

Challenges to Governmentality Under a Climate ‘Refugee’ Crisis

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INTRODUCTION

Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened... already affecting every inhabited region across the globe with human influence contributing to many observed changes in weather and climate extremes.

- Report of Inter-governmental Panel on Climate Change (IPCC), August, 2021¹

Intergovernmental Panel on Climate Change (IPCC) in its First Assessment Report published in 1990 expressly stated the effects of climate change proclaiming a predicted rise of 1.5° – 2° C by the turn of the century.² The detailed assessment was a breakthrough for scientific community and political circles underscoring, perhaps for the first time, the anthropological equation with the planet Earth. Striking observations were made with regard to the irreversibility of the GHG emissions and unpredictability of the ramifications on global climate system.³ While the report was being published, it is estimated that around 2.5 crore individuals had been forcibly displaced from their homes and thousands of hectares of lands turned wasteland

¹ Inter-governmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis, released on August 9, 2021, pg no. 10-11, accessed from https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf

² Inter-governmental Panel on Climate Change, Climate Change: IPCC Scientific Assessment, released in 1990, accessed from https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_I_full_report.pdf pg. xiv

³ Supra, pg. iii

because of the climate related events.⁴ There is growing research in the subject providing an empirical basis to the interrelation between global warming-induced climate change and human displacement. Countless citizens living in diverse geographic inhabitations could possibly face economic, political or ethnic strife as a result of internal and external movement on account of rise in ocean levels, coast- flooding, acidification of oceans, unpredictable precipitation, land-wastage, unplanned land-conversion, destruction of ecological balance etc.⁵ The most under risk are small island-states, glacial river-plains of Asia and South America, coastal cities under extreme cyclones.⁶ The displacement is inevitable.

United Nations High Commissioner for Refugees (UNHCR), assessed the number of ‘climate refugees’ or ‘environmental refugees’, whether displaced internally or under cross-border movement to be exponential. In perspective, refugees escaping war/conflict is considerably larger but in that case, identification is simpler due to sudden-nature of displacement and legal recognition of status under multiple conventions.⁷ It is noteworthy that some of the major causes of displacement in the recent years are climate-induced/climate-related, whether sudden-onset or slow-onset phenomenon. In year 2016 alone, floods in Yangtze River Basin affected around 20

⁴ World Disasters Report, 2001 released by Red Cross and Red Crescent Societies, accessed from <https://www.ifrc.org/en/publications-and-reports/world-disasters-report/world-disasters-report/>

⁵ Inter-governmental Panel on Climate Change, Third Assessment Report: IPCC released in May, 2001 accessed from https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_TAR_full_report.pdf, pg.6

⁶ Inter-governmental Panel on Climate Change, Climate Change: IPCC Scientific Assessment⁷ released in 1990 accessed from https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_I_full_report.pdf pg. iii

⁷ UN High Commissioner for Refugees, In Harm's Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change accessed from <https://www.unhcr.org/en-in/protection/environment/5cac7fda7/harms-way-international-protection-context-nexus-dynamics-conflict-violence.html>

lakh people and estimated 16 lakh people had to move into shelter-camps on account of Kosi flooding in Nepal and Bihar, India.⁸ Among those displaced, majority was forced to continue living in relief camps for almost a year after flood water receded.⁹

Meteorologically, climate change related events vis-a-vis displacement can be understood under two important phenomenon¹⁰;

- Climatic events like natural disasters having a sudden nature of occurrence with little predictability and little room for preparedness. This would include heavy precipitation, cyclonic storms, hurricanes, ocean surge, glacial breach.
- Climatic processes which are slow-onset of climatic events. This would include sea-level rise, glacial melting, excess salination of soil, desertification, diminishing ground water, Submergence of low-lying coastal areas, contamination of land/water.

Again, the question of “involuntariness” in any climate related displacement phenomenon, in a political dialogue, is a vexed one. This is truer in case of slow-onset disasters which entail a long-drawn process of re-settlement. Additionally, many extrinsic factors intertwine and further accentuate the issue, for example, factors like political inaptitude, non-recognition of status under foreign law, incoherent domestic policy, labour migration/influx or simply resilience to natural extremities. These factors, among others, play cumulative role in decoding the ‘vulnerability’ of individual.

Though sudden-onset disasters are major drivers of mass-displacement they are made inconspicuous by politico-ethnic factors. Data interpretation in the subject suggests that slow-onset events are gradual enough to allow considerable detection and

⁸ United Nations Development Program,, Climate change, Migration and Displacement: The need for a risk-informed and coherent approach, 2017, pg. 10, fig. 1

⁹ Supra, pg.11

¹⁰ Jane McAdam, Climate Change and Displacement: Multidisciplinary Perspectives, The Johns Hopkins University Press, 2017, pg. 9

warning periods which affords adequate prospects for implementing viable M & A policies, which includes migration to ‘safe zones’ as an adaptation strategy. The circumstances so created have disaster-response frustrating potentials and may last for extended intervals of months or years.¹¹ Such response decapitating events need to be carefully planned and provided for as a prior measure. The Internal Displacement Monitoring Centre (IDMC), organization dedicated to collect statistics on IDPs because of climate change/disruptions by tracking settlement, has compiled reliable data on climate-induced migration.¹² The undermentioned table demonstrates the quantitative effect of sudden-onset displacement:

Countries with high internal sudden-onset disaster displacement numbers (2016) and their climate change vulnerability and readiness score¹³

Country	Region	Vulnerability to climate change*	climate-related displacement
Philippines	South-East Asia	50.8	5,930,000
India	South Asia	46.4	2,400,000

