UNHCR, <http://www.unhcr.org/climate-change-and-disasters.html> (last visited Jan 5, 2018).

³Climate Change Adaptation - UNISDR, , <https://www.unisdr.org/we/advocate/climate-change> (last visited Jan 5, 2018).

⁴Simon Rogers, WORLD CARBON EMISSIONS: THE LEAGUE TABLE OF EVERY COUNTRY THE GUARDIAN (2012), <http://www.theguardian.com/environment/datablog/2012/jun/21/world-carbon-emissions-league-table-country> (last visited Jan 5, 2018).

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⁶Climate Refugees, Making a Show: The Black Money Bill, , 50, 50, 50, 50, 50 ECON. POLIT. WKLY. 7, 7, 7, 7, 7-8, 8, 8, 8, 8 (2015).

⁷Dhaka: the city where climate refugees are already a reality | Cities | The Guardian, , <https://www.theguardian.com/cities/2015/dec/01/dhaka-city-climate-refugees-reality> (last visited Jan 5, 2018).

submergence of the islands and President Nasheed plans to divert a substantial part of the tourist revenue to fund insurance against sinking of the country⁸. Hurricane Matthew, which struck Haiti in October 2016, killed at least 1,000 people, displaced 175,000 people, affected 894,057 children, placed 80,600 people at the extreme level of food insecurity, resulted in 5,840 suspected cholera cases (until 5 November 2016) and affected approximately 2.1 million people.⁹ Dubbed as the world's first environmental refugees, the people of the Carteret Islands have been subjected a structured displacement programme in November 2003.¹⁰

There has been debate around offering an institutional and organized protection to climate and environmental refugees. The existing frameworks are too rigid to allow for an expanding definition of the term 'refugees'. Till date, there is no internationally recognized and agreed upon definition of the term 'climate refugees'. The term 'environmental refugees', was first introduced by Lester Brown of the World Watch Institute in the 1970s¹¹. The concept became widespread after the studies conducted by El Hinnawi and Jacobson on forced migration¹². Myers points out that the number of climate refugees is exponentially higher than the official definition of 22 million refugees¹³. The present vulnerability of climate migrants defies the agreed upon principle of common but differentiated responsibility. There is an urgent need for an international framework providing for a comprehensive protection to vulnerable populations and ecosystems and reconciling higher level policy making with local level participation. Within the precincts of the international humanitarian law, all the countries should come together under a multilateral forum to negotiate an international treaty all the while supporting it through customary practice and bilateral and regional negotiations. Similar to the Green climate fund, there must be imposition of greater responsibility on countries

⁸Randeep Ramesh, *Maldives seek to buy a new homeland*, THE GUARDIAN, November 10, 2008, <http://www.theguardian.com/environment/2008/nov/10/maldives-climate-change> (last visited Jan 5, 2018).

⁹Rapidly Assessing the Impact of Hurricane Matthew in Haiti, WORLD BANK, <http://www.worldbank.org/en/results/2017/10/20/rapidly-assessing-the-impact-of-hurricane-matthew-in-haiti> (last visited Jan 5, 2018).

¹⁰Bougainville News : Carteret Islands : The world's first relocations due to #climatechange, BOUGAINVILLE NEWS (2017), <https://bougainvillemews.com/2017/08/19/bougainville-news-carteret-islands-the-worlds-first-relocations-due-to-climatechange/> (last visited Jan 5, 2018).

¹¹JAMES MORRISSEY, 19 RETHINKING THE "DEBATE ON ENVIRONMENTAL REFUGEES": FROM "MAXIMILISTS AND MINIMALISTS" TO "PROponents AND CRITICS" (2012).

¹²Id.

¹³Climate Refugees: Implications for India, Making a Show: The Black Money Bill, , 50, 50, 50, 50, 50 ECON. POLIT. WKLY. 7, 7, 7, 7, 7-8, 8, 8, 8, 8 (2015).

which have historically contributed to global warming and polluting activities more than others.

