



INTERNATIONAL
ENVIRONMENTAL LEGAL
RESEARCH JOURNAL

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



International Environmental Legal Research Journal (Open Access Journal)

Journal's Home Page – <https://ielrj.iledu.in/>

Journal's Editorial Page – <https://ielrj.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ielrj.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



ILE Publication House is the
**India's Largest
Scholarly Publisher**

© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ielrj.iledu.in/terms-and-condition/>

The Need for an International Policy Concerning the Status of Environmentally Displaced Persons

Authors - Calvert Nazareth & Sneha Nagarajan, Students at School of Law, Christ (Deemed to be University)

Best Citation - Calvert Nazareth & Sneha Nagarajan, The Need for an International Policy Concerning the Status of Environmentally Displaced Persons, *INTERNATIONAL ENVIRONMENTAL LEGAL RESEARCH JOURNAL*, 1 (1) of 2023, Pg. 133-144, ISBN - 978-81-960677-0-0.

ABSTRACT

Changes and disturbances in the environment across the globe have given rise to environmentally displaced persons (EDPs), who migrate from their homes with no other resort. These individuals are not escaping war or an oppressive government but are on a search to seek sanctuary elsewhere, owing to the crisis of climate change. There is an ardent need to protect environmental refugees considering the plight of such individuals. Amid the discourse on global warming and its hazardous impacts, there is minimal dialogue concerning the absence of multilateral protection for displaced individuals. Although the Refugee Convention and the framework for Internally Displaced Persons (IDPs) revitalise a discussion on the status of refugees, the efforts prove futile due to the lack of a theoretical framework in International Law. As the circumstances are likely to become more drastic, it is crucial to consider the rights of environmental migrants and the duties of the rest of the world. This research contributes to the need for greater clarity and knowledge of the situation of environmental refugees on a global scale. Furthermore, the paper makes recommendations for an international policy to recognize the status and vulnerability of environmentally displaced persons.

KEYWORDS: climate change, displaced persons, environmental refugees, international law

RESEARCH METHODOLOGY

The research methodology adopted by the researchers is a doctrinal and analytical form of research. This methodology was employed in order to analyse the current status of international environmental law and the lack thereof to address Environmentally Displaced Persons (IDPs). Throughout the research, the researchers have referred to both primary and secondary sources of information such as legislations, case laws, rules, books, articles, research papers and websites. The researchers have looked into literature, articles, reputed blogs and opinion pieces by renowned environmentalists, policymakers, and other credible authors. The researchers have further analysed existing laws, policies, treaties, conventions and United Nations resolutions concerning environmental refugees to gauge deeper insight into the issue, its lacunae, and plausible solutions. The keywords used by the researchers to source reading material include:

1. International Environmental Law
2. Environmentally Displaced Persons (EDPs)
3. Status of Environmentally Displaced Persons in International law
4. Refugee Convention and EDPs
5. Human Rights of EDPs
6. Solutions to problems faced by EDPs

INTRODUCTION

Major changes in the climate put forth an unrivalled challenge on humanity. The devastating effects in the global arena make it not only an environmental problem but also a climacteric social, economic and political issue. The spontaneous nature of migration, in internal as well as cross border cases, creates a vacuum of resources and appropriate coping strategies by host countries. As refugee camps are seen to be the only quick and viable solution, the long-term effects of a huge number of displaced individuals are not given the required relevance. Although there has been an escalation to combat the problem, most nations have no incentive to conceptualise a plan of action for environmental refugee protection. The lack of identification of environmental refugees in the Refugee Convention of 1951 renders no legal obligation on states. Additionally, there is an absence of any policy that distinctly defines a mechanism to protect and aid climate migrants. The need of the hour is to confer individual rights to displaced individuals, who are in dire need of special protection. The slow progression of environmental events will only further accelerate the movement, ensuing in the displacement of individuals in an undignified manner.³⁷⁵ The lack of action across the globes signifies a violation of moral obligation. The road to the future is to amplify the urgency in relation to population displacement and the provision of a safe passage for life-endangering migration. The paper provides an all-encompassing scrutiny of existing mechanisms in place and provides insights into the topic area by emphasising the need for policymakers to advance coherent laws. This can provide a beneficial premise for nations to implement more efficacious laws concerning EDPs.

³⁷⁵ Walter Kalin, *Displacement caused by the effects of the Climate Change: Who will be affected and what are the gaps in the normative framework for their protection*, BROOKINGS EDUCATION (Mar. 1, 2022, 9:43 PM), <https://www.brookings.edu/research/displacement-caused-by-the-effects-of-climate-change-who-will-be-affected-and-what-are-the-gaps-in-the-normative-framework-for-their-protection/>

CLIMATE CHANGE AND DISPLACEMENT

Climate-related issues have become drivers for displacement, and thereby, it is crucial to question the gravity and significance of environmental migration.³⁷⁶ The Earth's climate has constantly been subjected to change. The interaction between copious elements of nature-land, atmosphere, and water impacts the planet's variability.