Indonesia	South Asia	50.9	1,246,000
Myanmar	South-East Asia	37.6	509,000

¹¹ United Nations Development Program,, Climate change, Migration and Displacement: The need for a risk-informed and coherent approach, 2017, accessed from [http://www.undp.org/content/dam/undp/library/Climate%20and%20Disaster%20Resilience/ Migration_Report.pdf](http://www.undp.org/content/dam/undp/library/Climate%20and%20Disaster%20Resilience/Migration_Report.pdf) on 7th May 2020

¹² Jane McAdam, Climate Change and Displacement: Multidisciplinary Perspectives, The Johns Hopkins University Press, 2017, pg.32

¹³ Data from IDMC Database, 2017; ND-GAIN, 2017; Chen et al., 2015 cited in “Climate change, migration and displacement: The need for a risk-informed and coherent approach”, UNDP Report, 2017, pg. 15.

Ethiopia	East Africa	40	347,000
Democratic Republic of Congo	Central Africa	32.5	130,000
Nigeria	West Africa	40.1	78,000
Yemen	Middle East	32.2	45,000
Colombia	South America	56.2	31,000
Afghanistan	Central Asia	32.4	7,400

The ‘vulnerability’ index above is computed on a range of factors which involve aspects of capabilities of public administration, disaster preparedness, response mechanisms, swiftness of relief operations, mitigation projects undertaken, funding etc.¹⁴ India, with a score of below 50, requires ‘policy adjustments’ to make M & A action program a ground reality. The challenge lies in fair examination of multifarious reasons of displacement, proper identification of areas on severe risk and in analyzing nature of displacement, whether it is sporadic or cyclic. Associated subsidiary causes need to be simultaneously analyzed to find co-dependency among two factors.

¹⁴ United Nations Development Program,, Climate change, Migration and Displacement: The need for a risk-informed and coherent approach, 2017, pg. 15. accessed from [http://www.undp.org/content/dam/undp/library/Climate%20and%20Disaster%20Resilience/ Migration_Report.pdf](http://www.undp.org/content/dam/undp/library/Climate%20and%20Disaster%20Resilience/Migration_Report.pdf)

The ND-GAIN Index ranges from 0-100, measures nation’s vulnerability to climate change events in combination with its disaster preparedness and resilience. Lower score on index is suggestive of greater vulnerability.

DEFINING THE CONTOURS OF CLIMATE-INDUCED MIGRATION: A VEXED QUESTION

In understanding the physical phenomenon of climate change and the socio-political issues that emanate from consequent unplanned migration, one needs to get the grip on the terminology used, their specific meaning assigned in scientific research and diplomatic talks. It is the foremost duty of a policy-maker/rights-advocate to understand the contours of contentions under current international ‘refugee’-rights law to shape a better policy on rehabilitative concerns of ‘climate refugees’. Do persons forcibly displaced as a direct result of environmental forces qualify for status of “climate migrants”? Does non-recognition as climate ‘refugees’ subsidize the plight of the victims of disruptive effects

of global warming thus stifling remedies and relief under domestic and international law? What normative standards must be evolved to govern inter-governmental policies on rehabilitation or resettlement actions and which legal body/organization must be entrusted with powers of supervision? This section of the paper demonstrates that demand for a standard and broad definition of ‘climate refugees/migrants’ under International treaty-based order is need of the hour to genuinely protect rights of those displaced.¹⁵ The term “refugee” in general parlance, suggests a person who involuntarily left his home as a consequence of threat or use of violence. The element of force is the dominant factor. It brings evocative images of distress and apathy on their part which makes one empathize for the ‘victims’. In contrast, ‘migrant’ implies voluntary movement based on informed consent of a family taken to avail better economic prospects or lifestyle options. This general understanding is not of a concern for a Human Rights defender or Environmental activist since the ‘choice’ to move is often guided by multiple impersonal considerations having political, ethnic, economic, sectarian, ecological overtones. The question from legal standpoint is how far general term ‘refugee’ accurate to describe mass climate change-induced displacement.

¹⁵ Jane McAdam, *Climate Change and Displacement: Multidisciplinary Perspectives*, The Johns Hopkins University Press, 2017, pg.32

The Convention on Status of Refugees, signed under the aegis of United Nations¹⁶ in 1951 is primer legal instrument prescribing the privileges of refugees. It states:

“A refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his or her nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country”.¹⁷

It also includes stateless persons who does not possess citizenship of any nation and is outside the country of their former habitual residence because of the fear of persecution. The 1967 Protocol to Refugee Convention also presupposes ‘refugee’ under similar terms. Thus, the various grounds mentioned under Convention that is, race, religion, nationality, membership of social group, political opinion give the definition under Article 1A(2) a socio-political outlook. It does not include non- political variables like climate disruptions within its scope. Another limitation of the Refugee Convention is that movement across internationally-recognized borders between two sovereign nations is essential for roping in the legal protection under refugee status. Thus, individuals dislocated on grounds of vis major or even those moving because of developmental projects to safeguard against environmental forces, within the same country are not qualified as ‘refugees’. In such cases self-contained guidelines for those affected by internal displacement, that is, persons relocating within a geographical different region but within the same political sovereign. They are known as Internally Displaced Persons or IDP¹⁸, In contrast to Refugee

¹⁶ Protocol relating to the Status of Refugees signed in 1967.

¹⁷ Article 1-2, OAU Convention Governing The Specific Aspects Of Refugee Problems In Africa, 1987 accessed from <https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>

¹⁸ Guiding Principles on Internally Displaced Persons, 1998 address the needs of IDPs across the globe. They enumerate rights and specific entitlements for protection of individuals from forced displacement and provide assistance measures during displacement, on return/resettlement.