Scenarios of Imminent Threat and Migration

People generally migrate either due to the negative factors threatening or burdening their existence in a place or the positive ones attracting them to a new place. Apart from displacement caused due to negative impact of climate change, people might also move to a place where newer economic opportunities are created due to the climate change. The populations most vulnerable to climate change induced degradation are people living on the coasts, low lying Island nations and regions affected by land diversion and destruction. The recent climate talks that happened in Fiji indicate the sense of urgency required to fight the imminent threat faced by the inhabitants of low lying nations likely to be submerged in the near future. In 1998-99, 2 Islands under the territory of Kiribati entirely disappeared¹⁴. In 2005, the whole population of Carteret Islands was moved to another Island in Papua New Guinea. In 2006, the Lochahara Island in Ganga Delta sank without a trace¹⁵. Apart from just the rise in sea level, the degradation of low lying Islands is accentuated by human activities, sea water intrusion, rapid erosion, droughts etc. Many more Islands like Tuvalu, Maldives also face the threat of surging seas.

The second situation concerns the prospect of peril faced by people living along the coasts. Mekong delta is occupied by millions of people cultivating rice but due to the recent upsurge in floods, they have been moving to other regions within their country. The Ganga –Brahmaputra delta is susceptible to various climate change related events and half a million people migrate from there every year to other places in India and Bangladesh causing increased stress on natural resources.

Recently, in poor regions of Africa where food security has declined greatly, there has been internal displacement and migration to European countries. In West African Sahel

¹⁴Kiribati_migration_to_New_Zealand.pdf, , http://presbyterian.org.nz/sites/default/files/gmo/kiribati/Kiribati_migration_to_New_Zealand.pdf (last visited Jan 5, 2018).

¹⁵Associated Press, *Island claimed by India and Bangladesh sinks below waves*, THE GUARDIAN, March 24, 2010, <http://www.theguardian.com/world/cif-green/2010/mar/24/india-bangladesh-sea-levels> (last visited Jan 5, 2018).

and in Nigeria, already huge spaces of land have been subject to desertification caused by the crisis in agriculture.¹⁶

Climate change has also resulted in the proliferation of extreme weather events and increase in the frequency and intensity of disasters. The slow gradual changes caused by the climate change have been called the climate process. The catastrophic event caused on the backdrop of a climate process may just be the last straw borne by the Earth. The Hurricanes recently occurring in Bangladesh and US namely, Katrina and Aila are an indication of the future threat¹⁷. The climate change is expected to affect the water availability and affect between 75 and 150 million in Africa by 2020. The slow onset displacement happening in Somalia is evidence of the gradual falling of sustainable level of living to the point where people are forced to move.

Definition and Terminology: Between Inclusion and Death

The non-inclusion of the term ‘climate refugees’ has kept the definition and status of such refugees hanging in the air. Environmentally displaced people are not afforded any protection under the 1951 convention. Bierman and Boas used the term ‘climate migrants’ to purport a sense of urgency and immediacy in view of the increasing action by the countries in combating climate change.¹⁸Subramanian and Urpelainen have used the term environmentally displaced persons instead of the word refugees to avoid the overlap with conventional refugees¹⁹. Kolmannskog used the term to indicate those people who have migrated atleast partly due to the occurrence of a natural disaster.²⁰ The international organization of migrants provides an exhaustive and inclusive definition including those affected by both affected by climatic events and processes, people who are forced to move and those who have made a choice, those who are planning to come back and those who are planning a permanent settlement.

¹⁶30 January 2012, UN WORLD FOOD PROGRAMME, <https://www.wfp.org/stories/drought-returns-sahel> (last visited Jan 5, 2018).

¹⁷“Over 200 killed” by Cyclone Aila, May 27, 2009, http://news.bbc.co.uk/2/hi/south_asia/8069458.stm (last visited Jan 5, 2018).

¹⁸FRANK BIERMANN & INGRID BOAS, 10 PREPARING FOR A WARMER WORLD: TOWARDS A GLOBAL GOVERNANCE SYSTEM TO PROTECT CLIMATE REFUGEES (2010).