A lack of legal framework and efficient practices to protect environmentally displaced persons (EDPs) is a cause of concern. The nexus of migration and climate change is substantial and pressing, thereby causing the need to accord rights to environmentally displaced individuals and the duties of the rest of the globe.³⁷⁷ The presence of climate change poses a significant conflict of migration, both at a domestic and international level. Sudden alterations and rearrangements in the natural environment have resulted in a state of affairs where human mobility has escalated. These displaced individuals are compelled to migrate over latitudes and longitudes, with no legal framework in place to protect their vested rights and interests.³⁷⁸

Climate change and its effects on various sectors and the working of the society has been analysed in depth through scholarly research.³⁷⁹ Numerous efforts have shed light on the ravelled relationship between displacement and climate change. Prolonged change in

³⁷⁶ Roger Zetter, *Environmentally Displaced People*, UNIVERSITY OF OXFORD REFUGEE STUDIES CENTRE (Mar. 5, 2022, 9:25 PM), <https://www.rsc.ox.ac.uk/policy/environmentally-displaced-people>.

³⁷⁷ Walter Kalin, *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, BROOKINGS (Mar. 10, 2022, 5:56 PM), <https://www.brookings.edu/research/displacement-caused-by-the-effects-of-climate-change-who-will-be-affected-and-what-are-the-gaps-in-the-normative-framework-for-their-protection/>.

³⁷⁸ Angela Barisic, Dilan Inci, *Environmentally Displaced People: In the hands of international legal protection or left to their fate?*, (March 2, 2022, 12:18 PM), <http://www.diva-portal.org/smash/get/diva2:633332/ATTACHMENT01.pdf>

³⁷⁹ Wolfgang Kempf, *A Sea of Environmental Refugees? Oceania in an Age of Climate Change*, GOOGLE BOOKS (Mar. 12, 2022, 6:13 PM), https://books.google.co.in/books?hl=en&lr=&id=rGLufyWs0hYC&oi=fnd&pg=PA191&dq=environmental+refugees&ots=Ku5qzDOnGe&sig=qA7qz4kKhNEQm-xeD6wDVPnqiJQ&redir_esc=y#v=onepage&q=environmental%20refugees&f=false

temperatures of the planet, leading to erupted wildfires and coastal storms, will potentially impact tens of millions of lives across the globe.

The change in the climate, which has increased global temperatures to an all-time high, have escalated climatic events such as cyclones, storms, rise in sea level, desertification, etc.³⁸⁰ Variables of climate change, such as temperature and precipitation levels, enable individuals to resort to transnational diffusion. This migration comes with leaving behind one's own home, land, property, belongings, and in severe cases, one's family too. The destruction is not only caused to basic infrastructure but additionally cause an excess in migration.

Displacement is caused in economic, social, and political layers accentuated by changing environmental conditions and frequently by developmental and demographic conditions.³⁸¹

Global migration debates have to consider the crucial aspect of the situation of displaced persons post an adverse change. The discourse on willingness to leave versus opportunity has to be considered. Although maximal emergency occurrences such as volcanoes and hurricanes cause movement from regions, it is also of paramount importance to note that gradual changes in our natural environment may cause significant disruption.³⁸²

The various kinds of migration that occur in today's world are as follows:

i. Environmental Emergency Migration

These are known to be immediate or sudden triggers for migration. These include landslides, hurricanes, floods, tsunamis, etc., which provide no other relief to individuals but to displace from their homes. The emergency would give rise to an arduous situation where it would be unfeasible for individuals to survive where they are.

ii. Environmental Forced Migration

This is known to be a crisis in the making. These leave individuals with no choice but to move away owing to a rise in deteriorating economic conditions. They fall through the cracks of international refugee and immigration policy.³⁸³ As compared to voluntary migration, migrants who are moved by force place an immeasurable strain on the public purse and create negative externalities.

iii. Environmental Motivated Migration

Popularly known as environmentally induced economic migrants, individuals may predict that a specific area could be susceptible to danger in the near future. This is known to be an adaptive response. As the area possesses a threat and becomes less viable to live in, this slower-acting process requires access to areas where there is unanticipated climate change and lesser regional vulnerabilities.³⁸⁴ In addition to this, individuals may have to seek shelter in areas where there is a presence of historical ties or family. This, in turn, requires an ample number of resources and money, with persisting uncertainties. Such disasters can lead to large scale displacement and a heavy burden on the economic costs of

³⁸⁰ Diane C. Bates, *Environmental Refugees? Classifying Human Migrations Caused by Environmental Change*, SPRINGER LINK (Mar. 9, 2022, 11:23 AM), <https://doi.org/10.1023/A:1015186001919>.

³⁸¹ Rajendra Ramlogan, *Environmental Refugees: A Review*, CAMBRIDGE UNIVERSITY PRESS (Mar. 15, 2022, 8:23 PM), <https://doi.org/10.1017/S0376892900038285>.

³⁸² Zorzeta Bakaki, *Environmental Refugees: The impact of climate change on Emigration*, UNIVERSITY OF GENEVA (Mar. 13, 2022, 8:56 PM), https://www.unige.ch/sciences-societe/speri/files/3014/5294/4496/Zorzeta_Bakaki_-_Environmental_refugees_ZBakaki.pdf.

³⁸³ David Keane, *The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees"*, HEIN ONLINE LAW JOURNAL LIBRARY, (Mar. 8, 2022, 4:12 PM) <https://heinonline.org/HOL/Page?handle=hein.journals/gintenlr16&div=158&id=&page=&collection=journals>.