Convention, the African Convention of 1969 which applies to fifty-four nations and Cartagena Declaration on Refugees, 1984 for the Latin American and African nations delineates wider understanding of the term ‘refugee’ yet they too fail to expressly prescribe climate-induced refugees under its scope. African Convention states:

“every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”¹⁹²⁰

The African Convention under Article 1 recognizes events that seriously disturb public order which would logically include massive natural disasters affecting large geographical region, however, the legal implications of the phrase are yet to be discovered. Cartagena Declaration on Refugees recognizes “massive violation of human rights”, though again; Human Rights law is more developed to secure rights of those affected by political aggression, conflict situations than to deal with climate- migration. It is only if environmental factors contribute to the origin or intensification of violence or conflicts that the definition under 1951 Refugee Convention or regional refugee frameworks. The growing recognition of aggravating effect of climate change on Human Rights situations across the LDCs and other vulnerable areas is comparatively a newer trend.²¹²² Another framework pact dealing with subject-matter

¹⁹ Article 1(2), OAU Convention Governing The Specific Aspects Of Refugee Problems In Africa, 1987 accessed from <https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>

²⁰ Jane McAdam, *Climate Change and Displacement: Multidisciplinary Perspectives*, The Johns Hopkins University Press, 2017, pg.12

²¹ Margaux J. Hall; David C. Weiss, "Avoiding Adaptation Apartheid: Climate Change Adaptation and Human Rights Law," *Yale Journal of International Law* 37, no. 2 (Summer 2012): 309-366.

²² Human Rights Law imposes legal obligations on states and holds them accountable for violations through action (or inaction). Only state-actors are recognized under Human Rights

of displacement is Global Compact on Refugees. It was passed by resolution of UNGA in 2018 with the idea of organically developing sustainable answers to the vexed political question of status and rights of ‘refugees’. It is perhaps the one legal charter to considerably acknowledge the contribution of disruptive patterns of climate which affect in the long course of events, either through ecological degradation or reduced economic prospects, play a role in movement of people.”²³ A climate refugee cannot be equated with ‘migrant’ as the same involves some element of consent and violation on part of relocating person. International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families,²⁴1990, provides:

“A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.”²⁵

There exist well-defined self-contained guidelines in form of Guiding Principles on Internal Displacement, 1998, issued by the Office of High Commissioner of Refugees (UNHCR). They apply to those affected by internal displacement, that is, persons relocating within a geographical different region but within the same political sovereign. They are known as Internally Displaced Persons or IDP²⁶. Armed conflict,

Treaties. Failure to respond to situations, like mass displacement on account of climate change, is not ipso facto, a violation, normally, of recognized legal obligation.

²³ UN High Commissioner for Refugees, *Guiding Principles of Global Compact on Refugees*, 2018, accessed from <https://www.unhcr.org/en-in/protection/environment/5e01e3857/key-messages-for-cop25.html>

²⁴ Article 2(1), International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families, 1990.

²⁵https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-13&chapter=4

²⁶ UN High Commissioner for Refugees, Guiding Principles on Internal Displacement, 1998, accessed from <https://drc.ngo/media/1217434/guiding-principles-on-internal-displacement.pdf>

violence, Human Rights abuses or natural or human-made disasters are recognized under the Guidelines.²⁷ A formidable majority of persons displaced as a consequence of climate change would be hesitant to cross national borders, as a result, there would be gross under inclusion of affected persons under such circumstances. More importantly, under the Principle of Durable Solution, a refugee may be required to return to his country of original residence when threat of persecution is over and there is no refolement.²⁸ Such migrants who escaped some political backlash may find it safer to return upon restoration of normalcy, however in case of climate change migration, there are often effects of permanent or prolonged durations extending over generations as in case of coastal flooding, submergence of inhabitations, annual breach of river banks due to glacial melting or soil contamination, loss of fertility etc. In such cases, Permanent relocation to another place is only feasible option. UNHCR has an extended role now in the absence of a international legal instrument addressing the needs and rights of ‘climate refugees’ and climate change-induced IDPs²⁹.

In this regard, the most accurate description is given by International Organization for Migration (IOM):

“Environmental migrants are persons or groups of persons, who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave

²⁷ ‘Introduction, Scope and Purpose’ of Guiding Principles on Internal Displacement, 1998 accessed from <https://drc.ngo/media/1217434/guiding-principles-on-internal-displacement.pdf> pg 3.

²⁸ <https://www.unhcr.org/1951-refugee-convention.html>

²⁹ ‘Introduction, Scope and Purpose’ of Guiding Principles on Internal Displacement, 1998 accessed from <https://drc.ngo/media/1217434/guiding-principles-on-internal-displacement.pdf> pg 3.

their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad”³⁰.

The definition stresses poignantly the nature of harm, right to life issues, and other significant aspects of climate-induced displaced people. At the same time, it recognizes the non-significance of the element of choice in such endangering situations by stating that movement may be under compulsion (‘obliged to leave’) or under own violation (‘or chose to do so’). The IOM definition secures to climate refugees their right to self-determination of such status. Other significant features include:

1. Inclusion of both slow-onset events and sudden-onset disasters by stating ‘compelling reasons of sudden or progressive changes’;
2. Broad spectrum of human cost included i.e. adverse effects of climate change which affect not just their lives but also those affecting living conditions making a decent livelihood impossible by adversely affecting resources availability, livelihood prospects etc. affecting health, well- being, quality of life.
3. Element of choice made irrelevant for determinations of status as all persons who were either obliged to leave their habitual residence, or those who chose to do so; as a result, the distinction between climate ‘refugees’ and climate ‘migrants’ is diminished further.
4. The uniqueness of migration motivated by climate change is that the effects are of permanent or prolonged durations generally, extending over generations whether in form of coastal flooding, submergence, glacial melting. Permanent relocation to another place often becomes only feasible option. The recognition of relocation temporary or permanent is suggestive of progressive outlook towards the matter.

