

## **ENVIRONMENTAL REFUGEES: THE NEED FOR A NEW LEGAL FRAMEWORK**

*Athul Chandran\* and Sreelekshmi Sylesh†*

### **ABSTRACT**

Human migration on account of environmental changes has been in existence for centuries. However, the term ‘environmental refugees’ and the subsequent discussion centered around their existence and the repercussions of their existence in the international arena is indeed a novel phenomenon, inasmuch as their number is on an increase. If scientific estimates are to be believed, the number of environmental refugees will well-exceed 150 million by 2050, which is indeed alarming. The legal lacuna that exists due to the absence of any proper legal framework concerning environmental refugees further aggravates their plight. This paper makes an attempt at forming a comprehensive definition of the term ‘environmental refugees,’ after the perusal of the already existing definitions. It further analyses the causes due to which people may be forced to seek permanent or temporary asylum. The presence of environmental refugees worldwide is shortly analyzed by citing a few examples. An attempt is made towards the drawing out of a legal framework governing the rights of environmental refugees, as the existing legal instruments are ill-adapted to deal with this relatively unconventional migration. The article also proposes a new inter-disciplinary Convention for confronting the issue of environmental refugees. The Convention is required to be flexible enough to suit the needs of environmental refugees while effectively conforming with the already existing laws. The Convention should deal with the sharing of responsibility between the host country, home country and the international community, by laying down the obligation each party is expected to undertake. The paper further calls for a provision in the Convention mandating the enactment of domestic legislations by the party states, towards the sustainable use of land and pollution control, thereby attempting to control the climate-change-induced-migration. The concluding remarks emphasize on the urgency to acknowledge and mitigate the crisis of environmental migration.

### **INTRODUCTION**

“Migration takes many forms: temporary and permanent; between and within countries; legal and illegal; forced or voluntary; to cities or suburbs; for tourism or to escape persecution; for economic gain or at the point of a gun; daily commuting or in search of food. One thing in common is that all are on the increase. The world is on the move, and the environmental causes and consequences are profound.”<sup>1</sup>

In the wake of the 21st century the global arena saw the birth of a new phenomenon: environmental refugees. It can be vaguely stated that environmental refugees are people who seek asylum due to the environmental changes in their homeland or place of habitual residence. These people may not necessarily flee their countries of origin, most of them

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\* Second Year BA LLB (H) Student, The National University of Advanced Legal Studies, Medical College-NAD Rd, HMT Colony, North Kalamassery, Kochi, 683503, Email: [athulmon96@gmail.com](mailto:athulmon96@gmail.com)

† Second Year BA LLB (H) Student, The National University of Advanced Legal Studies, Medical College-NAD Rd, HMT Colony, North Kalamassery, Kochi, 683503 Email: [sreelekshmisylesh@gmail.com](mailto:sreelekshmisylesh@gmail.com)

are displaced internally. However, all of them have deserted their homeland, and are usually bereft of any hope of return.

The International Red Cross states that the number of environmental refugees far exceeds that of political refugees who migrate due to wars and other conflicts. The United Nations (UN) estimates showed that, in 2008, 20 million people were displaced by climate change. The United Nations High Commissioner for Refugees (UNHCR) estimated that 36 million people were displaced due to natural disasters in 2009; 2009 was the last year such a report was taken. The Environmental Justice Foundation (EJF) states that global warming will force up to 150 million "climate refugees" to move to other countries in the next 40 years, i.e., by 2050. The statistics in itself prove the gravity of the issue and the exigency for immediate action.

### **CAUSES OF MIGRATION**

The forces that cause environmental displacement of people can be classified into two broad groups:

i) Traditional environmental hazards

These hazards cannot be directly attributed to climate change. These hazards usually include drought, soil erosion, desertification, deforestation and other environmental problems such as pollution and natural disasters.

ii) Climate change hazards

Climate change hazards can be attributed to anthropogenic greenhouse gas emissions. Scholars point to three particular refugee generating hazards that are attributable to climate change: (1) sea level rise; (2) increased storm activity and strength; and (3) drought, desertification, and water shortages.

### **ENVIRONMENTAL REFUGEES WORLDWIDE**

Following is an attempt to assess the horror of environmental migration on the basis of certain select examples from around the world.