³⁸⁴ Normal Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century*, THE ROYAL SOCIETY PUBLISHING (Mar. 17, 2022, 8:46 PM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1692964/pdf/12028796.pdf>.

individuals, and return to principal position requires an extended period of time. Internal migrants, who displace from an area of attack or vulnerability, such as from coastal areas, are subjected to the same laws of the land. The exhaustion of appropriate facilities and assistance capacities leads individuals to international and cross border migration, i.e., from one country or continent to another. Though these borders are seen as escape routes and are recognized globally as a state border, the future status of relocated persons remains uncertain.³⁸⁵ As no particular policy or legal status is entrusted to displaced persons, their relocation to a specific land depends on various subjective factors. These include the nation's approach to providing relief based on their current economic resources or on humanitarian grounds. This is so because displaced individuals do not fall within the ambit of "refugees", thereby providing no sense of obligation on states to protect their right to live in a dignified manner.³⁸⁶

EXISTING INTERNATIONAL POLICY CONCERNING EDP's

The protection obligations of EDPs extends to two key stakeholders - the home country and the host nation. The home country has a negative duty of non-violation and positive duty to mitigate hazards and ensure that EDPs are protected from environmental disasters. The host country has a positive responsibility to accept EDPs as refugees and not subject them to ill-treatment. One can view the status of EDPs in international policy through a two-fold lens. Firstly, through the scope of international human rights law, and secondly, through the scope of international environmental law. Both these domains of policy are brought to the forefront when discussing EDPs as one can

creatively interpret them to understand the status of EDPs under international law.

No international human rights instrument directly addresses EDPs. However, they entail certain fundamental rights that cannot be derogated from as they form customary international law. By analysing these basic rights, one can understand their direct or indirect relation to the conditions of the EDPs:

i. Right to Life

The right to life, often referred to as the "first right of man"³⁸⁷, is contained in major legal frameworks such as the Universal Declaration of Human Rights (UDHR)³⁸⁸, the International Covenant on Civil and Political Rights (ICCPR)³⁸⁹, the European Convention on Human Rights (ECHR)³⁹⁰, the American Convention on Human Rights (ACHR)³⁹¹ and the African Charter on Human and People's Rights³⁹². The *jus cogens* aspect of the right to life obligates States to take positive measures to ensure its non-violation, apart from non-interference. The Human Rights Committee (HRC) has expanded the scope of this right to extend beyond its traditional meaning and include environmental threats affecting human life. The Committee noted that States ought to prevent or mitigate ecological hazards compromising human life.³⁹³

In its Öneriyildiz decision³⁹⁴, the European Court on Human Rights (ECtHR) determined that States must undertake a dual duty to ensure that it directly does not infringe upon the right to life of citizens as well as to take measures to safeguard their right to life.³⁹⁵ The State can do this by actively incorporating frameworks to

³⁸⁵ Michael Berlemann & Max Friedrich Steinhardt, *Climate Change, Natural Disasters, and Migration—a Survey of the Empirical Evidence*, OXFORD ACADEMIC (Mar. 24, 2022, 5:12 PM), <https://academic.oup.com/cesifo/article/63/4/353/4656267>.

³⁸⁶ JANE MCADAM, REFUGEES AND RIGHTS 382 (Taylor and Francis Group 2015).

³⁸⁷ 1 KAREL VASAK, THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 159 (Greenwood Press Westport, Connecticut 1982).

³⁸⁸ The Universal Declaration of Human Rights, 1948, art. 3.

³⁸⁹ The International Covenant on Civil and Political Rights, 1966, art. 3.

³⁹⁰ European Convention on Human Rights, 1950, art. 2.

³⁹¹ American Convention on Human Rights, 1978, art. 4.

³⁹² African Charter on Human and People's Right, 1981, art. 4.

³⁹³ 3 LINDA HAJJAR LEIB, HUMAN RIGHTS AND THE ENVIRONMENT PHILOSOPHICAL, THEORETICAL AND LEGAL PERSPECTIVES 72 (Brill 2011).

³⁹⁴ Öneriyildiz v. Turkey, App. No. 49839/99, ¶ 89-90 (Nov. 30, 2004), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-67614%22%7D>.

³⁹⁵ *Id.* at ¶ 128-129.

protect citizens' right to life in its legislations.³⁹⁶ A similar observation was made by the Inter American Commission on Human Rights (IACmHR) in *Sawhoyamaxa v Paraguay*³⁹⁷. The Court noted that the failure of Paraguay to protect the lands of the Sawhoyamaxa population amounted to a breach of their right to life.³⁹⁸

ii. Right to Food and Water

The UDHR³⁹⁹ and ICESCR⁴⁰⁰ discuss the right to an adequate standard of living. This right has a broad ambit and includes the right to food and potable water. The World Health Organisation (WHO) has observed that food and water and other basic needs alike are at risk due to changing climatic conditions.⁴⁰¹ The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment No. 12, recognized the need for States to alleviate hunger even in times of natural disasters⁴⁰². The Committee also noted that the availability and accessibility of food are closely interlinked with the environment.