³⁰ ‘Introduction, Scope and Purpose’ of Guiding Principles on Internal Displacement, 1998 accessed from <https://drc.ngo/media/1217434/guiding-principles-on-internal-displacement.pdf>, pg 3.

5. And finally, the non-inclusion of IDPs under international treaty law especially Refugee Convention, 1951 was a major short-come which sis sought to be overcome here.

ISSUE OF GOVERNMENTALITY AND FORMULATION OF LOCAL ADAPTATION STRATEGY

The impact of changing climate on global stability and economy are the multifarious. Tropical region with high population density, sub-tropical and temperate zones with large glaciers and permafrost and low-lying coastal cities and islands are all at equally immediate risks of instability and human displacement from variety of natural calamities like glacial-lake breaches, tidal surges, high-intensity cyclonic winds, persistent droughts, riverbanks flooding, topographical changes from glacial melting etc. This raises dire concerns about food-security of billions of people as most vulnerable countries and LDCs are 'food-bowls' of the world. Exponentially rising refugee-camps in South Americas, Europe and South and south-east Asia will add fuel to fire. It is not in every case that natural events lead to deleterious human cost for those involved in displacement/migration. Often subsidiary factors like lack of governance, absence of basic infrastructure and deliveries, improper building codes, flouting development norms/by-laws, construction in disaster-prone areas, non-evaluation of propensity of risks involved, sorry state of emergency-response and relief mechanisms are few among the scores of vulnerability factors which become the understated causes of human migration.⁵⁰ Addressing vulnerability and building capacity to either reduce displacement or facilitate equitable and resilient migration requires the integration of sustainable development, climate resilience and disaster risk reduction, particularly in countries with low readiness. In these complex contexts, migration – both autonomous and planned – presents opportunities that may aid adaptation, and serve as an adaptation measure itself.

⁵⁰ Brian H. Hurd, "Challenges of Adapting to a Changing Climate," *UCLA Journal of Environmental Law and Policy* 26, no. 1 (2008): 77-92

The significance of scientific research in disaster-risk management is growing in policy framing. Analytical data predicting the magnitude and extent of risks that inhabitants of a geographical region are exposed to, both in short-term and long-term, critical evaluation of the cause-and- effect relationships is of immense public administration importance. This could assist local authorities in town-planning and making adjustments necessary for timely disaster-preparedness by setting priorities in accordance with financially-viable and practically feasible M&A strategies. An effective risk-management decision would necessarily involve researching using certain well-founded assessment methodologies, viz.:^{51,52}

1. Principle of Beneficence- the ethical objective in any disaster management strategy and formulation of a re-settlement policy for displaced persons should be – Beneficence. It is a notion central to research ethics that prioritizes welfare of the research participant as primary concern of a researcher.

2. Just process based on equity and principles of natural justice in formulation of such adaptation strategy – absence of maleficence, impartiality and arbitrariness at the decision-makers end.

⁵¹ Jardine C, Hrudey S, Shortreed J, Craig L, Krewski D, Furgal C, McColl S. Risk Management Frameworks for Human Health and Environmental Risks, 2003, *J Toxicol Environ Health B Crit Rev.* 6(6):569

⁵² Sexton K. The Role of Scientific Research In Risk Assessment And Risk Management Decisions, 1992, *Otolaryngol Head Neck Surg.* 106(6):635.

3. Equitable distribution of risk – similar treatment of affected communities at administrative end requiring just distribution of entitlements and obligations accommodating distributive justice principle.

4. Optimizing resource mobilization – in order to tranquilize burden on GDP and ecological costs involved, limited resources utilization is important aspect of viable adaptation strategy.

5. Assimilation and integration policy- any influx of humans in a new territory accentuates not just the economic burdens but socio-religious sentiments of the existing communities. Sudden migration without necessary political supervision and flexible assimilation strategy could fuel xenophobic emotions. Imperative of undertaken adaptation is layered integration with existing societies.

6. Participative decision-making processes with all concerned stakeholders under the guiding principle of right of self-determination of people and autonomous decision-making.
7. Incorporation of new knowledge and ideas based on case-studies of other regions, technological advancements, data interpretations and evolutionary processes in public administrations.
8. Ultimately, communication and good personal judgment are foundation of viable risk M&A policy keeping in mind the Human Rights of individuals affected.⁵³

⁵³ Sexton K. The role of Scientific Research in Risk Assessment And Risk Management Decisions, *Otolaryngol Head Neck Surg.* 1992 Jun;106(6):635-41. doi: 10.1177/019459989210600604. PMID: 1608626.