¹⁹Narayan Subramanian & Johannes Urpelainen, *Addressing cross-border environmental displacement: when can international treaties help?*, 14 INT. ENVIRON. AGREEM. POLIT. LAW ECON. 25–46 (2014).

²⁰Vikram Kolmannskog, *CLIMATE CHANGE, ENVIRONMENTAL DISPLACEMENT AND INTERNATIONAL LAW*, 24 J. INT. DEV. 1071–1081 (2012).

The meaning of the term ‘climate refugees’ considerably overlaps with environmental refugees but it is much narrower in its extent. The states which cause climate change cannot absolve themselves of the responsibility of protecting these refugees. The familiar difficulty of establishing a direct causal link between climate change and the migration is also encountered in defining ‘climate refugees’.²¹ Although it is not compulsory that scholars find a dichotomous categorization by dividing climate refugees into forced or not, the confusion caused by a semi-protection granted to an ambiguous group of refugees should be erased. In corollary to the 1951 convention which deems existence of persecution as a determinant of migration, an international agreement on climate refugees should reflect the objective criteria of existence of an event inducing the migration rather than people’s perception of it.

There is always a difference between the temporary migration undertaken on account of sudden and catastrophic events and permanent migration embarked on in view of either complete destruction of habitat or impending threat of a brewing storm that could render entire populations at the mercy of god. Internal climate displacement is not the same as international displacement. It is climate induced cross border migration that causes many legal implications and requires definition under an international law framework. The cross border migrants are excluded from the jurisdiction of a particular state. Till now, most reports have only addressed the question of ‘environmental refugees’. The UNEP report of 1985 defined them as people who are forced to leave their original habitat due to some marked environmental disruption which jeopardizes their existence or affects the quality of their life²². Myers and Kent provide a more broad ranging definition inclusive of gradual and unspectacular changes like desertification, salt water intrusion. Many scholars like Derek Bell do not attempt to differentiate among the broader basket of environmental refugees putting even climate refugees in the same category.²³ The 1992 UN conference on environment and development also used the term ‘environmental

²¹Sabine L. Perch-Nielsen, Michèle B. Bättig & Dieter Imboden, *Exploring the link between climate change and migration*, 91 CLIM. CHANGE 375 (2008).

²²Supra at 11.

²³ Derek R. Bell, *Environmental Refugees: What Rights? Which Duties?*, 10 RES PUBLICA 135–152 (2004).

refugees' consistently²⁴. The Labour party of the Australia wanted to form an international alliance to accept climate refugees from pacific and in 2007.²⁵

'Refugees' is generally used to refer to cross border migration. But it is apt to use the term for climate migrants since they are both internally displaced and also have to seek shelter outside the boundary of their nation. This term also import a sort of legitimacy and evokes a sense of concern for the human rights of these people.

The Limitation of National Solutions and Adaptation Strategies

The vulnerability of any place to climate change is determined by its geographical exposure to climate events and the resilience of the economy, infrastructure, political policy and the people's adaptive capacity. The anthropogenic origins of climate change make it expedient to predict the occurrence of events and trying to come up with solutions to fight it.

Under international law, it is the state's responsibility to protect its citizen's fundamental rights and no other country can interfere with that duty. But irrespective of such a mandate and custom, states have helped people all over the world in fighting such global catastrophes like climate change through international organizations and regional forums. Various countries have applied different solutions of culture diversification, water management systems etc. to combat Climate change. But they often fall in the trap of focussing on short term solutions with no guarantee of implementation rather than long term reversal strategies. In 2010, a summit on the great green wall gathered 11 representatives from the most affected states of Africa in N'djamena pledging to build forests across the continent.²⁶ The Pacific Island nations too have adopted plans for construction of retention walls which in most cases are not built and do not really address the main cause of climate change.

²⁴Earth_Summit, , <http://www.un.org/geninfo/bp/enviro.html> (last visited Nov 30, 2017).