The CESCR also noted the inextricable relationship between the right to water and other human rights as clean drinking water is essential to leading a dignified life.⁴⁰³ Increasing global temperatures, resulting in droughts or floods, will affect the availability of potable drinking water, causing people to migrate. The island nation of Tuvalu declaring a national

emergency in 2011 over lack of potable water is a classic example.⁴⁰⁴

iii. Right to Health

The Right to Health can be found in the ICESCR⁴⁰⁵, Child's Rights Convention (CRC)⁴⁰⁶, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴⁰⁷, and the African Charter on Human and Peoples' Rights⁴⁰⁸. Environmental instruments such as the Stockholm Declaration⁴⁰⁹, the Rio Declaration⁴¹⁰, and the United Nations Framework Convention on Climate Change (UNFCCC)⁴¹¹ stress on the interrelationship between health and the environment. The African Commission on Human and Peoples' Rights (ACmHPR) held the Nigerian government liable for violating the right to health of concerned citizens due to its activities of oil corporation in Ogoniland, which subsequently worsened the condition of the environment.⁴¹²

iv. Other Human Rights

The Right to Privacy is an inalienable right enshrined in the ICCPR⁴¹³, European Convention on Human Rights⁴¹⁴ and American Convention on Human Rights⁴¹⁵. On several occasions, the European Court on Human Rights noted that environmental degradation could compromise the Right to Privacy of an individual. Additionally, the Court also held that States must protect the

³⁹⁶ *Id.*

³⁹⁷ *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Inter-Am. Ct. H. R. (ser. C) No. 146 (Mar. 29, 2006).

³⁹⁸ *Id.* at ¶ 153.

³⁹⁹ *supra* note 12, at art. 25(1).

⁴⁰⁰ International Covenant on Economic, Social and Cultural Rights, 1976, art. 11.

⁴⁰¹ Kristie Eb, *Protecting Health from Climate Change Vulnerability and Adaptation Assessment*, WORLD HEALTH ORGANISATION (Mar. 7, 2022, 6:15 PM), https://apps.who.int/iris/bitstream/handle/10665/104200/9789241564687_eng.pdf?sequence=1&isAllowed=y.

⁴⁰² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (art. 11)*, ¶ 6, Doc. E/C.12/1999/5 (May 12, 1999).

⁴⁰³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, ¶ 1, Doc. E/C.12/2002/11 (Jan. 20, 2003).

⁴⁰⁴ BBC, *Tuvalu declares emergency over water shortage*, BRITISH BROADCASTING CORPORATION (Mar. 19, 2022, 10:42 PM), <https://www.bbc.com/news/world-asia-pacific-15147043>.

⁴⁰⁵ *supra* note 24, at art. 12(1).

⁴⁰⁶ Child Rights Convention, 1989, art. 24(1).

⁴⁰⁷ Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 12.

⁴⁰⁸ *supra* note 16, at art. 16.

⁴⁰⁹ Stockholm Declaration, 1972, Principle 1.

⁴¹⁰ Rio Declaration, 1992, Principle 1.

⁴¹¹ United Nations Framework Convention on Climate Change, 1994, arts. 1(1) & 4(1)(f).

⁴¹² *Social Economics Rights Action Centre v. Nigeria*, No. 155/96, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶ 50 (Oct. 27, 2002), <https://www.esccr-net.org/sites/default/files/serac.pdf>.

⁴¹³ *supra* note 13, at art. 17.

⁴¹⁴ *supra* note 14, at art. 42.

⁴¹⁵ *supra* note 15, at arts. 11(2) & 21.

Right to a private life of EDPs against environmental harm or pollution.⁴¹⁶

For indigenous people, a disruption in the environment can affect their special rights to protect and conserve their land. The U.N. Declaration on the Rights of Indigenous People⁴¹⁷ recognizes this right. They also have the right to redress if the environment destroys their lands.⁴¹⁸ More often than not, individuals belonging to such communities are relocated in cases of severe environmental changes. Thus, indigenous people have the right to choose to return home if safer conditions prevail. Tuvaluans have strong ties with their homeland, and their migration puts their lands and culture at stake.

International environmental instruments primarily deal with measures to mitigate natural disasters and attain sustainable development. However, very few legal documents reference EDPs by addressing their vulnerability and protection.

i. Guiding Principles on Internal Displacement (GPID)

The Guiding Principles on Internal Displacement (GPID) was developed by Francis M. Deng, former United Nations Secretary-General on internally displaced persons, in the year 1998.⁴¹⁹ Principle 5 of the GPID rules oblige States to respect their duty to prevent individuals from forced migration due to environmental concerns.⁴²⁰ Paragraph 2 of the Principles states that such environmental problems can result from natural or man-made effects.⁴²¹ These Principles highlight aspects of International

Human Rights Law, Humanitarian Law and Refugee Law.⁴²² Though the Principles extend only to internally displaced persons, its conceptualisation would include cross border displacement too, as legal frameworks born out of it would inevitably have to protect external migration. The GPID is not legally binding and is considered to be soft law.⁴²³ There exists no treaty or convention yet that fully reflects the ideas of the GPID.

ii. Kampala Convention

The Kampala Convention is also referred to as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. It is a treaty drafted and enforced by the African Union on the 22nd of October 2009.⁴²⁴ The Kampala Convention is an essential document in that it binds state parties to avoid causative agents of displacement and protect internally displaced persons. It elucidates a clear definition for displacement.⁴²⁵ Article 4 of the Convention includes a broad range of causes for the displacement of vulnerable populations.⁴²⁶ Specifically, Article 4(4)(f) states that State parties ought to prevent the arbitrary displacement of individuals due to natural or human-made disasters.⁴²⁷ The Convention also seeks to avoid displacement caused by non-state actors.⁴²⁸ Though the Convention mentions only internally displaced persons, it inadvertently includes cross border displacement within its scope. The unique and legally binding protection provided by the Kampala Convention is commendable considering that no other convention in international law affords such protection.