One may note that planned migration as an adaptation strategy to be feasible needs to overcome the adversities caused or anticipated in face of a mass-human migration must include critical elements with respect to safeguarding human health and well-being to overcome trauma of involuntary displacement, safeguarding ecological balance of the place of temporary settlement, creating basic infrastructure, securing some means of subsistence, safety of women and children, vulnerable sections etc. These concerns must be accounted in policy-formulation, stakeholder participation, inter-departmental communications, along with other quantitative risk-assessment elements.⁵⁴

It is suggested that relocation and resettlement measures need to be prioritized as a scheme under adaptation strategy. It is imperative to recognize that the since GHGs are expected to stay in the environment for years to come and emissions, if Paris Agreement is implemented with utmost good faith, could only be slowed down not dramatically altered, adaptation becomes crucial aspect of any local M&A policy. The costs are likely to be disproportional for LDCs, particularly south Asia which hosts larger concentration of populations around flood plains of Himalaya-fed Rivers and coastal-slums in cyclone prone areas.⁵⁵ Such nations would be overburdened with expenditure up to two to three percent of current GDP to meet relief and response measures⁵⁶ e.g. Kerala floods of 2018 cost the state GDP 20,000 crore INR⁵⁷. The common but differentiated responsibility paradigm of the Paris Agreement, 2015 acknowledges the unequal contribution to GHG emissions by developed nations and hence requires distinct and pronounced action on part

⁵⁴ Jardine C, Hrudey S, Shortreed J, Craig L, Krewski D, Furgal C, McColl S. Risk Management Frameworks for Human Health and Environmental Risks. *J Toxicol Environ Health B Crit Rev.* 2003 Nov-Dec;6(6):569-720. doi: 10.1080/10937400390208608. PMID: 14698953.

⁵⁵ Daniel H. Cole, "Climate Change, Adaptation, and Development," *UCLA Journal of Environmental Law and Policy* 26, no. 1 (2008): 1-20

⁵⁶ William D. Nordhaus & Joseph Boyer, *Warming The World: Economic Models of Global Warming* 91 cited from Daniel H. Cole, "Climate Change, Adaptation, and Development," *UCLA Journal of Environmental Law and Policy* 26, no. 1 (2008): 1-20⁵⁷ <https://www.ft.com/content/4e3a74da-a36d-11e8-8ecf-a7ae1beff35b> accessed on 21st July, 2021

their part to cut emissions and transfer greener technologies and climate funds to meet the adaptation needs of LDCs. UNFCCC under Article IV requires Co-operation of all the state parties in preparing for adaptation measures and envisions financial and technological assistance from the developed nations to LDCs for the purpose.⁵⁸ However, the mitigation provisions under Kyoto Protocol have dominated the climate action narrative till recently.⁵⁹ The following funds have been established by UNFCCC parties in 2001 for capacity-building to tackle climate change.

1. Climate Change Fund,
2. Least Developed Countries Fund, and
3. Adaptation Fund

The framework required assistance to address broader issues including “adjusting” economies of LDCs to sectors more climate-resilient and reducing dependence on agriculture. Professor Tom Schelling underlines the need for LDCs to adopt and imitate wealth-generating activities for financing self-guided adaptation measures. He argues for minimal economic burden of mitigation policies upon LDCs and supports differentiated arrangements made under Kyoto unlike his most western contemporaries.⁶⁰ I humbly submit that any direct assistance in the form of fund transfer for self-fashioned adaption measures may not be sufficient, and more nuanced approach like technical-knowledge sharing, patent-license transfer, resource-grant and FDI in greener technologies can provide a sustainable way forward. This would help overcome some of

⁵⁸ <https://unfccc.int/resource/docs/convkp/conveng.pdf> accessed on 21st July, 2021

⁵⁹ Daniel H. Cole, "Climate Change, Adaptation, and Development," *UCLA Journal of Environmental Law and Policy* 26, no. 1 (2008): 1-20

⁶⁰ Daniel H. Cole, "Climate Change, Adaptation, and Development," *UCLA Journal of Environmental Law and Policy* 26, no. 1 (2008): 1-20

the local challenges in implementing M&A in LDCs like poor governance, corruption, cumbersome bureaucratic processes, among others. Funds under UNFCCC can be utilized for the purpose. This will strengthen capacity-building in underdeveloped state-parties in the most efficient manner within a short-time frame as was re-affirmed in Buenos Aires in 2004 as a program of adaptation and response measures.⁶¹ Stockholm Declaration⁶² under Principle 11 states “the environmental policies of nations should enhance, not adversely affect the present or future development of developing countries.” Also, Principle 12 requires all parties to acknowledge particular requirements and circumstances of developing countries.⁶³ Such strategy would have to anticipate behavioral changes necessitated from relocation. has to be shaped keeping local policies and cultures of the relocating place in the context and numerous peculiar circumstances of that place have to be analyzed⁶⁴. Since relocation is generally done en masse, with all members of family and whole communities migrating, there are added vulnerabilities. The most dominating factor in climate migration is economic considerations. Diversifying the income base can reduce vulnerability, including for women participating in labour migration. The landless poor constitute the majority of migrants, many of them from lower castes and indigenous communities, and from regions with poor economic performance.⁶⁵ Given that almost

⁶¹ United Nations Framework Convention on Climate Change, Buenos Aires Programme of Work on Adaptation and Response Measures, , Decision 1/CP.10, at 2, U.N. Doc. FCCC/CP/2004/10/Add.1 (Dec. 18, 2004), available at http://unfccc.int/resource/docs/copl/10a_01.pdf

⁶² Stockholm Declaration and Action Plan for the Human Environment, 1972 accessed from <https://undocs.org/en/A/CONF.48/14/Rev.1>

⁶³ Ryan Jarvis, "Sinking Nations and Climate Change Adaptation Strategies," *Seattle Journal for Social Justice* 9, no. 1 (Fall/Winter 2010): 447-486

⁶⁴ Lenard and Straehle, 2012; Nijkamp and Poot, 2012; Conway and Potter, 2009; McKenzie and Rapoport, 2004

⁶⁵ Inter-governmental Penal on Climate Change, Third Assessment Report: IPCC, released in 2001, accessed from https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_TAR_full_report.pdf pg 72

half of the entire global population lives in cities and one-fourth of them do not reside in secure permanent settlements,⁶⁶ urban local bodies need and UDBs to develop dedicated plans to ensure access to secure and affordable modern housing needs as envisioned under SDG 11.

