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## **ESCAPING CLIMATE CHANGE: THE NEED FOR LEGAL RECOGNITION OF ENVIRONMENTAL REFUGEES**

### **Introduction:**

Today, climate change is one of the greatest challenges faced by the world, threatening the existence of all and every lifeform on Earth. The increasingly frequent occurrence; in its extremity, of events arising due to changes in climate and the degradation of natural resources have forced the displacement of a large scale of people from their homelands, abandoning their way of life, for however brief a time, to escape the consequences of climate change. This may include the unsettling surge in temperature, sea level, or the occurrence of natural disasters such as floods, droughts, hurricanes, or windstorms. Although the term is not internationally recognised, these individuals are generally referred to as ‘environmental refugees’ or ‘climate refugees’. Although the literature surrounding the issue has evolved in recent years, the lack of legal protection for environmental refugees in international law remains a glaring problem that needs to be addressed. The present article makes a candid effort to reinforce this very notion, to starkly emphasise the despair with which these refugees struggle to be recognised under the law and the current status quo of the environmentally-induced refugee crisis.

### **The pressing concern in the international arena**

While migration is not a new phenomenon, it is usually associated with people fleeing from war, conflict or human rights abuses, overshadowing the extreme catastrophes and significant environmental crises that have driven people and organisations to migrate. However, due to increased human activity, environmental changes are happening more frequently and reaching levels that are considered irreversible. According to the data released by the United Nations High Commissioner for Refugees (UNHCR), the number of people displaced due to drastic climatic

change has increased to 21.5 million since 2010, noting that “in addition to sudden disasters, climate change is a complex cause of food and water shortages, as well as difficulties in accessing natural resources”.<sup>1</sup>

As per Article 1 of the United Nations Convention Relating to Status of Refugees (The Refugee Convention), a refugee is defined as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”<sup>2</sup>

Such a narrow-clad definition fails effectively to include people who leave their homes due to environmental shifts or disasters. Even if a state has ratified the Refugee Convention, they are not required by law to accept refugees who have been uprooted due to environmental change. Despite the mounting focus and discourse on the relationship between environmental changes and refugees, whether caused by nature or humans, there is currently no established legal language or efficient system in place for addressing environmental refugees.

### **Emergence of Legal Status for Refugees**

History has been the darning witness to forced migration, having seen people leave their homelands due to religious persecution in the sixteenth and seventeenth century, and later as a result of the brutal atrocities of war and beyond, travelling across borders seeking some semblance of security. While many countries kept an open mind in response to the problem, nevertheless, in the later part of the twentieth century, borders were slammed down as countries started instituting more stringent regulations and limitations on immigration, leaving migrants exposed and destitute. But with the end of World War II and with the formation of the United Nations, there was a shift in perspective as one of the most prominent conventions concerning refugees, the Refugee Convention of 1951, came into force along with the establishment of UNHCR, as a subsidiary organ of the UN General Assembly, based on a humanitarian response to the displacement of people in Europe after the War.<sup>3</sup>

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<sup>1</sup> UNHCR, *Data reveals impacts of climate emergency on displacement*, <https://www.unhcr.org/en-us/news/stories/2021/4/60806d124/data-reveals-impacts-climate-emergency-displacement.html> (Last visited 17th Nov, 2022)

<sup>2</sup> Article 1, United Nations Convention Relating to Status of Refugees (1951)

<sup>3</sup> David Keane, *The Environmental Causes and Consequences of Migration: A Search for the Meaning of Environmental Refugees*, 16 GEO. INT'L ENVTL. L. REV. 209 (2004)

In 1992, the UNFCCC and Kyoto Protocol were instituted to tackle climate change. At the time, the potential impact of migration was not taken into account, leading to the exclusion of many individuals who required protection. Nevertheless, India's climate change action plan proved successful as it recognized the socioeconomic implications for health, demography, and migration.<sup>4</sup> Additionally, the 1984 Cartagena Declaration on Refugees broadened the definition to encompass environmental refugees, a concept that has since been incorporated into numerous regional laws. Yet, struggling migrants being turned away at the borders, and refused asylum merely because they don't fit within the defined spectrum brings attention to the grim reality and how little we've come from before.

### **The Forgotten Victims of Today -**

Environmental migration is becoming increasingly common in the contemporary era. 135 million people in The African Sahel, a semi-arid strip stretching from Mauritania to Somalia, is at particular risk from desertification. Continuous population growth in the area, combined with the unwarranted exploitation of environmental resources, has led to irreversible depletion, frequent droughts, and ultimately forced migration.<sup>5</sup> Similarly, droughts and erratic rainfall in the northeast of Brazil in the 1980s and 1990s led to a high rate of emigration from the region, as did flooding in Bangladesh. Haitians have also migrated due to a depletion of environmental resources and political tyranny, while the people of Tuvalu are in danger due to rising sea levels, it is emphasised that "the people of Tuvalu would soon have to follow their island to a salty demise or move to higher ground."<sup>6</sup>

Although some scholars have strongly criticised the inclusion of other criteria such as environmental change within the ambit of the definition, alarming reports indicate that millions of individuals around the globe are at risk of environmental migration caused by climate change, leading to the conviction that environmental refugees should be granted the same rights as traditional refugees.<sup>7</sup> The ability to cultivate food may be reduced in some areas, and ecosystem

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<sup>4</sup> Paramjit Jaswal, *Climate Change: Challenges and Opportunities in International Law*, Journal of the Indian Law Institute, Vol. 55, No. 1, pp. 45-58 (2013)

<sup>5</sup> Norman Myers, *Environmental Refugees*, Population and Environment, vol. 19, pp. 167-182, 1997

<sup>6</sup> Statement made by Prime Minister Kausea Natano, SPREP, <https://www.sprep.org/news/tuvalu-is-sinking-prime-minister-natano-tells-world-leaders-grim-reality-of-atoll-nation> (Last Visited on 23rd Mar, 2024)

<sup>7</sup> According to the 1990 assessment of the IPCC, it was warned that 'large-scale human migration could be the single most significant impact of climate change'. IPCC, *Climate Change: The IPCC 1990 and 1992 Assessments*, <https://www.ipcc.ch/report/climate-change-the-ipcc-1990-and-1992-assessments/> (Last visited on 22nd Mar, 2024)

services like clean water and fertile soil will be compromised. Extreme weather events and rising sea levels will cause a shift in population, while low-lying coastal areas will be destroyed, forcing millions of people to flee permanently.

The benchmark set in the case of Ioane Teitiota<sup>8</sup>, where he was denied refugee status by the Supreme Court of New Zealand despite having a valid claim, highlights the urgent need to broaden the concept of "refugee". The UN Human Rights Committee (OHCHR) ruling in Teitiota's favour was a milestone judgement that declared that 'states cannot deport people who experience difficulties due to climate change that infringe their right to life'. Alas, the lack of authority of OHCHR rendered the decision almost useless since there was no change made to his refugee status despite the judgement delivered in his favour.

As population displacement due to climate change becomes increasingly prevalent, there rises a pressing need to prioritise and protect the rights of those affected. The UN Refugee Convention and multilateral agreements must be expanded to include individuals who are forced to relocate due to environmental changes. By giving environmental refugees the rights and attention they deserve, we can hope to create a better world.

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<sup>8</sup> Teitiota v. Chief Executive Ministry of Business, Innovation and Employment, CCPR/C/127/D/2728/2016