⁴¹⁶ Fadeyeva v. Russia, App. No. 55723/00, ¶ 69 (Nov. 30, 2005), <https://www.informea.org/sites/default/files/court-decisions/CASE%20OF%20FADEYEVA%20v.%20RUSSIA.pdf>.

⁴¹⁷ G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Vol. III), at 29 (Oct. 2, 2007).

⁴¹⁸ *Id.* at art. 28(1).

⁴¹⁹ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/en/issues/idpersons/pages/standards.aspx> (Mar. 17, 2022).

⁴²⁰ UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, REFworld (22 July 1998), <https://www.refworld.org/docid/3e3da07f7.html>.

⁴²¹ *Id.* at Principle 2.

⁴²² INTERNAL DISPLACEMENT MONITORING CENTRE, <https://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement>, (Mar. 24, 2022).

⁴²³ *Id.*

⁴²⁴ INTERNAL DISPLACEMENT MONITORING CENTRE, <https://www.internal-displacement.org/sites/default/files/publications/documents/2010-making-the-kampala-convention-work-thematic-en.pdf>, (Mar. 24, 2022).

⁴²⁵ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009, art. 1(f).

⁴²⁶ *Id.* at art. 4.

⁴²⁷ *Id.* at art. 4(4)(f).

⁴²⁸ *Id.* at arts. 3 (1) (h) & (i).

iii. The International Law Commission (ILC) Draft Articles of Protection of Persons in Event of Disasters

The ILC Articles on Protection of Persons in the Event of Disasters is an important international legal document that seeks to protect vulnerable populations from being displaced. The Draft Articles realise the need to prevent and mitigate environmental disasters, apart from general protection to displaced persons. Similar to the Kampala Convention, the ILC Articles include home countries, States, and non-state actors under its purview.⁴²⁹ In 2016, on the recommendation of the United Nations General Assembly, the Law Commission added a draft Preamble, 18 draft Articles and commentaries to document.⁴³⁰ The ILC Articles on Protection of Persons in the Event of Disasters fill the void regarding the international legal status of EDPs to an extent.

iv. The Protection Agenda

In 2012, the governments of Norway and Switzerland introduced the Nansen Initiative to realise the plight of EDPs and work towards building effective legal protection.⁴³¹ Over the next few years, several intergovernmental groups and relevant stakeholders from across the globe met to discuss environment-induced displacement. It identified vulnerable communities, their protection and a need for an international policy to regulate cross border migration and other durable solutions. The meeting resulted in the formation of The Protection Agenda.⁴³² It is a non-legally binding document that has the backing of nearly 109 countries. In 2016, the Platform on Disaster Displacement became operational in

furtherance to implementing the Protection Agenda.⁴³³

v. The Peninsula Principles on Climate Displacement within States

The Peninsula Principles were drawn up by members of affected communities from countries such as Australia, New Zealand, Bangladesh, the UK and the USA.⁴³⁴ They are a result of a five-year-long deliberation process. As the title states, these principles aim to alleviate the problems faced by environmentally displaced communities within their own countries. Principle Two recognizes that displaced persons could include individuals, households or entire communities.⁴³⁵ Furthermore, the same principle outlines that displacement could be due to “sudden and slow-onset environmental events and processes, occurring either alone or in combination with other factors.”⁴³⁶

vi. Cancun Adaptation Framework

The Cancun Adaptation Framework resulted from the Conference of Parties (COP) 16 held in 2010. The need to protect humans from being displaced across borders due to harsh environmental concerns were discussed in depth at the Conference. Paragraph 14(f) of the Framework states that measures should be taken to cooperate and coordinate migration.⁴³⁷ It recognized relocation at three levels – regional, national and international.⁴³⁸ Interestingly, the Cancun Framework accepts coordinated migration as a solution and mode to adapt to severe environmental concerns. Additionally, the Framework establishes a process whereby least developed countries

⁴²⁹ Int'l Law Comm'n, Rep. on the work of its Sixty-Eighth Session, U.N. Doc. A/71/10 (2016).

⁴³⁰ *Id.* at 6.

⁴³¹ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, <https://www.unhcr.org/5448c7939.pdf> (Mar. 26, 2022).

⁴³² PLATFORM ON DISASTER DISPLACEMENT, https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_low_res.pdf (Mar. 27, 2022).

⁴³³ *Id.*

⁴³⁴ OCHA SERVICES, <https://reliefweb.int/report/world/peninsula-principles-climate-displacement-within-states-2013#:~:text=Then%2C%20in%20mid%2DAugust%202013,human%20rights%20and%20refugee%20law> (Mar. 24, 2022).

⁴³⁵ DISPLACEMENT SOLUTIONS, <http://displacementsolutions.org/wp-content/uploads/2014/12/Peninsula-Principles.pdf> (Mar. 24, 2022).

⁴³⁶ *Id.* at Principle 2.

⁴³⁷ Conference of Parties, *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010*, ¶ 14(f), U.N. Doc. FCCC/CP/2010/7/Add.1, (Mar. 15, 2010).