The notion of ‘governmentality’, as conceptualized by Michael Foucault in, demonstrates a constructive approach in re-shaping the dynamics of power, polity and governance under an increasingly democratic world. The functioning of public institutions in a reasoned order in a dissipated power structure of governance marks a conscious rational system within a democratic polity.⁶⁷ This call for rationality is required for in the international order as well which is still largely

dictated by parochial diplomatic interests of the powerful nations. Any index of success in preparing for environmental crisis on the planet has to account for the human cost of the same. The human cost may be in terms of death, homelessness, risks to means of livelihood and ill-governance. National governments and regional associations need to evolve to the occasion to develop an all-weather ‘human policy’ for involuntary migrants, prescribing their right to stay, settle and relocate. Thus, the question of climate change induced migration is one of involving aspects of collaborative governance, of right of self-determination of individual, of climate justice for traditional communities and of scientific re-analysis of our relationship with the material resources of the planet. The issues which are likely to be faced adding to the vulnerabilities of those displaced includes:

1. The intensifying of the phenomenon of meteorological events like flash flooding, tropical cyclones, landslides, erratic weather phenomenon which becomes the primary cause of internal displacement.

⁶⁶ <https://www.weforum.org/agenda/2016/10/these-are-the-worlds-five-biggest-slums/>

⁶⁷ <https://plato.stanford.edu/entries/foucault/#toc>

2. Exacerbated environmental degradation including ground-water pollution, desertification, increased salinity of soil which does not lead to displacement directly, but it aggravates ‘voluntary’ migration disguised along with other direct factors like better income and livelihood opportunities.

3. Small islands and low-lying coastal nations face risk of complete disappearance due to ocean level-rise or a territory becoming uninhabitable due to decline in crop productivity, clean water unavailability. The uniqueness of this situation is the fact that in most cases, it gives rise to inter-country migration and problems of absence of international law, statelessness of such person, specific needs etc. are to be addressed.

4. Conflict over natural resources and problems of assimilation of communities from different cultural. Linguistic or ethnic backgrounds into the resident communities. Even though the humanitarian community is used to dealing with internal conflict, and people displaced by conflict may be eligible for protection as refugees assistance as IDPs, resource-based conflicts ‘may be particularly challenging’ at operational level.

Further exacerbating the situation is the legal vacuum under the current regime upon the rights of refugees and their relevance for an environmental migrant. The international covenant delineating the rights of refugees is Convention on Status of Refugees, 1951. Article 1 of the said convention provides the only legal understanding of term ‘refugees’. It states that a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.⁶⁸ Such person is entitled under the UDHR to seek asylum in the country of migration.⁶⁹ It is significant that neither the 1951 convention nor the 1967 protocol includes

⁶⁸ Convention and Protocol Relating to the Status of Refugees, Office of the United Nations High Commissioner for Refugees, Resolution 2198 (XXI) adopted by the United Nations General Assembly, accessed from <https://www.unhcr.org/3b66c2aa10> on 27th July, 2021

⁶⁹ Article 14, Universal Declaration of Human Rights, 1948 accessed from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

persons who are displaced from the country of origin/residence due to environmental disturbance. Though at times, it may be difficult to pinpoint with exactitude, a family’s decision to relocate as such drastic steps are taken often due to environmental factors intermixed with administrative apathy, absence of rehabilitative schemes, corruption or simply political isolation of a community. For example, some experts agree that the underlying cause of the Syrian conflict is extended periods of droughts from 2006 to 2010 which affected the supplies of basic necessities and consequently sparked unrest among the middle class against ruling class. However, unless it may be shown with positive evidence that the person has relocated due to “well-founded fear of persecution” which implies an active state policy to discriminate and victimize a ‘defined’ community on basis of political or religious markers as mentioned under the convention.

Climate or environmental refugees⁷⁰ are excluded impliedly.⁷¹ Lack of official recognition under international instruments signifies:

- Absence of legal protection mechanisms and encapsulation of rights for environmental migrants.
- Leads to subjective determination of the status of such persons based solely upon will of the governmental authority, official policy, nationality of migrants, political factors and other extraneous factors legitimizing any arbitrary action proposal of the municipal government.
- Lack of official interest in quantifying the movement of people due to environmental factors, whether exclusively or considerably based upon them.

⁷⁰ It is also important to note the distinction between movement due to environmental factors and that due to climate change related factors. The former is border is scope including multitude of factors which are not related to global warming induced climate discrepancies but also natural disasters like earthquakes, volcanic eruptions, etc. Again, it may be difficult to ascertain with precision the cause of migration as a chain of environmental factors work together. For the purpose of our research we take to understand climate change migrants as implying Environmental refugees.

⁷¹ Elizabeth Keyes, "Environmental Refugees: Rethinking What's in a Name," North Carolina Journal of International Law 44, no. 3 (2019): 461-486.

- Non-application of principle of customary international law of non-refoulment in such cases even when the national government of the receiving state determines the cause of movement to be environmental when based upon other considerations as well which under a liberal interpretation, would be well within the purview of 1951 convention.

