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CLIMATE REFUGEES: THE MISSING LINK IN INTERNATIONAL REFUGEE LAW

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Abstract

Climate change is today's biggest global crisis. The global community has realized this reality and it is currently implementing processes to address this critical issue. The scientific community has also acknowledged that Human actions are responsible human created global environmental degradation, that the results of that degradation are the current world's growing concern for climate change. Among other issues, rising sea levels, erosion of our coastline, reduced agricultural output, limitations on access to safe drinking water, and impacts on public health are the main consequences of climate change. Recently, there is growing support (and understanding) of the social, economic, and differential consequences of climate change worldwide. While climate change is a global dilemma, it will be felt differently throughout the world. The global consequences of climate change will vary by Regions, Age cohorts, Generations, Income levels, and Gender. The primary goal of this paper is to investigate the impact of climate change on displacement and refugee issues. In addition to addressing the extent to which climate change has been incorporated into the current International Framework on Displacement and Refugee Issues/Refugee Law.

INTRODUCTION

Located in the Pacific Ocean, the island of Kiribati is an island country in the Micronesia subregion of Oceania in the central Pacific Ocean. Its permanent population is over 119,000 as of the 2020 census covering an area of 811km² facing a rapidly increasing flood risk as sea levels rise found in a recent assessment by NASA's Sea level team. According to which depending on future greenhouse-gas emissions and the intensity of global warming, Kiribati sea level could rise by 1 ½ to more than 3 feet (50 to 100 centimetres). ¹The former president planned for an action to prevent the island from being submerged but failed in consequence of which in 2014 he brought a place in Fiji so Kiribati citizens would have a refugee when their

¹ *NASA Sea Level Change Portal* (2024) 'NASA sea level team examines an island nation at risk,' 3 September. [https://sealevel.nasa.gov/news/276/nasa-sea-level-team-examines-an-island-nation-at-risk/#:~:text=By%20the%20end%20of%20the,%C2%BD%20feet%20\(2%20meters\).](https://sealevel.nasa.gov/news/276/nasa-sea-level-team-examines-an-island-nation-at-risk/#:~:text=By%20the%20end%20of%20the,%C2%BD%20feet%20(2%20meters).)

homeland would be submerged. In a similar instance an island nation located in the Pacific Ocean, the nation of Tuvalu is comprised of nine island atolls totalling an area of 26 square kilometres. However, as one of the world's lowest lying countries Tuvalu and its 11,000 residents are in serious danger from the on-going threat of global warming and rising sea levels.² Some Tuvaluans have already relocated to Fiji, New Zealand, and other neighbouring islands as result of the impacts of climate change.

The United Nations defines climate change as a long-term change in temperature and weather patterns over an extended period of time. Some of these changes occur naturally through variations of solar energy and through many large volcanic eruptions. Since about 1800, however, human activities have been the primary cause of climate change and this is due mainly to the combustion of fossil fuels (coal, oil, and gas). The emission of greenhouse gases (GHGs) from the combustion of fossil fuels has created a barrier around the Earth that acts as a barrier for radiant heat from the sun and as such, results in an increase in the temperature of the Earth. Carbon dioxide and methane are the primary GHGs causing climate change which is basically released from humans and consumed by nature. It is also released by burning gasoline and using fossil fuel which releases these gases. Clearing land and cutting trees also releases carbon dioxide. The average temperature of the earth surface is now 1.2° C warmer than it was in 1800's. However, it has already had a huge effect on the environment, including:

- more frequent and intense extreme weather, such as heatwaves and heavy rainfall
- rapid melting of glaciers and ice sheets, contributing to sea-level rise
- huge declines in Arctic sea-ice
- warmer oceans, which can fuel more intense storms and hurricanes and damage wildlife such as coral reefs

The global impact of climate change will create tremendous hardships for society and the economy. Both Hurricane Helene and Hurricane Milton caused enormous destruction to the United States—Hurricane Helene caused over \$50 billion (£40 million UK money) worth of damage and lost over 200 lives, while Hurricane Milton caused roughly \$50 million (£40 million) worth of damage and lost at least 16 lives.³

² Yeo, S. (2024) *Tuvalu: The disappearing island nation recreating itself in the metaverse*. <https://www.bbc.com/future/article/20241121-tuvalu-the-pacific-islands-creating-a-digital-nation-in-the-metaverse-due-to-climate-change>.

