

Climate Refugees: Exposing the Protection Gap in International Law

Aram Kamali

August 2016



A publication of the Climate Institute
1400 16th St. NW, Suite 430, Washington, DC 20036

Introduction

“If you were faced with the threat of the disappearance of your nation, what would you do,” asked Tuvalu’s Prime Minister at the 2014 Conference of the Parties (COP20).¹ It is precisely this sense of anxiety that underlies the global effort toward a comprehensive climate governance system. The submission of Intended Nationally Determined Contributions (or INDCs), as well as of National Adaptation Programmes of Action, comprise the foundation upon which this emergent regime is built.

In spite of increased cooperation with regard to mitigation, the implications for vulnerable communities have yet to be addressed in global policy frameworks. It is commonly acknowledged that while climate change does not intrinsically induce migration, it produces conditions that render certain environments increasingly uninhabitable. Agricultural drought, groundwater salinization, and increasingly frequent extreme weather events are key factors threatening livelihoods across the globe.

Given this grim forecast, it is imperative to evaluate the ability of the international community, under present circumstances, to accommodate anticipated movements of forced displacement. Only by analyzing contemporary migration policies is it possible to a) posit strategies for a more dynamic protection regime, and b) assess whether such measures are actually feasible given the current political climate. Before addressing these issues, however, it is apt to explore how, why, and to what extent forced displacement will manifest.

¹ *The Climate Institute | Climate Refugees: Exposing the Protection Gap in International Law*

The Seeds of Vulnerability

As the effects of climate change intensify in the global South, rural-to-urban migration will increasingly prove an inadequate method of adaptation. The case of Bangladesh is particularly illustrative. Under significant duress from climatic variability are the nation's agricultural regions, a large share of which lie along the coast of the Indian Ocean. Due to projected sea level rise, increased soil salinity may reduce the yield of rice – a staple crop upon which numerous farmers rely – by as much as 10 percent.² This destabilization of rural livelihoods has and will continue to increase the rate of migration to the city of Dhaka.³ Situated between four flood-prone rivers, however, the urban metropolis has also grown vulnerable to the effects of climate change. Scientists contend that rapid glacial melting in the Himalayas, along with intensified precipitation patterns, will magnify Dhaka's vulnerability to flooding, cyclones, and storm surges.⁴

Overwhelming policy inaction has further compounded these strains. Traditionally, urban development in Bangladesh has centered on accommodating the burgeoning middle and upper classes.⁵ The historical shortage in affordable housing is now reflected in the growth of informal slums, roughly 60% of which have “poor or no drainage and are prone to frequent flooding.”⁶ This lack of balanced housing policy has therefore left slum inhabitants – a large number of whom relocated due to agricultural disruption – vulnerable to anticipated environmental disasters. As such, Bangladeshi migrants have been forcibly displaced to areas that are just as, if not more, vulnerable to the effects of climate change.

While many of the same issues will plague Pacific Island nations, these communities stand to suffer arguably worse consequences. In Tuvalu, a nation composed of three reef islands and six low-lying atolls, the highest point of elevation is estimated to be merely 5 meters.⁷ A projected sea level rise of 1-2 meters by the century's end – considered possible under a business-as-usual emissions scenario⁸ – thus holds grave implications for national livelihood. The island Funafuti, for example, accommodates over half of Tuvalu's population and hits a peak elevation of 3 meters above sea level.⁹ In contrast to Bangladesh, therefore, agricultural disruption and natural disasters are not the chief causes of concern; rather, it is the complete loss of the physical environment.

Patterns of forced displacement are already evident in the Oceanic region. In 2007, the Teitiota family relocated to New Zealand from the island-nation of Kiribati. Following the termination of their visas in 2010, the family applied for refugee status citing “changes to [their] environment in Kiribati caused by sea-level-rise associated with climate change.”¹⁰ Despite the ostensible legitimacy of this claim, New Zealand's government rejected it on the basis of inconsistency with the existing refugee regime; namely, that a) the Teitiotas would not “face serious harm” upon returning to Kiribati, and b) there was insufficient evidence to implicate the government in “failing to take steps to protect their citizens.”¹¹ Regardless of its outcome, the appeal exemplifies the urgency of enhanced migration planning at the international level.

