

Climate Refugees: Complexities and Legal Aspects

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Source- UNHCR

Introduction:

A threat to humanity's existence is climate change. There is definitely cause for alarm over climate change and its implications. The expected increase in temperature by the end of the

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twenty-first century will be another disaster, if immediate action is not taken. Natural catastrophes, droughts, and other weather events are forcing more people to leave their homes as the global climate problem gets worse. Most often, this group is referred to as climate refugees. They still don't have a lot of legal protection under international law. This commentary explores the complexity and legal ramifications of climate refugees. The exploration of a case study of a region that has been significantly impacted by climate change and the ensuing refugee problem is another objective of this discussion.

Climate Refugee under International Law:

The term "Climate Refugee" was coined in 1985 by UN Environment Program Expert Essam El-Hinnawi. He used the term "climate refugee" to describe those individuals who are forcibly evicted from their traditional homes, either temporarily or permanently, as a result of significant environmental damage. International law, however, still lacks a specific or formal definition. As a result, there are no clear guidelines on how to treat climate refugees under international law.

Refugees are a matter of international law, and international refugee law emerges from many treaties, customary law, national law, and general law principles. The main foundation of the refugee law is laid on the 1951 Convention relating to the Status of Refugees and the 1967 Optional Protocol relating to the Status of Refugees. The 1951 Convention has defined the term refugee but does not state the procedure relating to refugee status determination. Therefore, it was assumed that the states would set the rules of procedure by considering legal tradition, different resources, and history.

According to Article 1(A)(2) of the 1951 Convention, a refugee means an individual who is outside his or her country of nationality or habitual residence and is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group.² The protection, benefits, physical security, basic needs, freedom of movement, aid, and protection from the host state that are provided to refugees as a result of recognition are crucial. Additionally, it offers defense against the principle of non-refoulement. Article 31 of the Convention states that, no penalty shall be imposed on a person if he illegally enters through the borders when his life is in threat and if he

² The Refugee Convention, 1951

immediately presents himself to the host country³.Furthermore, the definition of a refugee under the 1951 convention has splendidly described the criteria for becoming a refugee. If a person fulfills the criteria of the said definition, he can get refugee status. Most refugees are generally victims of civil wars, military takeovers, grievous human rights violations, economic dislodgement, etc.

Individuals or groups of people can apply for the status of refugee. Prima facie group refugees are generally accepted, which means they have left their country of origin for a volatile situation. A person can get refugee status if he/she can establish that he is afraid of prosecution for his/her race, nationality, or religion. A person will not be considered a refugee under some circumstances-

If there is a significant shift in the country of origins political landscape and he decides to renew his residence there as a result, if a person does not need or deserve protection; if he violates the principles of the UN or commits any war crime or crime against humanity.



Source: OXFAM

International refugee instruments have not laid any specific regulations or procedures to determine the status of refugees. But it states that the process must be adversarial, justified, judicial or administrative. The burden of proof lies on the person who wants refugee status.

³ ibid

Besides, refugee protection requires that all the persons who claim asylum must enter the territory and be given temporary rights until the final determination.

The 1951 Refugee Convention does not recognize the climate refugees and this is an existing aperture in the law. Thus, the victims of climate change do not receive refugee status. The Kampala Convention on IDP and Great Lakes Protection have first referred to situations such as climate disaster.

Moreover, the OAU Convention and the Cartagena Declaration both have broader definitions of refugees that include anyone who are forced to flee their nation as a result of “events substantially upsetting public order.” People who have fled threats posed by natural disasters may find some security and protection from these protection measures. According to Article 14 of The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa, older persons in situations of, inter alia, natural disaster are a prioritized group for assistance.⁴ Article 12 (1) of The Protocol on Persons with Disabilities in Africa states that, obliging States Parties can take measures to protect persons with disabilities in situations of forced displacement, humanitarian emergency and natural disaster.⁵ But these protocols are made for only African Region. Thus, they do not apply to other regions.

The United Nations has recently declared that a state’s government cannot push back to people if their lives are threatened by climate change. However, according to the 1951 Convention, the term ‘climate refugee’ can be included in the definition of a refugee. It can be added by showing that the person has a real risk of life if he goes back or continues to live in the country. Over time, UNHCR has been instrumental in assisting with the establishment of rules and regulations that are pertinent to individuals who are internally displaced on an international, regional, national, and subnational level.

*‘Teitiota vs New Zealand’*⁶ is a landmark case on this regard. Here the United Human Rights Committee declared for the first time that if a person faces a threat to his/her life due to climate

⁴ The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa

⁵ The Protocol on Persons with Disabilities in Africa

⁶Ioane Teitiota vs New Zealand (2020)

change, it will be considered a violation of the right to life according to Article 6 of ICCPR. The committee held that refugees need to prove that they would face imminent harm if they returned to their country and has given guidelines to the international community to play an important role here. They have given importance to the right to life with dignity.