⁴³⁸ *Id.*

(LDCs) can formulate their own National Adaptation Plans (NAPs).⁴³⁹ NAPs allow countries to focus on climate change concerns and strategies to overcome consequent problems. Many nations, including Bolivia, Brazil and Colombia, have started to add migration as a part of their NAPs.⁴⁴⁰

vii. The Hyogo Framework and the Sendai Framework

The Hyogo Framework was a blueprint instrument to oversee disaster risk management. It was adopted at the World Conference on Disaster Reduction at Hyogo, Japan.⁴⁴¹ The framework remained active for a decade between 2005–2015.⁴⁴² Delegates at the Conference set forth five priorities, of which the fifth entailed disaster tackling and preparedness at all levels⁴⁴³. After the Hyogo Framework elapsed, the United Nations Office for Disaster Risk Reduction adopted the Sendai Framework for Disaster Risk Reduction (2015–2030) at Sendai, Japan.⁴⁴⁴ It noted the need for a humanitarian approach to disaster management and prevention.

viii. United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Convention

The UNFCCC and the Kyoto Protocol are two important legal documents dealing with climate change. Though they do not deal specifically with EDPs, they emanate certain principles such as collaboration and review of harmful environmental consequences that seek to aid displaced people. These principles form

customary international law. The UNFCCC and the Kyoto Protocol obligate states to evaluate environmental concerns and reduce their negative impacts. This can be implicitly interpreted to understand that EDPs need to be protected.

LACUNAE IN THE CURRENT LEGAL SYSTEM CONCERNING EDP'S

There exists no clear definition under international law for environmentally displaced persons. It is inaccurate to refer to such individuals as refugees under International Law. The Refugee Convention of 1951 only includes displacement caused by fear of persecution due to race, religion, nationality, membership in a particular social group or political opinion.⁴⁴⁵ Climate change is not included in its ambit. The lack of clarity about the status of environmentally displaced migrants proves to be a deterrent in providing legal protection to them.

Major international conventions, such as the UNFCCC and the Kyoto Protocol, that deal with environmental problems do not explicitly discuss the status of EDPs. Instead, they only refer to specific issues of the environment. The agenda relating to EDPs have entered into the UNFCCC's discussions. However, whether the UNFCCC will make a practical framework for protecting EDPs is still not clear.

Another area most legal policies analysed earlier lack in their legal protection to EDPs is their naive vision of protecting only internally displaced persons. Though some recognize cross-border displacement, they confine legal status only to internally displaced individuals stating that climate displacement happens only within borders. Due to this narrowed scheme, most individuals cannot seek protection under legal treaties.⁴⁴⁶

⁴³⁹ *Id.* at ¶ 14(a).

⁴⁴⁰ UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/sites/default/files/resource/NAP-progress-publication-2020.pdf> (Mar. 27, 2022).

⁴⁴¹ UNITED NATIONS INTERNATIONAL STRATEGY FOR DISASTER REDUCTION, <https://www.unisdr.org/2005/wcdr/intergover/official-doc/L-docs/Hyogo-framework-for-action-english.pdf> (Mar. 20, 2022).

⁴⁴² *Id.* at ¶ 1.

⁴⁴³ *Id.* at ¶ 14.

⁴⁴⁴ PREVENTION WEB, https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf (Mar. 24, 2022).

⁴⁴⁵ Refugee Convention, 1951, art. 1(A)(2).

⁴⁴⁶ ISABEL M. BORGES, ENVIRONMENTAL CHANGE, FORCED DISPLACEMENT AND INTERNATIONAL LAW: FROM LEGAL PROTECTION GAPS TO PROTECTION SOLUTIONS 89 (2020).

Current systems, including the adaptation strategies, have ambitious ideas but not much practicality.

Environment-induced displacement is often seen in smaller least developed countries such as Bangladesh, Tuvalu, the Solomon Islands, etc. The nations might not have the economic and human resources to implement highly advanced strategies to mitigate disasters. Furthermore, governments will have to undergo a transformational change in their policymaking. Economically weaker countries might not have the necessary technology to overcome climate displacement.⁴⁴⁷

The Kampala Convention, which seems to afford the best legal protection to EDPs, also suffers from major drawbacks.⁴⁴⁸ The monitoring and redressal mechanism provided in the Convention are lacking. Monitoring through regular meetings by State parties and submitting reports to the African Commission on Human and People's Rights might not necessarily be as efficient. Additionally, violations within the scope of the Convention can be brought before the African Court of Justice and Human Rights.⁴⁴⁹ However, the jurisdiction of this Court can apply only if the State parties expressly accept its competence to resolve the dispute. Moreover, the decisions of the Commission are not legally binding on State parties.

Scholarly literature and several policies recognize migration as a legitimate solution to protect individuals from environmental concerns.⁴⁵⁰ Migration is viewed as an effective means of adapting to climate change as it can help reduce the risk to the lives and ensure people's livelihood. Migration as a solution allows the State to reduce its costs on resolving climate change concerns as mitigation measures are often expensive and employ

advanced technology. The trend identifying migration as a solution is erroneous and has many unattended fallacies. Migration is not suited for vulnerable populations such as the young, old, sick, poor, disabled, etc. People are arbitrarily relocated from their ancestral lands where they have genuine cultural, ethnic, linguistic ties. Migration might not be suited for small nations such as Tuvalu, which has a large number of individuals affected by environmental change. Many global problems such as undocumented and illegal migration could also follow if migration is viewed as a legitimate solution.⁴⁵¹

Lastly, no national immigration system currently recognizes environmental change as a valid ground to grant admission to refugees.⁴⁵² They confine their grounds for entry only to criteria such as conflicts, violence, persecution, etc.