²⁵Ben Doherty, *Labor champions plan to resettle Pacific climate change migrants*, THE GUARDIAN, November 10, 2015, <http://www.theguardian.com/environment/2015/nov/11/labor-champions-plan-to-resettle-pacific-climate-change-migrants> (last visited Jan 5, 2018).

²⁶Lars Laestadius, *AFRICA'S GOT PLANS FOR A GREAT GREEN WALL: WHY THE IDEA NEEDS A RETHINK*THE CONVERSATION, <http://theconversation.com/africas-got-plans-for-a-great-green-wall-why-the-idea-needs-a-rethink-78627> (last visited Jan 5, 2018).

The Maldives Government has built a 3.5 m high wall around male.²⁷ Singapore is considering the possibility of building dykes. The UNDP, World Bank, OECD have their own programs of adaptation to climate change. The UN convention to combat desertification calls for international cooperation and partnership but hardly any funds have been provided.²⁸ The UNFCCC has mandated the creation of the national adaptation programs of action for the least developed countries under the supervision of an adhoc voluntary trust fund under the administration of the GEF.²⁹ The GEF also administers two other trusts for funding of the climate adaptation programs. But none of these funds have reached the capacity of 3 billion\$ yet which is the sole cost of the Dutch ‘room for rivers’ program which improved the security of rivers in Netherlands.³⁰

The tropics are expected to bear most of the brunt of climate change. But they are also the poorest of regions and their response to climate change is rendered difficult due to their minimal financial capacity, poor settlement conditions and demographic pressure. These countries can ultimately depend on the aid of western countries which is hard to come by given the poor state of most of the funds created to deal with climate change.

The Option of Resettlement

In situ adaptation strategies do not always work in countries facing an immediate threat of submergence from surging seas. In countries like the Maldives and the Pacific Island nations, migration might be the only option in view of the fact that these people might just get drowned even if they waste a few years. In 2009, NGOs failed in the adoption of an international framework for resettlement programs under the Copenhagen treaty. In the UNFCCC report titled climate change: impacts, vulnerabilities and adaptation in developing countries stated that international relocation is not an option. The nations of the world assume that cross border relocation would one day affect the socio-economic polity of their nations. They even argue against domestic resettlement in fear that granting legitimacy to it would force them to make concessions for international resettlement. Some small island nations like the Nauru suspect adaptation strategies to be means of further exacerbating the

²⁷DIRAM-Vol3-DIRP1-Hithadhoo-V2.pdf, , <http://ndmc.gov.mv/assets/Uploads/DIRAM-Vol3-DIRP1-Hithadhoo-V2.pdf> (last visited Jan 5, 2018).

²⁸United Nations Convention to Combat Desertification, , <http://www2.unccd.int/> (last visited Jan 5, 2018).

²⁹Global Environment Facility (GEF), http://unfccc.int/cooperation_support/financial_mechanism/guidance/items/3655.php (last visited Jan 5, 2018).

³⁰Room for the River, the Netherlands, , <https://www.royalhaskoningdhv.com/en-gb/projects/room-for-the-river-the-netherlands/6055> (last visited Jan 5, 2018).

effect of development on the earth's resources. They merely deem it as a way for the developed nations to once again impose their idea of growth and exploit the small nations in the form of neo colonialism. The small island countries intent on preserving their unique culture and local traditions despise attempts to make them permanently move from their ancestral lands. Resettlement has been consistently used by nations and communities to escape the impacts of extreme weather conditions. In 1984-85, 600000 people were internally displaced from Ethiopia due to famine.³¹ The 'living with the floods' program of the Vietnam envisaged the relocation of population in flood affected areas to closeby but less vulnerable spaces³². Till now, the climate and environmental refugees have mainly been relocated within the countries due to the strict border and migration policy of the various countries.