The Carteret islanders are usually referred to as the world's first environmental refugees. They went through a structured relocation when the government of Papua New Guinea authorized and funded the evacuation of the islands owing to the impending flooding of the islands.

Sundarbans, the world's largest group of river delta islands and mangrove forests, face the serious threat of global warming, due to which 80 sq. km. of Sundarbans have completely disappeared due to the rise in sea level. Studies show that 70,000 of the 4.1 million living in the Sundarbans will be driven out of their habitat by 2020.

According to the Internal Displacement Monitoring Centre, during the period between 2010-2011, about 42 million people were dislocated in Asia and the Pacific, owing to storms, floods and heat and cold waves.

China is home to at least six million environmental refugees, who were obliged to abandon their farmlands due to shortages of agricultural plots owing to decades of population growth.

In 2005, more than 5,00,000 inhabitants of the Bhola island in Bangladesh were rendered homeless when half the island was inundated by flooding. They sought asylum in the slums of Dhaka.

The number of people displaced involuntarily by public works projects, notably large dams, increase by 10 million every year.

Around seven million people have fled Sub-Saharan Africa owing to semi-starvation caused due to environmental factors.

During the time period between 1970s-1990s, around 600,000 people have migrated from Bangladesh rural areas, coastal areas and islands, to Chittagong Hill Tracts in Bangladesh owing to droughts, water scarcity, floods, storms, erosion and desertification.

African Sahel, provides a fine example of how human activity can lead to droughts which in turn lead to human migration. The total number of refugees stemming from the Sahel crisis is estimated to reach 50 million.

Preliminary estimates indicate that the total number of people at risk of sea-level rise in Bangladesh could be 26 million, in Egypt 12 million, in China 73 million, in India 20 million, and else- where, including small island states, 31 million, making a total of 162 million. At the same time, at least 50 million people could be at severe risk through increased droughts and other climate dislocations.<sup>2</sup>

Tanzania hosts thousands of refugees from neighboring countries, with many refugee camps operating in western Tanzania since 1994. UNHCR notes that "across all locations, environmental problems commonly observed include deforestation (for fuel, construction and cultivation), soil erosion, water depletion and water contamination."<sup>3</sup>

#### **ACKNOWLEDGING ENVIRONMENTAL REFUGEES**

Although environmental hazards and consequent human migration is not a novel phenomenon, the term "environmental refugees" is of recent origin.

The term refugee is usually associated with people fleeing from political oppression, genocide, and civil war. However, refugees are not legally defined thus. The United Nations 1951 Convention Relating to the Status of Refugees (hereafter the Refugee Convention) defines the term 'refugees' and lays down their rights, stating the protection and assistance that they are entitled to receive from the State they migrate to. A refugee is defined as someone who:

"As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality, and is unable or owing to such fear is unwilling, to avail himself of the protection of that country; or who not having a nationality or being outside the country of his formal habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it."<sup>4</sup>

This definition can be broken down into four elements.<sup>5</sup>

- the refugee must have fled his or her homecountry;
- the refugee must be unwilling or unable to return home;
- therefugee's inability or unwillingness to return home must be due to awell-founded fear of persecution; and
- the persecution must be related tothe refugee's membership in a particular group (i.e., race, religion, nationality, membership in a particular social group or political opinion).

On close perusal, it can be inferred that the definition aims at beshielding people who seek asylum due to the conventional threats that existed due during the twentieth century. It fails to address the threats, like environmental degradation, which can drive people out of their home land. Under the convention, the term environment refugee is a misnomer, as it doesn't recognize environmentally displaced persons as refugees.

Environmental refugees do satisfy the first two criteria as emphasized by the definition. However, it is impossible for the environmentally displaced persons to prove that their migration was caused by 'well-founded fear of prosecution'. To seek protection under the Convention, the refugee must be under the fear of persecution and the State actor perpetrating the persecution must have the required intend. It has been argued that the governmental mismanagement of land, erroneous policies etc. qualify as persecution. However, this argument carries little weight as the policies of government are usually not aimed against a particular person or a group of persons. Many scholars contend that environmental refugees are not persecuted the same way as conventional refugees are. Environmental refugees can still look for protection from the home government, which the conventional refugees cannot. Climate change refugees further face the problem of zeroing in on a particular entity as the cause of their migration. Climate change is often caused by trans-border actions for which the international community is collectively responsible.

