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Opinion – Assessing National and International Responses to Climate-Induced Migration

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RADHEY WADHWA, MAY 28 2024

Climate change is causing extreme and intolerable conditions in many parts of the world. The worsening problem has stoked the debate over classifying and protecting Climate Migrants under International law. Termed as “World’s forgotten victims”, climate migrants are the worst sufferers of the adverse effects of climate change. Climate-induced Migration is already a reality in the present world due to the occurrence of extreme events like floods and cyclones. According to the Ecological Threat Report (2022), the number of forcibly displaced people has increased to 89.3 million. And by 2050, the number will reach 143 million, according to the World Bank. Despite clear scientific evidence linking climate change to Migration, the evolution of international legal frameworks has not seen substantial development.

The idea of Climate-induced migrants has been in public discourse since 1985 when UNEP expert Essam El-Hinnawi coined the term “environmental refugees,” denoting individuals compelled to abandon their homelands due to profound environmental disruptions. The lack of consensus on addressing the issue is particularly noticeable, as various terms like “climate refugee”, “climate migrants”, and “environmental migrants” are used interchangeably. This article will focus on the multifaceted evolution of international legal instruments and their efficacy in addressing the complexities of climate-induced migration. Secondly, how different governments globally are evaluating the issue and the mechanisms they are implementing in response.

The term ‘Climate-Induced Migration’ is relatively new and thus is not covered under international refugee laws. While Climate Migrants do have some of the fundamental rights under the present international law regime, there is a lack of essential protection mechanisms. For instance, the 1951 Refugee Convention and the 1967 proposal broadly provide for the human rights of those fleeing persecution or violence. For three key reasons, refugees from climate change are not protected under the 1951 Refugee Convention:

1. Climate-related causes are not covered by the convention, which limits refugee status to people who are persecuted for specific grounds like race, religion, nationality or political opinion.
2. The convention requires persecution to be carried out by a human agent, such as a state or non-state entity.
3. While the majority of climate-induced Migration occurs internally within a person’s own nation, the convention requires refugees to be outside of their country of residence to obtain protection.

Therefore, the current system of international law needs to be equipped to handle complex cases of climate refugees.

Although several UN bodies have attempted to address the issue of climate migrants, only multilateral conventions and resolutions made by the UN Security Council hold the authority to establish binding international law. For instance, the UN General Assembly did not provide concrete policy suggestions even though it recognized the need to safeguard climate migrants in a nonbinding resolution. The International Organization for Migration (IOM) has formed a division to address issues related to Migration, the environment, and climate change but needs help generating support for new binding conventions. Additionally, the United Nations Human Rights Organization (UNHRC) use the term ‘Environmental Migrants’ rather than climate refugees. UNHRC says the term refugee is “misleading” as the refugee term entails inter-state Migration, while in the case of climate change, the displacement

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is primarily internal.

In light of all this, Climate litigation has emerged as a means for climate migrants in various countries. The international legal framework of “non-refoulement” offers an encouraging path for climate migrants. For instance, in the *Ionae Teitiota vs. New Zealand* case, the United Nations Human Rights Committee (UNHRC) recognized that the principle of non-refoulement can be applied. While the applicant’s argument was rejected as UNHRC argued that he did not face any imminent threat to his life. Nevertheless, the ruling recognized that forcefully returning a person whose life would be at risk due to climate change effects may violate the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). In 2021, a French court recognized the country’s first environmentally impacted Migrant hailing from Bangladesh. The French court held that it was unsafe to send the man back to his home nation due to air pollution. Whether this judgment has any ripple effects on other European nations remains to be seen; however, the case could encourage governments and courts to handle climate migrant cases systematically.

As climate change continues to intensify, nations worldwide are beginning to address the looming crisis of climate-induced displacement. Australia and Tuvalu have signed the world’s first refugee treaty. Under the agreement, the people of Tuvalu, a critical nation which will be submerged shortly and is currently facing adverse effects of climate change, have been allowed access to Australia. In the agreement, which is known as the Falepili Union Treaty, Australia has pledged to implement migration pathways to help the Tuvalu population amidst the threat of rising sea levels. With climate change intensifying, the role of agreements like the one between Australia- Tuvalu gains significance.

The USA has also signalled its positive tone on the issue. By signing bilateral treaties with the Marshall Islands, Micronesia, and Palau, the USA has granted citizens of these nations the unique status of ‘legal non-migrants’. The Compact of Free Association (COFA) also allows Marshallese citizens to freely live and work in the United States. Lastly, the European Union recognizes climate change as a significant trigger of Migration, as highlighted in the European Green Deal and various reports. In multiple reports, the EU has identified the problem of climate-induced Migration, but there is still no standard definition of the term climate refugees. This lack of definition leads to consistency in the approach of EU member states.

The international community’s response to climate-induced migration needs to be more cohesive and adequate. The urgency of climate-induced migration and the need for solutions cannot be overstated. Despite clear scientific studies linking climate change to forced displacement, existing international frameworks fail to protect affected people. Recognizing climate-induced migration as a human rights issue and underscoring the need for a rights-based approach is crucial.

While individual actions through climate litigation and bilateral treaties among nations are taking place, the response of the international community has been dilatory. Despite the adoption of multiple frameworks, such as the Cancun Adaptation Framework, 2010 and the Nansen Initiative, 2012, the ground realities, as evidenced by court cases and the rise in migrations, demand more robust action. Without comprehensive reforms in international law, the world risks exacerbating the humanitarian crisis.

Moreover, over time, the international community may feel increasing pressure to move away from the status quo. It could involve amending the 1951 Refugee Convention to include climate refugees or having a new international treaty for climate migrants and their rights. It is also essential to understand that climate litigation has its limitations and is no panacea for protecting climate migrants. However, its usage still represents a critical step in fulfilling the climate protection regime.

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