Existing Legal framework: Rigid and Unyielding

Historical Framework

The main convention dealing with the plight of refugees is the 1951 refugee convention and its 1967 protocol relating to the status of the refugees but both these conventions restrict the meaning of refugees to those displaced by political crises and wars. A much expanded definition has been propounded in the two regional instruments namely the 1969 organization of African unity convention³³ governing the specific aspects of refugee problems in Africa and the 1984 Cartagena protocol on refugees.³⁴ Both the agreements cover people fleeing from the events seriously disturbing public order and the Cartagena protocol also extends to groups. This might provide an opportunity for inclusion of climate refugees although the conventions never really intended to include climate refugees in the first place.

³¹Migration - Ethiopia, , <http://www.nationsencyclopedia.com/Africa/Ethiopia-MIGRATION.html> (last visited Jan 5, 2018).

³²Vo Thanh Danh & Shahbaz Mushtaq, *Living with Floods: An Evaluation of the Resettlement Program of the Mekong Delta of Vietnam*, in ENVIRONMENTAL CHANGE AND AGRICULTURAL SUSTAINABILITY IN THE MEKONG DELTA 181–204 (2011), https://link.springer.com/chapter/10.1007/978-94-007-0934-8_11 (last visited Jan 5, 2018).

³³United Nations High Commissioner for Refugees, OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA, ADOPTED BY THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT AT ITS SIXTH ORDINARY SESSION, ADDIS-ABABA, 10 SEPTEMBER 1969 UNHCR, <http://www.unhcr.org/about-us/background/45dc1a682/oa-convention-governing-specific-aspects-refugee-problems-africa-adopted.html> (last visited Jan 5, 2018).

³⁴UNHCR - Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984, , <http://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html> (last visited Jan 5, 2018).

By end of 2007, 11.4 million refugees have come under the mandate of climate refugees.³⁵In view of the increasing number of people seeking refuge on various grounds, the Executive committee of the UNHCR and the UN general assembly has extended the definition to people who after temporary refuge have returned to their homeland, people who are internally displaced and people who are stateless although these groups do not come within the convention definition of ‘refugees’.

‘Environmental internally displaced persons’ fall within the Guiding Principles on Internal Displacement of the Office of the High Commissioner for Human Rights.³⁶ But these groups have not really been conferred the status of right holders. The guiding principles proclaim it the duty of the state to provide for the human rights of its citizens. The 2006 Operational Guidelines on Human Rights and Natural Disasters “Protecting Persons Affected by Natural Disasters” from the Inter-Agency Standing Committee directed to internally displaced people also doesn’t mention any duty imposed on other states to cater to the refugees³⁷. With the number of climate refugees going to increase at a booming rate by 2050, it is doubtful whether these international agreements will be able to safeguard their rights.

The universal declaration of human rights also presents a natural rights framework for the protection of the refugees but it is difficult to depend on the declaration alone as it doesn’t have any legal consequences and the weaker states cannot really depend on it for the protection of their refugees. The 2010 agreement on long term cooperative action under the UNFCCC was introduced at the Cancun conference and it contains the compensation for losses caused by climate change including climate induced migration³⁸.

The UN general assembly identified the human rights implications of the climate change and submitted it to the Secretary General. This report for the first time emphasized the loss of identity, statelessness and cultural survival. The human rights council in 2008 made a

³⁵JÜRGEN SCHEFFRAN ET AL., CLIMATE CHANGE, HUMAN SECURITY AND VIOLENT CONFLICT: CHALLENGES FOR SOCIETAL STABILITY (2012).

³⁶United Nations High Commissioner for Refugees, GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT UNHCR, <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> (last visited Jan 5, 2018).

³⁷Protecting persons affected by natural disasters: IASC operational guidelines on human rights and natural disasters | PreventionWeb.net, , <https://www.preventionweb.net/publications/view/1617> (last visited Jan 5, 2018).