Hence, it can be rightly asserted that the Refugee Convention is ill-equipped to recognize the issue of environmental refugees. It is therefore necessary to examine other sources for a plausible definition of the same.

The term 'environmental refugee' was first defined by Essam El-Hinnawi as-

“Those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life. By 'environmental disruption' in this definition is meant any physical, chemical and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unstable to support human life.”

El-Hinnawi described three major types of environmental refugees:

1. those temporarily dislocated due to disasters, whether natural or anthropogenic;
2. those permanently displaced due to drastic environmental changes, such as the construction of dams; and

3. those who migrate based on the gradual deterioration of environmental conditions.<sup>6</sup>

In 1998, the United Nations Secretary-General's representative for displaced persons, Francis M. Deng, proposed the following definition of internally displaced persons:

“Displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>7</sup>

None of the definitions stated above fully addresses the problem of displacement owing to environmental reasons, be it internal or trans-border. The term environmental refugees have remained a merely descriptive term, without conferring any kind of consequent rights or obligations.

A possible attempt to incorporate the term in the international regime, is by defining it in line with the Universal Declaration of Human Rights. The Refugee Convention states that the refugee status arises as a result of denial of human rights. The definition of refugees as stated by the Convention recognizes five freedoms: freedom from persecution due to reasons of race, religion, nationality, membership of social group or political opinion. The Refugee Convention also recognizes the right to seek safety, as contained in Article 14(1) of the Universal Declaration. Both the International Covenant for Civil and Political Rights and the International Covenant for Economic and Social Rights acknowledge the "inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources" and "in no case may people be deprived of its own means of subsistence.”<sup>8</sup> Hence a possible way to acknowledge the plight of environmentally displaced persons will be to define the term in line with the human rights laws. However, even this attempt can attract criticism on the basis that many environmental refugees are internally displaced and not driven out of their country, which in turn leads to their catapulting out of the purview of the Article (1) of the Refugee Convention, which defines the term refugee. The ever increasing number of environmentally displaced persons poses yet another hurdle.

#### **A LEGAL FRAMEWORK**

The problem of environmental refugees ranks amongst one of the most pressing issues of the 21<sup>st</sup> century. It is evident that there is utmost apathy from the part of both governments and international agencies towards the issue of environmental refugees. The problem of migration stems from the deprivation of livelihood and habitat; the consequences the migration has, on the global level is profound, ranging from social to political and economic. It is high time that the international community addressed this issue.

The most important step towards forming a legal framework is an International Convention on environmental refugees, which should be inter-disciplinary in nature, with three major areas coming under its orbit, viz., human rights, humanitarian assistance and international environmental law. The inclusion of environmental refugees into the already existing Refugee Convention and its subsequent expansion is not a feasible option. The

Refugee Convention doesn't acknowledge the existence of environmentally displaced persons. If environmental refugees are incorporated into the Refugee Convention, the very purpose that the Convention serves, i.e., the provision of protection for people fleeing their homeland on account of "fear of persecution," will be diluted. Since the issue of environmental migration on large scale is yet to be addressed by the international community, it does call for a new Convention.

The Convention should formulate a viable definition of the term 'environmental refugee,' dictate on who and how environmental refugees will be identified, and further lay down their rights.

A comprehensive definition of the term "environmental refugees," leaving little to no grey area, must contain the following elements:

- It should acknowledge environmental refugees as the people who migrate across the international borders.  
Environmental disruption can also cause the internal displacement of people. However, such people are usually entitled to protection from their home-government. Hence, it is important that the definition limits itself to the people who 'migrate across the international borders.'
- The definition should cover both temporary and permanent migration  
Environmental disruptions can sometimes leave regions permanently inhospitable while sometimes it causes only temporary displacement. Until the refugee acquires a new nationality or voluntarily returns to the home-land, he/she is qualified for humanitarian assistance.
- The principal cause of migration must be environmental disturbance, irrespective of whether it is natural or man-made.  
The reasons for seeking asylum might not strictly be limited to environmental disruption, however, the principal or primary cause that forced to the eviction of the person out of the country must be environmental change. The definition should also take into account the natural as well as the man-made causes of environmental disruption. Natural causes include the traditional environment hazards as aforementioned. Man-made causes are directly attributable to human actions.
- The environmental disruption must paralyze the refugee of securing basic human needs.  
A mere reduction in the quality of life doesn't qualify as a ground for securing protection as a refugee.