Identifying the Protection Gap

The above examples highlight the severe impact of climatic change on human settlements. While environmental concerns have long been identified as a factor in migration, it is now beyond doubt that, due to climate change, the nature of migration is becoming increasingly forced in character. For this reason, scholars typically distinguish “climate refugees” as those displaced by at least one of three phenomena: 1) water scarcity and drought, 2) extreme weather events, and 3) sea level rise.¹²

Although this rough typology has been echoed across the academic community, establishing a “climate refugee” regime remains a contested issue at the international level. The criteria by which refugees are classified stems from the 1951 Refugee Convention; the mandate defines a refugee as a person who, owing to a well-founded fear of persecution on the basis “of race religion, nationality,” or “membership of a particular social or political group,” has fled his or her homeland.¹³ This status thus applies only in scenarios in which a government is shown to be an agent of targeted persecution. For this reason, climate refugees are generally denied protection under the existing international framework.

Consistent though it may be with the letter of the Convention, however, this reading is clearly inconsistent with its spirit. Just like those fleeing political or other forms of persecution, climate refugees are fleeing harms from which their government cannot or will not protect them and that they cannot avoid in any other way than by leaving. The United Nations High Commissioner for Refugees denies this parity, contending that in contrast to victims of political persecution, environmental migrants can still “rely on the protection of their national government.”¹⁴ But in the

two cases considered earlier, this is manifestly not the case. Inequitable infrastructural investment in Dhaka suggests that the government has done little to protect the urban poor from climate change-related disasters. And in the Pacific Islands, the anticipated inundation of low-lying islands implies that no government policy, however aggressive, could possibly protect those at risk. Under these conditions, there is no option but to plead for international assistance.

Evaluating a Potential Amendment

Broadening the scope of the 1951 Convention seems a logical solution to the protection gap. Jessica B. Cooper, an environmental lawyer, was one of the first to contend that a legal basis exists to amend the refugee definition. She centers her argument on the Universal Declaration of Human Rights, upon which all instruments of international humanitarian law – including refugee resettlement – are founded.¹⁵ The document affirms that all people have “the right to security in the event of unemployment... or other lack of livelihood in in circumstances beyond [their] control.”¹⁶ Clearly, victims of climate change grapple with environmental conditions that are beyond their control; by neglecting these victims, therefore, the 1951 Convention is ostensibly inconsistent with the tenets of international law.

Although an amendment appears justified on moral and legal grounds, it will likely encounter considerable resistance from the international community. Stephen Castles, former director of the International Migration Institute, contends that “there is no consensus for extending the refugee regime” because “receiving states want to restrict it [rather] than improve it.”¹⁷ This reluctance on behalf of developed nations is somewhat understandable. Germany, for example, now faces a severe

housing shortage after accepting 1.1 million refugees in 2015. Indeed, the Institute of the German Economy forecasts that an additional 430,000 homes are needed to accommodate the dramatic influx of migrants.¹⁸ Considering these political and economic strains associated with mass refugee integration, governments are unlikely to expand their already-tenuous responsibilities.

Conclusion

A deepening crisis of forced displacement appears regrettably imminent. In spite of an academic consensus acknowledging the climate change-migration nexus, there exists no international framework within which to protect those at greatest risk. Amendments to the 1951 Refugee Convention have indeed been proposed, yet there is little, if any, political will to mobilize this urgent protocol.

Albeit inadequate, regional treaties may prove the only feasible solution to the protection gap. Because of the near certainty of mass displacement in the Oceanic region, for example, it would behoove importing nations – namely New Zealand, Australia, and the United States – to develop bilateral agreements on migration with small-island states. Establishing such accords would allow governments to plan accordingly for the anticipated effects of migration, including an increase in both labor and housing demand. However unpalatable such action may seem, grappling with issues related to forced displacement will prove the prudent, rational, and ultimately inevitable approach.

Finally, increased cooperation with regard to physical adaptation should also take precedence. Given the widespread resistance against a strengthened refugee regime, the international community could

elect, as rudimentary compensation, to increase its aid to the most vulnerable societies. An example would be to fund climate resilient infrastructure in cities such as Dhaka, where, as we have seen, millions remain vulnerable due to the inaction of their national government. The looming displacement crisis could be mitigated to a certain degree through cooperation on projects like this. While this is far from an adequate blueprint, the prevailing political climate leaves few alternatives, at least for the moment.

Aram Kamali is a Graduate Research Fellow at the Climate Institute and a Master's student at the London School of Economics and Political Science.

Notes

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