



“Climate Refugees” and the Role of International Law

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Despite huge numbers of people being forced to leave their homes a result of climate change, the governance of climate refugees represents a gaping hole in international law.

Author's note: *This piece is based on the author's chapter titled "A New Category of Refugees? 'Climate Refugees' and a Gaping Hole in International Law" in 'Climate Refugees': Beyond the Legal Impasse? (Simon Behrman & Avidan Kent, eds., 2018, Routledge).*

People rarely move solely for climate-related reasons. It is often the last resort when all other efforts have failed. The term "climate refugees" is increasingly being used to describe those who are being displaced due to adverse consequences related to climate change. Although used by scholars and laymen alike, it is not a legal term and its use in the legal context is misleading. This piece discusses the current legal lacuna governing climate refugees and the proposals that have been advanced to address the protection gap. It concludes with some recommendations for future action.

Climate change and forced human migration

We are living through a time when states are increasingly paranoid about borders and threats to their national security. At the same time, displacement associated with climate change could make current borders superfluous. Both severe weather events and slow onset events such as sea level rise can give rise to displacement. Inhabitants of small island states will be the hardest hit. From islands in the Caribbean to those in the Pacific are all affected by severe

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weather events as well as sea level rise. These populations will have to be relocated eventually and some have already moved to safer grounds. Low-lying and coastal cities are also affected. Sadly, many people will lose their homes permanently.

Because climate change is not the only trigger that makes people move, it is hard to find precise numbers of those who will be forced to move because of climate change. Predictions range from 20 million to 200 million of environmental refugees by 2050 but these figures are contested. A common myth surrounding forcible displacement is that these hapless people will flock to countries in the Global North in search of a better life. In fact, some politicians in the Global North paint this picture to instill fear in their people that refugees will take their resources away. The truth cannot be any further from this. The countries that host the greatest number of refugees and displaced persons are, in fact, in the Global South (Turkey, Pakistan and Lebanon were the top three hosts of refugees in 2015) - countries that can barely support their own populations.

The legal landscape

Contemporary international law governs only political refugees – those who are fleeing persecution – and does not extend to climate refugees. The legal definition is clear. According to the 1951 Geneva Convention on Refugees adopted in the aftermath of World War II, a refugee is a person who:

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“ 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 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 and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. ”

While the definition of internally displaced persons under the [UN Guiding Principles](#) and the [Kampala Convention](#) (a regional treaty based on the Guiding Principles applicable to Africa) is wider and covers those who are fleeing situations of generalized violence and natural or human-made disasters, there is currently no legal framework governing “climate refugees.” Given the projected numbers of people who may be displaced due to climate change, this legal lacuna is quite worrying.

For a long time, the UN Agency in charge of refugees, the United Nations High Commissioner for Refugees ([UNHCR](#)), refused to acknowledge that environmental/climate refugees needed to be recognized as a distinct category

needing protection. In fact, former High Commissioner for Refugees, Sadako Ogata, believed the term "environmental refugee" was a misnomer. Since then, the UNHCR has changed its position drastically, presumably in light of the increasing incidence of climate-related severe weather events and the influx of climate refugees. It even established an [Advisory Group on Climate Change and Human Mobility](#). The [International Organisation for Migration](#), on the other hand, always addressed the issue of environmental migrants and when it became a related agency of the UN in 2016, it provided the organisation with the opportunity to work with the UNHCR to address the plight of climate refugees. Despite the narrow definition of refugees, the UNHCR has helped victims of disasters and those fleeing violence even though they do not strictly fall within its mandate.

Proposals that have been advanced

Many proposals have been advanced to address climate refugees, although none of them comprehensively addresses the issue of cross-border movement of people associated with climate change. The [Nansen Initiative](#), based upon a pledge made by the governments of Switzerland and Norway, recognizes that forced displacement related to disasters is a reality and among the biggest humanitarian challenges facing the international community. The Nansen Initiative has gained considerable traction and is the only framework that seeks to govern cross border displacement. However, confining the framework to climate displacement due to severe weather events is rather restrictive as those who are displaced due to other consequences associated climate change, such as sea level rise, will not fall within this framework.