Additionally, internally displaced persons due to environmental factors are exclusively dealt with under the national laws, if there exists any, in view of death of international agreements.⁷² These issues which emanate from the lack of inclusion under convention of refugees or other international legal protection for environmental migrants are perpetuated till this date as there has been no consensus upon recognition of their rights. In 2013, Mr Ioane Teitiota of Kiribati Island, along with his family, sought refuge in neighboring New Zealand on the basis of prediction of submergence of his island nation under the pacific in a matter of decades. The New Zealand High Court rejected his plea on strength of "refugee" under Article 1 of Refugee Convention.⁷³ There have been news reports of at least a dozen of such cases in New Zealand alone, wherein climate change has been cited as a basis for seeking protection of another sovereign.⁷⁴ The Department of Economic and Social Affairs of UN boldly stated the situation of indigenous communities:

⁷² The only legal instruments protecting the rights of internally displaced (those persons who abandon their homes and relocate but do not cross recognized international border) is the UNHCR's Guiding Principles on Internally Displaced, issued in 1998, which afford comprehensive protection similar to 1951 Convention and 1967 Protocol. However, the guidelines are non-binding upon member states of UNHCR and hence only persuasive.

⁷³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25482>

⁷⁴ The Human Rights Committee in January 2020, in petition of Ioane Teitiota decisively stated that the state may not deport person who is under risk of climate change-induced situation that violates her/his right to life. The decision of HRC is landmark, being the first decision by a UN human rights body granting right to seek asylum from the adverse effects of climate change.

"Climate change endangers survival of traditional communities across the world, they being the first in line of attack, despite the fact that they are the least contributors to GHG emissions. There is urgency to safeguard their interest"⁷⁵

UN Declaration on Rights of Indigenous People, 2007 recognizes the rights of tribal communities and their particular vulnerabilities. Article 10 of the declaration requires state- parties not to forcibly remove such persons from their lands. Any relocation in event of environmental events or developmental cause shall be based on free and well-informed consensus of the community. It is also required that a fair compensation and an option to return to the original land forms part of such an action of governmental authorities.⁷⁶ Despite report of IPCC, published as early as 1990, sounding

alarm for all economies with threats of rising global temperatures and the imminent crisis related to international governance in face of possible climate induced mass migration, none of the COP meetings have been successful in agreeing upon a basic minimum program for such cases. Even the significant progress made in the area with the landmark Paris Agreement is conspicuous with the absence of mention of policy for climate migrants. The mention appears in preamble which calls for nation-states to respect the Human Rights of those affected and displaced. Preamble is non-enforceable. The only other reference is under 'Loss and Damage' section calling states to-

'Form task force to evolve guidelines for integrated policy to minimize and

address displacement due to climate change'⁷⁷.

⁷⁵ UNDP Report, Climate change, migration and displacement: The need for a risk-informed and coherent approach, 2017, pg. 60

⁷⁶ Res. no. 61/295 adopted by the UNGA on 13 September 2007, UNDRIP, 2007 accessed from https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf on 28th July, 2021

⁷⁷ Paris Agreement 2015 accessed from https://unfccc.int/sites/default/files/english_paris_agreement.pdf on 27th July 2021.

Under the agreement, 185 nations have submitted their INDCs, however, less than one-fifth mention relocation as a national adaptation strategy. Dearth of policy for the climate migrants undermines basic objective of the agreement that is, recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.⁷⁸ The concept of climate justice, which has been so endearingly endorsed and provided with realistic content under the said agreement, falls short in providing any adaptation and rehabilitation or redevelopment policy for the environmental migrants.

IPCC's sixth Assessment Report, 2010 underscores the irreversibility of anthropogenic-climate change and inevitability of mass-human displacement. In this backdrop, adaptation strategies which would encompass a feasible and assimilative relocation and resettlement plan occupy just as important a role as the mitigation. It is thus crucial, to adopt an inter-governmental policy framework that examines the potential movement and adopts planned internal and international mobility as an adaptation strategy to endure climate change. IDMC estimates 2.4 crore people are displaced annually due to sudden-onset disasters.⁷⁹ The recent years have seen exponential rise in climate migration trends. Bold speeches and elaborate commitments in the pursuit of refugee rights and habitat protection typically fall prey to narrow geopolitical interests. The result is human cost suffered by climate displaced who fall through the crevices of refugee and immigration law. There is no status for forced climate migrants, settlement is a deferred issue.

⁷⁸ Paris Agreement 2015 accessed from https://unfccc.int/sites/default/files/english_paris_agreement.pdf on 27th July 2021.

⁷⁹ Elizabeth Ferris, "Climate Change, Migration, Law, and Global Governance," North Carolina Journal of International Law 44, no. 3 (2019): 425-460

Comprehensive Displacement Treaty

Academicians have long mooted the idea of a holistic international treaty which addresses the issue of climate change-induced displacement. Biermann suggested a UNFCCC Protocol for Recognition, Protection, and Resettlement of 'Climate-Refugees'.⁸⁰ Such a treaty/convention would be an independent convention comprehensively and exhaustively defining, describing and detailing the rights of Environmentally-Displaced Persons or Climate Refugees based on sharing of responsibilities and allocation of burden among inter-governmental administration. The first steps in this direction were taken by Europe's Parliamentary Assembly Committee on Migration, Refugees and Population suggesting and drafting a protocol to European Convention on Human Rights (ECHR), exclusively dealing with basic Human Rights of the climate-change displaced person including their right to a safe haven, right to re-settlement and protection against environmental degradation.⁸¹ There is some clamor in the necessity of recognizing climate – change displaced persons as 'Universal Natural Persons' with certain minimum guarantees under a separate standalone convention. The stated objective of all these proposals, despite some variance in their content of rights of recognition

mechanisms is that, each proposal seeks to establish a rights-based framework for communities and families forcibly displaced due to natural factors induced by or aggravated by climate change. It is submitted that such a treaty would be a step in right direction by the international comity of nations to solve the vexed issue of cross- border migration of individuals.