³⁸Cancun Climate Change Conference - November 2010, , http://unfccc.int/meetings/cancun_nov_2010/meeting/6266.php (last visited Jan 5, 2018).

connection between climate change and the human rights³⁹. A year later backed by the study by the OHCHR, the council adopted another resolution where it acknowledged the impact of the climate change on human rights and need for international cooperation and long term solutions but it did not make a direct reference to the climate induced displacement. The office of UNHCR has recently in 2010 in a dialogue of the high commissioner of protection challenges called for international cooperation for cross border movement⁴⁰. During the 50th Anniversary of the statelessness convention in an expert meeting a Bellagio, the UNHCR has focussed on the same issue. These endeavours led to the debate to resurface during the Nansen conference in Oslo on climate change and displacement in the 21st century⁴¹. These debates did not really lead to the adoption in the UNHCR official communiqué in 2011. The UNHCR declared that regional and bilateral agreements with a pervasive soft law character would be more appropriate to address the issue.

Expansion of the 1951 Convention, Regional Regimes and ID Protocols

Politicians from countries like Maldives and Bangladesh have called for the inclusion of environmentally displaced persons which may be further nuanced to include climate refugees. The criteria of migration due to political reasons or of people belonging to a particular race under the 1951 convention may be met by considering the fact that many climate refugees do belong to a particular, class, sect more vulnerable than others due to the inequitable distribution of resources and relief after a disaster. This group may be a minority group or a class of people living in dire poverty. The non-provision of relief and discriminatory and inefficient climate mitigation approaches amount to persecution by the state which has failed in its duties to its citizen. The term ‘refugees’ invokes a sense of social and humane responsibility irrespective of whether it pertains to trans-boundary or internal flight. ‘Climate refugees’ may be defined as people who are forced to leave the place of their stay due to changes in environment beyond their control. But the 1951 convention itself may not be sufficient to protect the ‘climate refugees’ as most of them remain within the home country.

³⁹OHCHR | Human rights and climate change, , <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx> (last visited Jan 5, 2018).

⁴⁰United Nations High Commissioner for Refugees, HIGH COMMISSIONER’S DIALOGUE ON PROTECTION CHALLENGES, 2010 UNHCR, <http://www.unhcr.org/high-commissioners-dialogue-on-protection-challenges-2010.html> (last visited Jan 5, 2018).

⁴¹United Nations High Commissioner for Refugees, NANSEN CONFERENCE ON CLIMATE CHANGE AND DISPLACEMENT IN THE 21ST CENTURY (OSLO, 6-7 JUNE 2011): CONFERENCE REPORT UNHCR, <http://www.unhcr.org/protection/environment/4ea969729/nansen-conference-climate-change-displacement-21st-century-oslo-6-7-june.html> (last visited Jan 5, 2018).

The people displaced by climate events cannot merely be placed under the category of ‘climate refugees⁴²’.

Kolmannskog recommends the 1998 guiding principles on internally displaced persons for protection of climate refugees⁴³. These guiding principles provide a very wide definition including those fleeing from man-made or natural disasters. The UN special rapporteur for human rights of internally displaced people argues that these principles form a part of the soft law which might guide the national policies of the states although it is not legally binding. The countries placed in the same geographical region equally vulnerable to the perils of climate change can come together to create a regional framework treaty allowing for the cross border movement of the climate refugees. The Kampala convention adopted by the African Union is one such example of a regional treaty which strives to provide protection to people who have been forced to migrate due to climate change. It calls upon humanitarian agencies and other actors to help the people in the region. ‘Other actors’ could be interpreted to include other states⁴⁴. But regional treaties do not work where there is disparity in the vulnerability.

Dealing with Climate refugees across the border

The EU Approach

The adoption of the Lisbon treaty has provided a wide mandate to the Union for its policy on asylum and immigration. The principle of Non-refoulement in the Article 78 of the TFEU empowers the union to collate national practices and enact a new legislation for people displaced by slow onset environmental practices⁴⁵. The Council also proposed the Stockholm Programme in 2010 with respect to the impact of climate change on migration⁴⁶. On the basis of the assessment done by the commission, a revised global approach to migration in 2011 which along with the staff working paper emphasizes the links between climate change, migration and environmental destruction. A common approach is needed under the EU

⁴²Dwight Newman, *Collective Interests and Collective Rights*, 49 AM. J. JURISPRUD. 127 (2004).