³ BBC News (2024) *What is climate change? A really simple guide*. <https://www.bbc.com/news/science-environment-24021772>.

Climate change induces displacement is a documented fact. Several reasons can be attributed for this. Most conspicuous is the displacement changing sea levels. The global average temperature has increased by 1.1° C since 1880, the largest and fastest warming trend in the history. In the event that statehood is deemed to have ceased in such a scenario, the populations concerned would be left stateless unless they acquired other nationalities. ⁴The issue here will be whether they should claim protection as refugees or as stateless individuals under international law.

Research Objectives:

- To analyse the causes, socio- economic impacts and legal gaps associated with climate induced displacement, focusing on the challenges faced by climate refugee.
- To propose actionable solutions with respect to the identification, protection, and resettlement of climate refugees regarding necessary legal reforms, international cooperation.

Statement of Problem:

The worsening climate crisis on a global scale is forcing millions of people to migrate from their homes because of its impacts, constituting a severe humanitarian issue. The international community still has much to do in protecting and supporting those affected. There is an enormous chasm between the increasing numbers of climate change-displaced peoples and the existing legal and policy measures to redress their needs. The absence of sufficient frameworks and a limited understanding of the causes and effects of climate displacement put human rights in jeopardy, amplify existing disparities, and disrupt global stability finding about these are the main purpose of this research paper.

Research Methodology:

The research methodology is based on mostly secondary data that is collected from the research journals and online articles, books etc., while analysis of pieces of news will serve as primary data. The research is qualitative and comparative in nature. The citation style is 20th edition of Bluebook.

⁴ DelGrande, J. (2021, May 30). *Joe Delgrande*. NYU JILP. <https://nyujilp.org/statelessness-in-the-context-of-climate-change-the-applicability-of-the-montevideo-criteria-to-sinking-states/>

Climate change makes one of the most important appointments for mankind in the 21st century. As much as it interacts with nature, it has an impact on humans. Some of its worst effects are environmental displacements—people or populations displaced by the environment. This paper is about all that involves such environmental displacements primarily due to rising sea levels, melting glaciers, or extreme weather events. The urgency with which climate change displacement deals with environmental vulnerabilities and human vulnerabilities is clear. Sea levels are rising because of global warming, threatening their long-term survival as the U.S. east coast, small island countries, and most of the states in the Caribbean are likely to be submerged. Due to melting glaciers and melting polar ice caps, some displacement will be because of rising sea levels, while millions will be affected as supply chains of glacial runoff will be disrupted. Finally, most people are displaced as they face different extreme weather events like hurricanes, floods, droughts, and so forth, leaving them without adequate recovery resources or infrastructure. All these issues are examined candidly in this paper, exploring the social interactions between environmental triggers of human displacement and all the definitions and legal dilemmas surrounding the rights and needs of displaced people as a result of climate change. The problem of rising oceans—an effect of global warming—is now a survival question for many coast and island communities across the globe. The retreat of land by oceans at this rate is believed to be as a result of thermal expansion of seawater due to temperature increase and melting of ice caps and glaciers in the polar regions, quite compatible with global temperature upsurge. According to projections made by the Intergovernmental Panel on Climate Change (IPCC), the crisis now at hand demands urgent attention as 1.4 to 5.8 degrees Celsius temperature⁵ increase over a period of the next hundred years could lead to an unprecedented drastic rise in sea level. The rising sea levels have very far-ranging and very concerned implications. Areas within such low-lying parts like within Bangladesh and Maldives face a high probability of impending partial or total submerging of land mass. Such risks also extend into other megacities along coastlines, like Mumbai, Jakarta, and New York, where one could expect major infrastructural and economic loss. Saltwater intrusion into freshwater systems adds to the crisis of such part of the world, contaminating agricultural lands and denying millions the access to the available potable water.