The Complexity of the Term “Climate Refugee”:

The phrase “climate refugees” refers to those who have fled regions affected by climate change. There are numerous challenges in defining the phrase “climate refugee” when it comes to receiving protection for persons displaced due to climate change. The attempt to include persons who have been displaced both internally and outside under the umbrella word “refugees” has, however, drawn criticism. Initially, the term “climate refugees” threatened UNHCR because it blurred the distinction between “Convention refugees,” as defined by the 1951 Refugee Convention, and common perceptions of refugees.

The 1951 Refugee Convention may be challenged if climate migrants are given refugee status. Additionally, they may be barred from receiving help and support if they cannot provide adequate evidence that their forcible relocation was caused by the climate. Concerning whether or not climate refugees should be the focus of a new treaty or convention, UNHCR says that people uprooted by environmental change may, in principle, still rely on the protection of their national governments, but conventional refugees could not because States are frequently the source of persecution, rendering an individual “unwilling to avail himself of the protection of that country” as required by Article 1A(2) of the 1951 Refugee Convention.

Case Study on Central Sahel:

The Central Sahel is indeed one of Africa’s most extensively afflicted regions by violence, and one of the world’s most susceptible places to climatic concerns. It is characterized by permeable borders, seasonal and international migration, border-sharing communities, and vast territories and peripheries run by non-State Central Sahel is a region of Africa that includes Burkina Faso, Niger, and Mali. This region consists of one of the fastest-growing crises globally—one of the most avoided and unvalued crises. The root of the crisis began in 2012. Tuareg Separatists and Islamist armed groups took control of north Mali through a military coup. They shifted this

rebellion to central Mali, and other neighbouring countries such as Burkina Faso, Southern Mali and Niger also became involved. Historically, North Mali has been in danger for innumerable reasons, such as trafficking, drugs, and extremist and armed groups.

Islamist armed groups have committed extreme violence and crimes such as murder, war crimes, torture, rape, sexual violence etc., between 2012-2018. They also attacked human rights workers and MINUSMA⁷ and slaughtered people based on their religion and ethnicity. The consequences of the violence lead to poverty and unemployment. Besides, people started to flee from Northern Mali in 2011 for extreme violence. The conflicts also affect neighboring countries like Mauritania and Chad and coastal countries like Benin, Togo, and Ghana. Apart from these issues, the rebellion of Libya also made a significant impact in North Mali and eventually, this spark spread into Burkina Faso and Niger. Mali, Niger and Burkina Faso are already becoming fragile due to poverty, conflict, social embargo, population growth, violence, lack of education, weak governance, and corruption stemming from this crisis.



⁷ United Nations Multidimensional Integrated Stabilization Mission in Mali, 2013

Apart from these crises, Central Sahelians are already facing another breakneck situation. Climate change is becoming a challenge for Central Sahel. Central Sahel experiences a hot and dry climate all year because of its location. In the north, it is bordered by the Sahara Desert. Although many Sahelian cities are coastal and at risk from rising sea levels and floods, demographic change and increased urbanization have also contributed to a significant increase in urban population. This region experiences more floods, desertification, higher temperature, soil loss, droughts compared to the global average. UNHCR and UN Refugee Council have already acknowledged that natural disasters, environmental degradation, and climate change are progressively influencing the causes of refugee flows. The UNHCR has provided emergency shelter to over 81,000 displaced people; amid COVID-19, its work has helped over 338,000 people receive essential healthcare services in the Central Sahel.⁸

Climate and mobility frameworks are still not well linked in the Central Sahel, leaving many displaced people and migrants without safeguarding beyond what is provided under human rights legislation. For instance, only Burkina Faso and Mali have discussed mobility in their National Adaptation Programmes of Action for the UN Framework Convention on Climate Change. Additionally, although there is growing convergence between frameworks for reducing catastrophe risk and internal displacement, there is still opportunity for this to be enhanced. The government should take action to safeguard and aid those who have been forced to leave their homes because of natural or man-made calamities, including climate change.

A more precise and nuanced description of the connection between resource depletion and violence—in general—as well as between climate change and violence should be developed by Sahelian nations and their international partners.

⁸ 'Sahel Emergency' (UNHCR) <<https://www.unhcr.org/sahel-emergency.html>>

Conclusion:

“The climate emergency is a race we are losing, but it is a race we can win.”

– United Nations Secretary-General António Guterres

Human displacement is a result of climate change, the consequences of which has been worsening over time. Climate change-related circumstances can be included in the definition of "refugee" under international law. States should provide supplementary protection for those who do not meet the criteria for refugee status but are nevertheless manifestly at risk. Nevertheless, it is arguably possible that the requirements for refugee status might be met on the basis of human rights, including, among others, the right to life, the right to non-discrimination, the right to liberty and security of people, the right to food, the right to water, the right to shelter, and the right to a healthy environment. A pertinent subject for States to consider is whether the Refugee Convention should be changed to incorporate climate change as a basis for refugee status given the challenges faced by people who are forcibly relocated due to natural disasters, thus completing the requirements for refugee status under the Refugee Convention. Alternatively, a new protocol might be created to that effect to ensure the ideal safeguarding of a disenfranchised population so utterly devastated by the dangers of population.