⁴³Kolmannskog, *supra* note 19.

⁴⁴United Nations High Commissioner for Refugees, REFWORLD | KAMPALA DECLARATION ON REFUGEES, RETURNNEES AND INTERNALLY DISPLACED PERSONS IN AFRICAREFWORLD, <http://www.refworld.org/docid/4af0623d2.html> (last visited Jan 5, 2018).

⁴⁵The Principle of Non-Refoulement in the EU Legal Setting (Chapter 5) - Frontex and Non-Refoulement, , <https://www.cambridge.org/core/books/frontex-and-non-refoulement/the-principle-of-non-refoulement-in-the-eu-legal-setting/AB9D50D9DF66D146F7A77BE579A09CE1> (last visited Jan 5, 2018).

⁴⁶IPOL-LIBE_ET(2011)462422_EN.pdf, , http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/462422/IPOL-LIBE_ET%282011%29462422_EN.pdf (last visited Jan 5, 2018).

development and cooperation policy of the DG for humanitarian aid and the DG for human affairs. A previous attempt has been made to deal with environmental refugees in the Common European Asylum policy⁴⁷. There still does not exist, a harmonized structure for protection under the EU. The temporary protection directive doesn't take into account slow changes and only 4 states have adopted official policies on protection.

The US Approach

The US immigration act of 1990 provides Temporary Protected Status (TPS) to people who are not able to return to their home country safely. Environmental disasters and slow onset changes substantially disrupt the life of the people. This act made substantial changes to the immigration and nationality act 1965 by expanding the definition of refugees. The people provided the TPS status gain employment authorization, travel permit and cannot be removed from the country⁴⁸. The US granted an 18 month TPS to Haitians after the 2010 Haitian earthquake and to 150000 Nicaraguan refugees after the Hurricane Mitch.⁴⁹ Usually, the TPS is granted to people already residing in the US illegally or legally and it is in the discretion of the homeland security to grant TPS to people from a particular country. In 2017, US President trump has withdrawn from the Paris climate pact and the UN migrant and refugee compact which seeks to uphold the need for international coordination. This has made the situation more precarious.

New Zealand's Bold Step Forward

Recently, New Zealand has declared an exclusive 'visa' for climate refugees on humanitarian grounds. With the adoption of a humane approach, the question of who exactly constitutes 'climate refugees' has been avoided. In 2014, two cases refused the allowing of climate refugees which decision the New Zealand immigration tribunal overruled to provide refuge merely on humanitarian grounds (the situation in Tuvalu) rather than due to climate change

⁴⁷The EU Has a Solidarity Crisis. Not a Refugee Crisis., OPEN SOCIETY FOUNDATIONS, <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union> (last visited Jan 5, 2018).

⁴⁸Temporary Protected Status | USCIS, , <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Jan 5, 2018).

⁴⁹About 2,500 Nicaraguans to Lose Special Permission to Live in U.S. - The New York Times, , <https://www.nytimes.com/2017/11/06/us/politics/immigrants-temporary-protected-status-central-americans-haitians.html> (last visited Jan 5, 2018).

threat. Apart from providing entry the developed countries should also focus on helping in adaptation strategies.⁵⁰

Indian Situation

India might face both a surge in internally displaced persons due to the effect of desertification, drought and flood crisis etc. and migrants from nearby countries like Maldives and Bangladesh. Drought presents the most conducive situation for migration. It was found that 300000 people from Bolangir, Orissa migrate every year. The severity of drought is also expected to increase in Western Indi's Luni in Gujarat and Rajasthan. India is also said to house the second largest population located in the low elevation coastal zone with 63 million people. The Indian coast is inhabited by more than 100 million people in nine states⁵¹. A one meter sea rise is said to displace 7.1 million people in India and the sea is expected rise between 15cm and 38 cm by the middle of this century. Approximately, 32% of India's coasts are suspect to submergence⁵².