⁵ *Climate change widespread, rapid, and intensifying*. IPCC. (n.d.). <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

The Inescapable Threat of Rising Sea Levels

The problem of rising oceans-an effect of global warming-is now a survival question for many coast and island communities across the globe. The retreat of land by oceans at this rate is believed to be as a result of thermal expansion of seawater due to temperature increase and melting of ice caps and glaciers in the polar regions, quite compatible with global temperature upsurge. According to projections made by the Intergovernmental Panel on Climate Change (IPCC), the crisis now at hand demands urgent attention as 1.4 to 5.8 degrees Celsius temperature increase over a period of the next hundred years could lead to an unprecedented drastic rise in sea level. The rising sea levels have very far-ranging and very concerned implications. Areas within such low-lying parts like within Bangladesh and Maldives face a high probability of impending partial or total submerging of land mass. Such risks also extend into other megacities along coastlines, like Mumbai, Jakarta, and New York, where one could expect major infrastructural and economic loss. Saltwater intrusion into freshwater systems adds to the crisis of such part of the world, contaminating agricultural lands and denying millions the access to the available potable water. The demographic change brought about by sea-level rise has already begun and is expected to continue affecting the densities of some South Asian countries where a lot of people live within coastal zones vulnerable to sea-level rise. According to studies in India, rising levels in the sea will uproot millions within the middle of this century, which could have very adverse economic and social repercussions. Displacement not only causes loss of livelihood but also raises several legal and moral issues regarding the rights and status of those whose houses will be forced from their home. Ringed by oceans, the most pressing issue is that there is no consolidated international legal architecture in place for the population displacement by raising seas. Climate-displaced people are fundamentally different from refugees who escape because of war or conflict and are not recognized as refugees under the present international laws leaving these individuals in a state of ambiguity. An example of rising sea levels is the republic of Maldives. The Maldives is the smallest country in Asia covering only land about 298 sq km. Due to its scattered geography, these islands accede to Maldivian Exclusive Economic Zone (EEZ) about 923,322 sq. km, over three thousand times the land-area. In midlevel global warming scenarios, the sea level rise may cause the Maldives about half a meter inundation by around 2100, swallowing up to 77 percent of its land area. If the sea levels rise to 1 meter [or 39.37 inches], the Maldives could be almost completely inundated by 2085⁶.

⁶ *Climate refugees*. Othring & Belonging Institute. (n.d.). <https://belonging.berkeley.edu/climate-refugees-3>

Beyond Rising Seas: Impacts from Melting Glaciers

Climate change continues to ravage mountain ecosystems especially at this time when melting glaciers are happening rapidly. Out of this process are generated various possible consequences, one of the most significant acts being **glacial lake outburst floods (GLOFs)**. GLOFs are sudden and catastrophic discharges of water from glacially dammed lakes resulting from an ice or moraine dam break-up, heavy rainfall, or seismic shock. These areas are particularly relevant when one considers the present age and vulnerabilities of the densely concentrated glaciers in such rapidly warming climates as the Himalayas. The GLOF impacts are both widely ranging and disastrous in the sense that they kill a large number of people and destroy property, in addition to causing irreversible damage to important infrastructure such as roads, bridges, and hydropower installations. Many agricultural lands are also rendered unfarmable as a result of flooding and sedimentation in these areas, causing implications to local societies' livelihoods and food security. The result is double jeopardy for glaciers retreating towards already affected communities: glacial melting and GLOFs. In such cases, there are forced relocations as the only possible option to ensure safety and security for all affected peoples. Notable among such disastrous effects of glacial melting and glacial lake outburst floods (GLOFs) is the flood in Uttarakhand, India, in February 2021. This disaster was unleashed by a possible glacial break or avalanche that occurred in the Chamoli district and caused catastrophic flooding along the Rishiganga and Dhauliganga rivers. Many in the aftermath had to leave their homes, an example of climate-forced displacement. Such incidents call for all-encompassing assessments and responding risk mitigation frameworks in the form of early warning systems, better land-use planning, and resettlement of communities under potential threats posed by melting glaciers and GLOFs around mountain regions.