The [Peninsula Principles on Climate Displacement](#) proposed by [Displacement Solutions](#) cover both sudden and slow-onset event but are limited to internal

displacement. ‘Climate displacement’ is defined as: “Movement of people within a State due to the effects of climate change, including sudden and slow-onset environmental events and processes, occurring either alone or in combination with other factors.” However, since these principles are confined to internal displacement, the existing UN Guiding Principles on Internal Displacement would be applicable.

On the other hand, the [Draft Convention on the International Status of Environmentally-Displaced Persons](#), proposed by the University of Limoges, purports to be all-inclusive and is not limited to climate refugees. It defines “environmentally-displaced persons” as:

“ “Environmentally-displaced persons” are individuals, families, groups and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions, resulting in their forced displacement, at the outset or throughout, from their habitual residence. ”

According to the [Draft](#), parties should undertake measures “to protect environmentally-displaced persons in conformity with human rights law guaranteed by international law and to ensure the full exercise of those rights specifically set forth by the present text.” They purport to cover both internal

and cross border displacement. While this seems to be the best attempt to cover all environmentally displaced persons including climate refugees, confining the definition to "sudden or gradual environmental *disasters*" is too restrictive. These principles recognise that climate displacement is a matter of global responsibility and that states have the right to seek assistance from other states and relevant international agencies. Most proposals are reluctant to address the elephant in the room – cross-border displacement due to climate change, very likely to be in large numbers.

Recent developments

For the first time in the history of climate negotiations, climate displacement was mentioned in [climate documents](#) at COP21. The Executive Committee on Loss and Damage was instructed to establish a taskforce on climate displacement and to develop recommendations for integrated approaches to avert, minimize and address climate displacement.

The taskforce was established in March 2017 and a stakeholder meeting was held in May 2018 to make recommendations for integrated approaches to address climate displacement. Several organisations, including the Mary Robinson Foundation-Climate Justice and Oxfam, made submissions. According to [a press release](#) issued after the meeting the taskforce has undertaken nine mapping exercises, covering policy, practice and data related to human mobility in the context of climate change. The taskforce has identified several gaps related to international law, operational implementation, funding, and data collection and analysis. The taskforce plans to present their report at [COP24](#) in Poland.

The way forward

Despite a slow start and considerable lethargy, climate negotiators seem to have finally woken up to the reality of climate displacement. Establishing a taskforce on the issue was an important step forward. Recognizing migrants as a category to be protected as well as the inclusion of a provision on human rights and climate justice in the [Paris Agreement](#) were significant milestones.

There are several simple steps that states can take to address the protection gap relating to climate displacement. Since most of the displacement will likely be internal, the easiest step is to expand the UN Guiding Principles on Internal Displacement to cover situations other than disasters. While these are non-binding guidelines (except for Africa which has adopted the Kampala Convention based on the Guiding Principles), they enjoy wide support and will trigger involvement of the UNHCR and the Red Cross. Second, states should consider expanding the Nansen Initiative to cover slow onset events but the reluctance to do so is understandable.

Of course, the best approach to avoid mass movements of people is to invest in mitigation measures to minimize the catastrophic consequences that give rise to displacement. Because we have locked in a certain amount of adverse consequences due to the greenhouse gases that we have already emitted, the next best option is to provide adaptation assistance to the most vulnerable nations that are likely to generate large numbers of climate refugees.

Addressing climate displacement within the UNFCCC framework makes sense – after all, these displacement scenarios are largely the result of climate change. This would avoid the need to design a new legal framework or to amend the existing refugee framework which many scholars have cautioned against. We can use the same principle that underlies the legal framework governing political refugees to protect climate refugees – the collective responsibility of

the international community when individuals are no longer able to avail themselves of the protection of their own state, because it is overwhelmed with severe weather events, lacks resources or because the state itself may be disappearing. Due to the inverse relationship between contributions and impacts, principles of justice and equity dictate that major emitters should shoulder a greater share of the burden. Moreover, because obligations under both the UNFCCC legal regime and human rights are universal, these regimes provide us with a good framework to protect the rights of climate displaced persons. With regard to the inhabitants of small island states, additional legal questions must be addressed, and we should start planning now for the eventuality if we have to relocate them *en masse*.

No state will be able to insulate itself from the adverse consequences of climate change. By planning ahead, we will be able to address the protection gap before we are faced with a humanitarian catastrophe. If we are serious about protecting future generations and indeed our planet, we do not have much time to lose.

Image credit: Oxfam International/[Flickr](#).

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