Consider the case of *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*⁴⁵³ before the Supreme Court of New Zealand. In this case, Kiribati citizen Ioane Teitiota appealed before several courts before finally reaching the Supreme Court of New Zealand.⁴⁵⁴ He sought refugee status due to worsening environmental conditions in his country caused by increased ocean levels.⁴⁵⁵ The Supreme Court of New Zealand propounded that Ioane Teitiota could not be treated as a refugee under international human rights law.⁴⁵⁶ The 1951 Refugee Convention did not include climate change within its ambit to cause displacement.⁴⁵⁷ Additionally, the Court noted that broadening the scope of the Refugee Convention to include individuals displaced by

⁴⁴⁷ *Id.* at 88.

⁴⁴⁸ *Id.* at 83.

⁴⁴⁹ *supra* note 50. at art. 20(3).

⁴⁵⁰ Susanna Davies, *Are Coping Strategies a Cop Out?*, WILEY ONLINE LIBRARY, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1759-5436.1993.mp24004007.x> (Mar. 16, 2022, 9:58 PM).

⁴⁵¹ Oli Brown, *Migration and Climate Change*, INTERNATIONAL ORGANISATION ON MIGRATION (Mar. 23, 2022, 5:43 PM), https://www.ipcc.ch/apps/nj-lite/srex/nj-lite_download.php?id=5866.

⁴⁵² Katherine M. Donato, Amanda Carrico & Jonathan M. Gilligan, *Laws Must Adapt for Climate Refugees*, THE REVELATOR, <https://therevelator.org/laws-adapt-climate-refugees/> (Mar. 6, 2022, 3:23 PM).

⁴⁵³ *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107.

⁴⁵⁴ CLIMATE CASE CHART (2015), http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2015/20150720_2015-NZSC-107_judgment-1.pdf (Mar. 27, 2022).

⁴⁵⁵ *supra* note 76. at ¶ 5.

⁴⁵⁶ *supra* note 76. at ¶ 6.

⁴⁵⁷ *supra* note 76. at ¶ 12.

environmental concerns would set a dangerous precedent as countries would be obligated to host millions of refugees worldwide.⁴⁵⁸

RECOMMENDATIONS

The first step to providing legal protection is determining who can seek it. There needs to be a clear definition of an environment refugee accepted by consensus by the international community. An environmentally displaced person should include any person, family, or community forced to temporarily or permanently migrate within or across national borders to seek refuge from sudden or gradual climatic change. Such change can be natural or due to human activity.

There is a need for a policy concerning climate refugees that applies globally, unlike the Kampala Convention. Such a policy can be incorporated into the international legal arena in two main ways. Firstly, it can be added as an *ad hoc* convention or Additional Protocol to a pre-existing convention.⁴⁵⁹ Broadening the scope of the 1951 Refugee Convention might dilute the protection given to refugees of violence or conflicts. Instead, such an Additional Protocol can be added to the United Nations Framework Convention on Climate Change (UNFCCC).⁴⁶⁰ By modifying the Convention to add an Additional Protocol, the concerns regarding the environment can be clearly demarcated from the concerns of EDPs. Yet another means of recognising the legal status under international law is by drafting a completely new Convention. Such a measure has been recommended by the Committee on Migration, Refugees and Populations together with the Committee on Environment, Agriculture and Regional Affairs of the Parliamentary Assembly of the Council of Europe in its

Resolution No. 1655/2009⁴⁶¹ and recommendation No. 1862/2009⁴⁶². By having a separate legal framework specifically for EDPs, the protection afforded can be significantly increased, and the threshold for liability of violators remains high.

There is a requisite need to gather evidence from research and make suitable policies. As there is no definite liability on who is responsible from climate triggered migration, there is a lack of accountability. Parties to the UNFCCC's Cancun Adaptation Framework, known as the National Adaptation Plans (NAP's), which recognizes risks and priority actions, are created to ameliorate adaptation and mobility policies.⁴⁶³ This was taken in the year 2011 and is known as the Durban Decision. It focuses on three primary aspects: an integrated approach, country specific solutions, and continuity. These plans are created by countries across the globe who are developing. They are provided with the responsibility to enable individuals in vulnerable communities to be resilient to adversity. These plans range from a medium to long term duration and assist states in integrating climate change to their national planning. Scaling up eco-system based measures and inviting stakeholders at all levels—citizens, environmental organisations, and environmental policymakers can create a collaborative NAP from diverse perspectives. Different kinds of mobility call for the need for the introduction of different policies. The identification of “high risk zones” by the governments to plant prior warning to the citizens of the land can lead to a situation where displacement is permanent. Therefore, disaster management programmes should be

⁴⁵⁸ *supra* note 77.