The Cascade Effect: Droughts, Floods, and Displacement

Extreme weather events, triggered in part by global warming and changing patterns of precipitation, are central to the growing problem of climate displacement and climate refugees. The Internal Displacement Monitoring Centre published statistical research, concluding that a forced displacement of around 26.4 million people has been taking place every year since 2008 because of natural calamities like floods and windstorms⁷. Droughts relate to the prolonged period of time with little or no rain, which drastically reduces agricultural

⁷ *Displacement, disasters and climate change* (no date). <https://www.internal-displacement.org/focus-areas/Displacement-disasters-and-climate-change/>.

productivity and leads to depletion of available water resources with an increased risk of food insecurity. Subsistence farming areas, such as sub-Saharan Africa and parts of South Asia, are the most at risk for this kind of threat. With crops failing and the death of livestock looming large over them, communities sometimes have no alternative but to migrate in search of cultivable soil with reliable water sources. These forced displacements threaten classic social systems and increase the competition for scarce resources in the areas of reception thereby assuming a conflictive and unstable dimension. In contrast, floods are those types of calamities that take place when there is excess rainfall due to melting ice and snow. Floods cause widespread damage to infrastructure as well as homes and livelihoods. The questionnaire was made up of coastal areas and river banks and accounts for millions displaced every year. The dual function of flash floods and seasonal floods uproots their victims and then contaminates the drinking water supply, creating long and short-term public health crises which exacerbate the vulnerability of displaced people.

Legal and Policy Frameworks in International Law:

1. 1951 Refugee Convention:

The 1951 Refugee Convention, also known as the Convention Relating to the Status of Refugees, is an important document of international law on refugees. Its adoption date was July 28, 1951, but it officially entered into force on April 22, 1954. The convention, especially relevant to the period of recovery after World War II, emphasizes that corresponding events to be referred to here are prior to January 1, 1951, concentrating further on Europe.

The Main Issues of the 1951 Convention:

- **Definition of a Refugee:**

A refugee is a person who is outside the country of nationality because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership⁸ in a particular social group, or political opinion and is unable or unwilling to return to that country because of such fear.

- **Non-refoulement Principle:**

It forbids the expulsion or return (refoulement) of refugees to territories where their life or freedom would be threatened. This principle has been stated to be the foundation stone of refugee protection.

⁸ UNHCR US - (no date) *What is a refugee?* | UNHCR US. <https://www.unhcr.org/us/what-refugee>.

- Rights of Refugees:

Refugees must have the same basic rights and freedoms, including access to courts, elementary education, work, and public relief and assistance, as nationals of the host country.

2. UN Framework Convention on Climate Change (UNFCCC):

The adoption of the UN Framework Convention on Climate Change in 1992 established a legal framework for countries and parties to turn globally into a common agreement to mitigate and adapt to climate change. Its particular aim is building capacity for stabilization of greenhouse gases in the atmosphere to the level that prevents dangerous interference by humankind in the climate system and to promote sustainable development. The Paris Agreement (2015) added to the UNFCCC issues of displacement arising from climate change. The International Mechanism for Loss and Damage has also provisions addressing displacement due to climate change and was created in 2013 by Warsaw.

3. Guiding Principles on Internal Displacements:

Guiding Principles on Internal Displacements (1998) are wholly UN-provided standards towards the treatment of internal displacement issues. The principles were formulated by UN-mandated Francis Deng as the special representative on internally-displaced persons (IDPs) in the light of a growing international concern about human displacement arising from civil wars, violations of rights, natural calamities, and climatic change.

4. Kampala Convention:

There are internal displacements as a result of conflicts in the African continent, and the Kampala Convention (2012) refers to the African Union Convention for the Protection and Assistance of IDPs (Kampala Convention). This regional legal framework is adopted by the African Union (AU). The Kampala Convention addresses protection, assistance, and durable solutions for IDPs on the continent. Internal displacement has been mainly caused by conflict and violence; however, the Kampala convention is also relevant in an increasing dimension to climate-induced displacement, which has affected many African states.