Hence, a workable definition can be formed as thus:

"Environmental refugees can be defined as the people who are forced to migrate temporarily or permanently across international borders, the cause of which primarily is environmental disruption, either natural or man-made, and the disruption being of such nature that it leaves them incapable of securing basic human needs."

Once the term 'environmental refugees' has been defined, it must be decided as to how an environmental refugee will be identified. The status determination procedures, as provided for in the Refugee Convention, 1951, can be applied to determine whether or

not a person qualifies to be acknowledged as an environmental refugee. Under status quo, people who apply for refugee status normally need to establish individually that their fear of persecution is well-founded. However, during a mass, as it usually happens in the case of environmental refugees, it may not be possible to carry out individual screening. In such circumstances, it may be appropriate to declare 'group' determination of refugee status, whereby each civilian is considered as a refugee, *prima facie* - in other words, in the absence of evidence to the contrary.

The next step is the laying down of the rights of the environmentally displaced people. The new Convention on environmental refugees can borrow legally from its predecessor, the Refugee Convention of 1951. The receiving state must be obliged to protect the refugees' rights. The rights prescribed under the Refugee Convention 1951, which can be incorporated in the Convention on environmental refugees include the right to safe asylum which comprises more than physical safety and the rights and basic help as any other foreigner who is a legal resident of the host country would receive, including freedom of thought, of movement, and freedom from torture and degrading treatment. Economic and social rights are equally important. Refugees should be granted access to medical care, schooling and the right to work.

The next aspect of environmental refugee regime that needs to be addressed is the sharing of responsibility. Ideally, the responsibility towards refugees must be shared between the home state, host state as well the international community. Environmental refugees flee their respective countries not on the fear of persecution and hence their home states cannot entirely wash their hands of the responsibility. As far the home state is concerned, the responsibility is twofold. The home states should contribute towards the welfare measures of its nationals in a foreign land. Prevention of refugee crisis to the maximum possible extent as well as mitigating the crisis in case migration is inevitable is the second aspect of the home states' responsibility. The Refugee Convention, 1951 establishes the obligations the host states have towards the asylum seekers. In accordance with this, the Convention on environmental refugees should consolidate the responsibility that the host states must undertake with regard to the rights of the refugees as well as regarding the humanitarian assistance they should receive. Since the climate-change-hazards-induced-migration is a result of the cumulative actions of the international community, it is necessary that the environmental refugee regime incorporate international corporation and assistance within its ambit.

Finally, the Convention should call for sustainable land use practices throughout the world. Since the Convention is sought to be inter disciplinary in nature, it should encompass provisions which mandate the states to enact legislations which will lead to the sustainable use of land thereby curbing desertification and droughts. The states should also be required to take sufficient steps towards the checking of pollution and climate change.

The proposed Convention on environmental refugees should be a comprehensive one, encompassing various aspects which include prevention of further migration, protection of migrants as well as the obligations of the receiving states.

Dowty and Loescher argue that "acting early to avert refugee crises can be demanding, but it is considerably less expensive than dealing with the fallout of a full-blown and

protracted crisis.”<sup>9</sup> Hence, the states should act early and provide for an environmental focus in development, relations between the states as well as the refugee regime.

## CONCLUSION

Environmental migration is on rise and is one of the most pressing issues of the 21<sup>st</sup> century. The lacuna in the international refugee regime with regard to the same further exacerbates the issue. The only answer to the issue comes in the form of a carefully crafted legal framework that acknowledges the issue with due regard. The framework must be tailored to fit the needs of the environmental refugees, while drawing from the existing framework on traditional refugees. It is equally important to have policy decisions which are intended to minimize the crisis of migration. As the effects of climate change are becoming more profound with the passage of time, the number of refugees are expected to rise, and hence international community must recognize and protect the individuals who are forced to leave their homeland on account of environmental changes.

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