⁴⁵⁹ Chiara Scissa, *Recognition and Protection of Environmental Migrants in International Law*, E-INTERNATIONAL RELATIONS, <https://www.e-ir.info/2021/06/24/recognition-and-protection-of-environmental-migrants-in-international-law/#:~:text=They%20defined%20a%20climate%20change,more%20likely%20than%20not%20contributed%20> (Mar. 5, 2022, 4:47 PM).

⁴⁶⁰ *Id.*

⁴⁶¹ Committee on Migration, Refugees and Populations together with the Committee on Environment, Agriculture and Regional Affairs of the Parliamentary Assembly of the Council of Europe, Res. No. 1655/2009, at ¶ 12 (Jan. 30, 2009).

⁴⁶² Committee on Migration, Refugees and Populations together with the Committee on Environment, Agriculture and Regional Affairs of the Parliamentary Assembly of the Council of Europe Res. No. 1862/2009, at ¶ 2 (Jan. 30, 2009).

⁴⁶³ Micheal Berlemann & Max Friedrich Steinhardt, *Climate Change, Natural Disasters, and Migration—a Survey of the Empirical Evidence*, CESIFO ECONOMIC STUDIES, <https://doi.org/10.1093/cesifo/ifc019> (Mar. 12, 2022, 6:13 PM).

put in place after there is a scrutiny of global environmental conditions and frequencies of disasters.

Policy makers should look at climate financing as a viable solution to provide monetary backing to combat the adverse changes in the environment. Sustainable investment will incentivise private institutions to channel their funds in eco-friendly, resource-efficient and resilient alternatives. It is vital for governments across the globe and other stakeholders to analyse the monetary needs of countries with respect to environmental change. Additionally, governments ought to mobilise the resources to targeted persons.⁴⁶⁴

Migration as a strategy to adapt to climate change must be the last resort. Nations must work towards mitigating environmental disasters, than allowing them to happen and subsequently relocating large populations. Migration is not suited for vulnerable populations and creates an unnecessary power imbalance and financial burden amongst displaced people. In worst-case scenarios, migration should be a temporary solution and not a permanent one. Communities should not have to put their strong bonds with their ancestral lands at stake.

The conceptualization of environmental migrants in education is of foremost significance. It entails the sociocultural and socio-political experiences with a focus on maintaining their native languages and cultural practices and empowering them in their relocated areas.⁴⁶⁵

CONCLUSION

This testing time poses a challenge to countries to adhere to environmental sustainability and

developmental strategies. The crucial focus should be laid on providing strategic support for environmentally displaced persons and harmonising relations between host governments and local communities. To further the same, sensitization of the natural resources and effective management between refugees and host populations should be implemented to reduce overdependence. The provision of job opportunities to displaced persons which are income-generating will help in reducing the global burden. There is a need for an international policy concerning EDPs that provides an effective legal framework with proactive and reactive legal protection measures. Such a policy should revitalise the problems faced by such vulnerable individuals, like cross border displacement, housing, and human rights.⁴⁶⁶ Policy makers need to revamp the present system with unique solutions to adapt to the rapid changes in the ecosystem. The global community needs to come together to save vulnerable environment migrants. It is key to note that a comprehensive environmental migration policy and the recognition of the human rights of displaced individuals will reinforce the interlinked drivers of human migration in the context of environmental change.

REFERENCES:

Books

1. Environmental change, forced displacement and international law: from legal protection gaps to protection solutions / Isabel M. Borges.
2. The environmental case : translating values into policy/ Judith A. Layzer.
3. Negotiating migration in the context of climate change : international policy and discourse/ Sarah Louise Nash.

⁴⁶⁴ UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/topics/climate-finance/the-big-picture/introduction-to-climate-finance> (Mar. 19, 2022).

⁴⁶⁵ NATIONAL GEOGRAPHIC, <https://www.nationalgeographic.org/encyclopedia/environmental-refugee/#:~:text=Environmental%20refugees%20include%20immigrant%20environmental> (Mar. 5, 2022).

⁴⁶⁶ Kirsten Schuettler & Laura Caron, Job Interventions for Refugees and Internally Displaced Persons, WORLD BANK, <https://openknowledge.worldbank.org/bitstream/handle/10986/33953/Job-s-Interventions-for-Refugees-and-Internally-Displaced-Persons.pdf?sequence=5&isAllowed=y> (Mar. 7, 2022).

4. Migration and climate change/ edited by Graeme Hugo.
5. Environmental crime in transnational context : global issues in green enforcement and criminology/ edited by Toine Spapens, Rob White and Wim Huisman.
6. A Sea of Environmental Refugees? Oceania in an Age of Climate Change/ Wolfgang Kempf

Articles

1. Environmentally Displaced People/ Roger Zetter.
2. Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?/ Walter Kälin.
3. Environmental Refugees? Classifying Human Migrations Caused by Environmental Change/ Diane C. Bates.
4. Environmental Refugees: The impact of climate change on Emigration/ Zorzeta Bakaki
5. The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees"/ David Keane
6. Environmental Refugees: A Growing Phenomenon of the 21st Century/ Normal Myers
7. Climate Change, Natural Disasters, and Migration—a Survey of the Empirical Evidence/ Michael Berlemann & Max Friedrich Steinhardt
8. Laws Must Adapt for Climate Refugees/ Katherine M. Donato, Amanda Carrico & Jonathan M. Gilligan
9. Recognition and Protection of Environmental Migrants in International Law/ Chiara Scissa