⁸⁰ Jane McAdam, "Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer," International Journal of Refugee Law 23, no. 1 (2011): 2-27

⁸¹ Ibid

CONCLUSION

The detailed assessment made in the sixth IPCC report is a breakthrough for scientific community and political circles underscoring, perhaps for the first time, the anthropological equation with the planet Earth. Striking observations were made with regard to the irreversibility of the GHG emissions and unpredictability of the ramifications on global climate system.⁹⁶ Collective intellect of the humanity, the 'wise man' has from times immemorial attempted to withdraw itself from the force majeure. However still, the actual manifestations of the man- induced global warming and consequent changing climate is challenging modern civilization's edifice and demonstrating the mythical reality of crass development.

Climate change-induced human displacement is a problem of unprecedented scale. The issue is one of vexed political implications but it is not firmly established by reliable statistics and scientific analysis that the displacement of communities and families is inevitable in the face of changing weather patterns and intensifying disruptive forces of nature. The problem has ramifications which affects at all levels and presents a formidable challenge to regional, national and international governance. Issue of displacement is also an opportunity for the comity of nations to develop durable solutions to relocation and resettlement questions with aid of existing knowledge base. Global political leadership and local administration are required to leverage various legal instruments and framework conventions to identify the vulnerable regions and communities, nature of threat faced, anticipated migration patterns, i.e. autonomous, spontaneous, planned or unplanned, and deploying broad-spectrum based rights and protection mechanisms. United Nations Framework Convention on Climate Change, Sendai Framework, Platform on Disaster Displacement (PDD), Climate Action Plan, Advisory Group on Climate Change, Task Force on Displacement are part of well-structured machinery to oversee the domestic and international policy on re-settlement of displaced, all is required is intent of international regime to keep it well-oiled too. International legal order is in place for strengthening target-orientated relief and response function for disaster risk management, what is required at this stage is to legally sanction relocation and re-habilitation policy as an adaptation measures to climate change since relocating is the only viable option in cases of slow-onset disasters. Migration which would cut across ethnic, religious, cultural, racial or national barriers can pose significant risk to national security or to non-discriminatory access of services and

⁹⁶ Climate Change: IPCC Scientific Assessment" accessed from https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_I_full_report.pdf pg. iii

hence is to be meticulously deliberated and diligently integrated in national polity. Risk- informed developmental projects should be the norm for sustainable future of cities and towns. Mitigation of associated social vulnerabilities of climate-based migration augmenting capacities of individuals to deal and respond with necessary skills should be part of local M&A strategies. Taking cue from The Paris Agreement, an M&A strategy may encompass some nationally determined contributions or NDCs based on global normative framework provided by Sendai, Nansen Initiative and Global Compact on Climate Change. Calibrated and well-informed adaptation and risk management with recurring financial resources can reduce vulnerability of communities, especially tribal and local groups. M&A policies need to take account of in-origin and in-destination societies, recognize and promote heterogeneous character of migrants.⁹⁷

Despite the difficult implications of widespread forced or voluntary migration based on climate situations, international capacity and conflicting vested interests in dealing with the issues is present. Motivating speeches by head of the states and elaborate obligations in pursuit of cherished targets to meet standards of environmental protection and securing

refugee rights with a sustainable development methodology bringing a harmony between the two, generally is eloquently laid out in national and provisional announcements by respective leaders yet fail before narrow geopolitical interests when the matter of implementation arises. The unpleasant outcome is that forced climate refugees fall through the pitfalls of asylum and immigration laws and regulations.

Intelligently synergized adaptation and disaster management processes and policies when combined with requisite financial and material resources have the capacity to reduce vulnerability of the communities, including indigenous tribal groups and at the same time would ensure that individuals and institutions and governments have the necessary expertise and predisposed minds to effectively endure and militate the adverse affects of such disasters with timely response to climate-related hazards. This stated potential will be rendered meaningless unless these strategies and policies account for the methods in which climate-based disasters affect people's needs, welfare, income, and consequent decisions migrate. Plans and strategies need to function in origin and in destination communities, acknowledge and protect the heterogeneous character of displaced, whether displacement be of permanent, temporary and circular or sporadic nature. To be able to effectively function in given mode, sources of financing, technical support, manpower needs etc. is required from the collective of international community.

It is submitted that since there is no international treaty-body or organization exclusively responsible for addressing climate-change induced displacement. Such a specialized organization would be required to handle issues related to overseeing migration, providing assistance in seeking asylum, tackling issues of environmental degradations having potential to induce large-scale migration, resettlement proposals, and humanitarian assistance. Currently, each of these areas are dealt by separate bodies which makes it near-impossible for an affected person to seek remedy under international law. In this context, it requires mention that until such separate body is functional, presumably under a new comprehensive treaty on the subject-matter, UNHCR is best-suited to address the needs of climate-displaced being the organization which has elaborate experience in this area and requisite workforce and resources at its disposal to deal with the issue in its enormity. Extra-governmental bodies like Climate Change, Environment and Migration Alliance (CEEMA), which includes experts from IOM, Stockholm Environment Institute, UNEP, World Wildlife Fund among others have instrumental role in shaping the national and local policies for building resilient climate adaptation strategies for a sustainable future.

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