By 2100, 120 million people could be rendered homeless in India and Bangladesh. Flooding displaces 500000 people in Bangladesh every year all of whom come to find refuge within the Indian borders. Myers expects that the refugees from Bangladesh to India might outnumber the total number of refugees itself. Over the last 40 years, the population of India has expanded from 12 million to 17 million induced by the migration from Bangladesh⁵³.

In this context, India needs a comprehensive policy to address the climate refugees driven by sudden disasters and also slow onset changes and for those who migrate either for temporary stay or permanent settlement.

Conclusion

There is an urgent need for inclusion of human rights and participation in the issue of climate change. In 2010, a second version was presented of a 2008 draft drawn up by the University of Limoges.⁵⁴ It ascertains common but differentiated responsibility, principle of proximity, proportionality and non-discrimination. The already weak nature of implementation under

⁵⁰New Zealand Proposes Humanitarian Visa for "Climate Refugees" | The Diplomat, , <https://thediplomat.com/2017/11/new-zealand-proposes-humanitarian-visa-for-climate-refugees/> (last visited Jan 5, 2018).

⁵¹Climate Refugees, *supra* note 12.

⁵² Id.

⁵³ Id.

⁵⁴MARY CROCK, REFUGEES AND RIGHTS (2017).

international law is further burdened by the fact of the lack of fixture of ‘responsibility’ especially in view of the absence of a strong definition of ‘climate refugees’.

But a clear definition of climate refugees merely makes it easier for the countries to avoid accepting the duties. Only under international customary law, states have an obligation to protect the citizens of other countries despite not having ‘effective control’ over them. In the Bankovic case, the ECHR held that the state parties of NATO did not have any control over victims bombed in Sarajevo⁵⁵. Apart from difficulty of ascertaining a link between general climate change and the migration, a state cannot have control over the anthropogenic activities occurring somewhere else. Even if Human rights could provide a reason for other states to intervene, it does not automatically provide any right to migrate. If the climate migrants had already migrated somehow, they should be allowed protection of human rights against the state that now has effective control over them preventing expulsion based on conventions like the one on torture. States have an obligation under such conventions to not send them back for prosecution or torture to their home states. The ECHR in the judgment of Soering v UK adopted an identical position.⁵⁶

A long term structured relocation and integration programme should be adopted and not a mere short term in situ adaptation in response to sudden climate disaster. The latter doesn’t provide a chance for a consistent and stable policy in actual prevention of exacerbation of climate change and merely amounts to an ad hoc solution. Climate migrants shouldn’t be granted entry into a country in view of the cheap labour they can provide.

There is also a need to reconcile between individual human rights and collective group rights. While it is good to grant entry to individuals, it might also lead to brain-drain of talented individuals from developing countries. That in turn would affect the community social network and cause a sense of isolation among the collective. Biermann and Boas argue that it might be better to grant rights to collectives of people either through cession and lease of territory⁵⁷. Although Australia and New Zealand have rejected such an arrangement for migrants from Tuvalu and Maldives, it might be a good option to consider in the future.. The principle of common but differentiated responsibility shouldn’t be based on a benevolent gesture by financially capable countries. It should pertain to the historical responsibilities of

⁵⁵European Court of Human Rights : Case Bankovic and Others v. Belgium and Others, , <http://merlin.obs.coe.int/iris/2002/1/article2.en.html> (last visited Jan 5, 2018).

⁵⁶11 EHRR 439

⁵⁷BIERMANN AND BOAS, *supra* note 17.

countries. The “polluter pay” principle of the international environmental law can be usefully applied in this context. Since the refugee convention doesn’t grant any collective rights and provide for a responsible burden sharing based on international cooperation, it would be unfair to include climate refugees under the convention. It would put the burden on developing countries like India with less historic responsibility in regard to climate change to accept significant number of refugees.