Analysis:

The rise in sea levels in recent years has emerged as one of the most visible manifestations of climate change. Projections regarding these phenomena were made by scientist in the late

1970's, by their first observation of disintegration of western Antarctic ice sheet, a development with the potential to displace thousands of individuals. As per research by IDMC, approximately 26.4 million people ⁹have been forcibly displaced annually since 2008 due to natural disasters. The IPCC, in its report on the Ocean and Cryosphere in a Climate Change (2019), highlighted a significant loss of ice in Antarctic and Greenland over recent decades. The report indicates that even in a low emission scenario, sea level are projected to rise by 1.4 feet by 2100. In a contrast, in case there is a high emission scenario the sea level rise is projected to be 2.8 feet in same period. These evidences underscore a urgent need to reconsider security within international politics, necessitating an expanded conceptual framework. Even with immediate climate migration efforts vast land areas will vulnerable to costal flooding for centuries. A study published in Nature (2019) projects that global mean sea level rise by an additional 0.5 meters during this century, even with substantial reductions in climate emission. Whereas, in extreme scenarios, this rise could reach upto 2 meters. By 2050, sea levels rise are expected to rise by 20-30 centimetres, threatening the lives and livelihood of over 150 million individuals¹⁰. This was an absolute consideration for statelessness at times even. But for the people of Small Island States, rising sea levels will complicate void citizenship. Questions such as those regarding the procedure or criteria to acquire citizenship for the newly displaced: consideration of cultural affinity with neighbouring countries in resettlement of the displaced population; rights of climate refugees while stay in host country until citizenship eligibility will require a comprehensive policy structure: One such policy proposal is the new idea of "climate passport" as suggested by Dirk Messner,¹¹ President of the German Environment Agency, to facilitate so that refugees will be able to travel between their countries until obtaining citizenship anywhere. At this time, the term "climate refugees" lacks any international legal recognition¹², although the term has been used to describe forced migration resulting from environmental factors by many position papers of non-governmental organizations, in academic debates, and in media reports since the 1970s. Such 'environmental refugees' have gained public currency; however, as to displacement based on environmental factors, it does

⁹ Apap, J. and European Parliamentary Research Service (2019b) *The concept of 'climate refugee': Towards a possible definition*, EPRS / European Parliamentary Research Service. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI\(2018\)621893_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI(2018)621893_EN.pdf).

¹⁰ Kulp, S. A., & Strauss, B. H. (2019). New Elevation Data Triple Estimates of global vulnerability to sea-level rise and coastal flooding. *Nature Communications*, 10(1). <https://doi.org/10.1038/s41467-019-12808-z>

¹¹ *Climate passport, anyone?* (2018). <https://www.preventionweb.net/news/climate-passport-anyone>.

¹² The concept of "Climate refugee" - towards a possible definition. (n.d.). [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI\(2018\)621893_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI(2018)621893_EN.pdf)

not find a place in the 1951 Refugee Convention.¹³ Likewise, there is no mention of this category of persons under the Paris Agreement, which confines its provisions from being directly useful in addressing their necessities. Yet, the question regarding climate refugees' rights has reached the doorstep of the UN body's offices. The Republic of Kiribati has been facing the worst effects of rising seawater levels. Today, it is nearly uninhabitable, and perhaps soon it would be the first country to emerge fully into the sea¹⁴. Among its citizens affected by this tragedy is Ioane Teitiota, who attempted in 2013 to seek refugee status in New Zealand¹⁵ citing threats to his family's life from rising tide waters. But the Immigration and Protection Tribunal of New Zealand dismissed this case and the decision was upheld by the Supreme Court too.

Even with all the international organizations addressing the climate change agenda, the member states have been reluctant to take any strong obligations for years. There lie some nations that are starting to accept the reality of future displacements due to rising sea levels. For example, Bangladesh has commenced a massive project called Bishesh Asrayan Prakalpa, where thousands of climate refugees will be given shelter and employment will be generated to reduce poverty. Other possible responses for dealing with the issue of displacement could include the issuance of humanitarian visas, temporary protection measures, regional and bilateral agreements¹⁶ that promote free movement, and much more.

¹³ Randall, A. (2019, July 31). *Environmental refugees: Who are they, definition and numbers*. Climate & Migration Coalition. <https://climatemigration.org.uk/environmental-refugees-definition-numbers>

¹⁴ Picheta, R. (2020, January 20). *Climate refugees cannot be sent back home, United Nations rules in Landmark Decision*. CNN. <https://edition.cnn.com/2020/01/20/world/climate-refugees-unhrc-ruling-scli-intl/index.html>

¹⁵ *Teitiota v New Zealand: A step forward in the protection of climate refugees under International Human Rights Law?*. OHRH. (n.d.). <https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law>

¹⁶ Martin (2019) *Let's talk about climate migrants, not climate refugees*. <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees>