

**TOWARDS DETERMINING THE LEGAL STATUS OF CLIMATE
REFUGEES: ANALYSIS OF THE HUMAN RIGHTS
PROTECTION STANDARDS AND STAKEHOLDER MAPPING**

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entitled

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STANDARDS AND STAKEHOLDER MAPPING**



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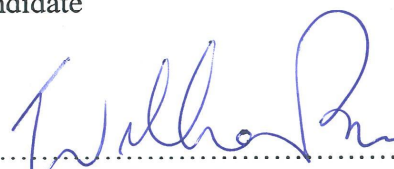
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TOWARDS DETERMINING THE LEGAL STATUS OF CLIMATE REFUGEES: ANALYSIS OF HUMAN RIGHTS PROTECTION STANDARDS AND STAKEHOLDER MAPPING

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ABSTRACT

It is estimated that by the end of this century the number of ‘climate refugees’ will reach 200 million. But despite this alarming number, the legal status of those who flee from environmental disruptions remains largely undefined. The 1951 Refugee Convention does not include environmental changes as grounds for protection, therefore it is not applicable. There is no other international or regional instrument dedicated solely to protecting the rights of environmental migrants.

This thesis deals with two main aspects of ‘climate refugee’ protection. Firstly, it identifies the complementary protection instruments and assesses their significance in solving the problem of ‘climate refugees’. Secondly, it presents an overview of strategies and positions of various actors engaged in the debate on defining the legal status of ‘climate refugees’: the national governments of both sending and receiving states, the world of academia, civil society and international organisations. It maps the commonalities and differences in their approaches and strives to establish what the international community does in order to resolve the problem ‘climate refugees’.

And finally, the thesis arrives at a conclusion that ‘climate refugees’ are a neglected group with very bleak prospects and few options. The complementary protection instruments are inadequate and often exclusive in applicability. Migration in general is a sensitive topic and it is unlikely that the richer countries of the West will open their doors to even more migrants. In addition, the stakeholders involved in the debate lack a unified voice on what should be done. So far, despite the growing urgency, the international community has not delivered a tangible solution or even a concrete proposal on how to better protect the human rights of ‘climate refugees’.

KEY WORDS: CLIMATE REFUGEES/ENVIRONMENTAL MIGRATION/CLIMATE CHANGE/
REFUGEE CONVENTION/HUMAN RIGHTS OF REFUGEES

73 pages

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LIST OF ABBREVIATIONS

ADB	Asian Development Bank
AWG-LCA	Ad-Hoc Working Group on Long-term Cooperative Action
BCCSAP	Bangladesh Climate Change Strategy and Action Plan
CEAS	Common European Asylum System
CESCR	Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
COINET	Climate Outreach and Information Network
DED	Deferred Enforced Departure
DS	Displacement Solutions
ECoHR	European Court of Human Rights
EJF	Environmental Justice Foundation
EU	European Union
GRC	Geneva Refugee Convention
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICSECR	International Covenant on Social, Economic and Cultural Rights
IDP	Internally Displaced Persons
IOM	International Organisation for Migration
IPCC	International panel on Climate change
LDC	Least Developed Countries
NAPA	National Adaptation Plan of Action
NGO	Non-governmental Organisation
NRC	Norwegian Refugee Council
OECD	Organization for Economic Cooperation and Development
PAC	Pacific Access Category
QD	Qualification Directive
R2P	Responsibility to Protect

LIST OF ABBREVIATIONS (cont.)

SHP	Special Humanitarian Program
TPD	Temporary Protection Directive
TPS	Temporary Protected Status
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Fund
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner on Refugees
UNPF	United Nations Population Fund
USA	United States of America
WB	World Bank

CHAPTER I

INTRODUCTION

1.1 Introduction

Migration is a phenomenon just as old as the human race itself. Environmental disruptions have always played a major part in triggering peoples' movement and migration is often seen as a natural way of adapting to changes (McAdam 2011:2). What is 'new' is the rapidly growing number of people displaced a result of anthropogenic environmental disruptions and unsustainable human actions leading to climate change.

The United Nations Framework Convention on Climate Change (UNFCCC) defines climate change as 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods'. In its Fourth Assessment Report (IPCC AR4) issued in 2007, the Intergovernmental Panel on Climate Change (IPCC) presents a clear scientific consensus that global warming 'is unequivocal and that, with more than 90 per cent certainty, most of the warming observed over the past 50 years is caused by manmade greenhouse gas emissions'(UNGA A/HRC/10/61).

Moreover, already in the 90s, IPCC issued a statement warning that: 'the gravest effects of climate change may be those of human migration' (IPCC, 1990, 20). While the cause of climate change is a highly controversial and disputed topic, its very existence and its impact on human security and economic and social rights is beyond question.

Scholars and scientists agree that climate change significantly impacts the capacity for human subsistence (Boano 2008:3). According to the Norwegian Refugee Council (NRC) 'as many as 20 million people may have been displaced as a result of climate-induced sudden onset natural disasters in 2008 alone' (Everland 2009). The impact of slow-onset environmental changes on migration is much more complex. The

slow-onset changes such as rising sea levels, droughts and desertification are permanent and irreversible. Myers estimates that by the end of this century the number of people displaced as a result of climate change will reach 200 million (Myers 2002:611). These will include both internal and international displacements.

The legal status of those who cross international borders remains undefined. Despite climate change being a hot topic in the recent years, relatively little tangible results have been achieved order to secure the future of those who become victims of climate change. Antonio Guterres, UN High Commissioner for Refugees expressed his concern in this regard: 'although there is a growing awareness of the perils of climate change, its likely impact on human displacement and mobility has not received the attention it deserves' (UNHCR 2009).

In the recent years, however, the presence of the topic in the media and in the politics has become much more 'visible' and the debate on regulating the status of 'climate refugees'¹ is gaining the momentum. This thesis is an overview of the current protection standards and the efforts to create new ones.

1.2 Statement of the research problem

The problem of this research is not climate change itself but the undefined legal status of people who suffer as its consequence. The research will focus on people who are displaced internationally as they seem to be particularly neglected by international law (IDPs fall under the UN Guiding Principles on Internal Displacement and they are also subject to national protection frameworks).

The most prominent and referred-to refugee protection instrument, the Convention Relating to the Status of Refugees and its 1961 Protocol does not apply to 'climate refugees'. The definition of a refugee limits the qualifying criteria to 'a well-founded fear of being persecuted for reasons of race, nationality, religion, social group or political opinion'. This narrow definition does not leave much room for interpretation and thus it leaves 'climate refugees' out of the convention's scope

¹The term 'climate refugee' is used in this thesis for the purpose of describing the victims of displacement driven by environmental disruptions occurring due to both climate change and unsustainable human actions. Legally speaking, the term is not accurate (which is discussed in more detail later in Chapter 2) but it is widely used by legal scholars and academics; it is also used throughout this thesis.

(Williams 2008:507). Complementary protection, regional and national laws, etc. are also limited in their applicability and effectiveness as they are mostly based on temporary and humanitarian assistance granted on a mostly discretionary basis (Williams 2008:514). Moreover, in very early stages of the research it became evident that a lot of the discussion is devoted to the reasons for plight, where perhaps the focus should be more on the needs of the victims. All this will be analysed in more detail in subsequent sections.

Based on the above, the following question arises: Having recognised the gravity of the situation, what does the international community do in order to accommodate the growing number of 'climate refugees' and to ensure they are treated in a humane and dignified way?

The main focus has been on different approaches taken by the advocates of the legal recognition of 'climate refugees'. Different groups and governments, depending on which side they are on (sending or receiving) have different ideas on what the legal status of 'climate refugees' should be. The proposals range from amending the already existing refugee framework to creating a new, separate document (either legally binding or not). There are also debates on whether a global document is the answer, or perhaps the international community should opt for smaller scale, regional solutions. The aim of this thesis is to analyse different advocacy approaches and to assess their potential impact on the ground.

1.3 Research objectives

The main objective of this research is to study the involvement of different stakeholders in creating the protection framework for 'climate refugees'. In order to achieve this, a number of more specific objectives were identified:

- 1) To identify the main actors involved in the policy making in the context of 'climate refugees' as well as their roles;
- 2) To identify current protection standards and to assess the extent to which they solve the problem of 'climate refugees';

3) To make recommendations through which the policy makers could arrive at common goals in order to guarantee that the human rights of 'climate refugees' are guaranteed and protected.

1.4 Research questions

For the purpose of analyzing and investigating the above objectives, this research poses the following questions:

- 1) Who are the main actors involved in the policy making in the context of 'climate refugees' and what are their roles?
- 2) What are the current protection standards and to what extent do they solve the problem of 'climate refugees'?
- 3) What can and should be done in order to ensure that the human rights of 'climate refugees' are guaranteed and protected?

1.5 Research methods

1.5.1 Data Collection

The research is qualitative in nature. Data for the research was collected mostly from secondary but also from primary sources.

1.5.1.1 Secondary data

Secondary data was gathered from documentary research. During the research, a wide range of documents were studied: over twenty academic papers written by both supporters and opponents of creating the global 'climate refugee' protection regime; thirteen legal documents (including international conventions and national laws); four court cases (three presented at International Court of Justice and one at European Court of Human Rights); nine government reports and actions plans (i.e. 'National Adaptation and Plan of Action' of Bangladesh or the UK 'Stern Review'); reports and working papers of seven civil society groups (i.e. Broot für die Welt, Friends of the Earth); multiple UN resolutions and reports (i.e.

UNHCHR's 'Report on the relationship between climate change and human rights'); two press releases and a radio interview.

1.5.1.2 Primary data

Primary data was collected through Expert interviews and a questionnaire.

1.5.1.2.1 Interviews

Four expert interviews were conducted. Three of the interviews were face to face, one via Skype. The interviewees were:

1) Professor Roger Zetter, Director of the Refugee Study Centre of Oxford University. Interview held in Oxford on 13 April 2012;

2) Ms Hanna Smith, Defending Rights Programme Manager of Climate Outreach and Information Network (COINET). Interview held in London, 12 April 2012;

3) Ms Tori Timms, Campaigns Officer at the Environmental Justice Foundation (EJF). Interview held in London 11 April 2012;

4) Mr Scott Leckie, Director of Displacement Solutions. Interview held via Skype on 30 April 2013.

1.5.1.2.2 Questionnaire

A questionnaire with 100 respondents of various nationalities and backgrounds was undertaken. The questionnaire was designed to test the general knowledge as well as the attitude towards climate change induced migration. Eighteen different nationalities participated in the survey with a third of respondents coming from the countries of the Global South (Thailand, Philippines, Kenya, Venezuela, and Vietnam). The questionnaires were distributed to the random members of the public in the city centre of The Hague, the Netherlands but also to the circle of acquaintances (family and close friends were not included in the survey as their familiarity with the research could potentially influence their responses).

1.6 Limitations of the research and ethical issues

Financial constraints have slightly influenced the flow of the research as it would have been interesting to interview the victims and the potential victims of climate displacement in the affected regions. And finally, the topic itself is relatively new and politically sensitive which limited the availability of relevant literature.

The research was mostly based on textual analysis; therefore no ethical issues involved were involved. The interviewed experts are active members of the civil society and academia who openly express their beliefs and share their research findings. They did not express any concern related to disclosing their names and affiliations. Moreover, no minors or members of vulnerable groups have been interviewed.

1.7 Structure of the thesis

The thesis has been divided into six main chapters. The first chapter provides an overall introduction to the thesis. The second chapter deals with concepts and definitions but also provides evidence that climate induced displacement is an ongoing and a rapidly growing phenomenon. The third chapter illustrates how climate change adversely impacts the human rights and may eventually cause migration. The fourth chapter focuses on the Global South which is believed to become the most affected region in terms of climate displacement. In particular, the national policies and displacement scenarios in Bangladesh and Small Island states in the South Pacific are discussed (Kiribati, Tuvalu and others)². The fifth chapter will focus on the responses of the Global North. The protection policies in the European Union, the United States and Australia are discussed. Moreover, this chapter is a collection of various ideas and strategies of the developed world's politicians, academics and the civil society. The last chapter will provide a summary and recommendations.

²Bangladesh, Kiribati and Tuvalu have been selected for the research due to their high vulnerability to climate change and the inability to cope with its consequences. In this chapter I will analyse these countries' protection and adaptation mechanisms but also the governments claims towards the international community, and more specifically towards the countries of the Global North. This will illustrate the discrepancy between the interests of the Global South and North.

CHAPTER II

CLIMATE REFUGEES: INTRODUCING THE CONCEPT

2.1 Introduction

This chapter is an introductory chapter which provides the background information on 'climate refugees' are and what are the main challenges faced by them. The chapter has been divided into three parts. The first part provides the definitions of the term 'climate refugee'. The second part focuses on the legal significance of the term 'climate refugee' and explains why although it is a widely used working term, it carries no legal significance. And the third part presents the empirical evidence of the rapidly growing phenomenon of the environmentally induced displacement and maps which regions in the world are the most vulnerable to climate change.

2.2 Climate refugee-definition

The term 'climate refugee' was first introduced to the world in the 70's but only defined in the 80's (Boano 2008). The first definition was formulated in 1985 by El-Hinnawi and describes 'climate refugees' as:

'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 jeopardised their existence and/ or seriously affected their quality of life. By the environmental disruption in this definition is meant any physical, chemical and/ or biological changes in the ecosystems (or resource base) that render it, temporarily or permanently, unsustainable to support human life' (El-Hinnawi 1985).

El-Hinnawi identifies four major types of 'climate refugees': those displaced temporarily as an effect of an environmental disaster (natural and man-made); those who flee permanently due to a complete and irreversible destruction of the ecosystems; and those who flee gradually as a result of a progressing degradation of environment and finally those who are displaced as a result of a war-related environmental changes (Boano 2008).

The International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) opposed El-Hinnawi's definition, as in their opinion blaming the plight of 'climate refugees' entirely on environmental disruptions is an inaccurate oversimplification. IOM and UNHCR recognised that as much as environmental changes are a significant contributing factor, it is not necessarily the only one (this will be discussed in more detail in the subsequent sections). Moreover, the lack of distinction between international and international plight has been also criticised by both organisations. In light of this, IOM and UNHCR created their own working definition of the term 'climate refugees' as:

'persons who are displaced within their own country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one' (Bauer 2010).

Norman Myers, one of the most prominent researchers on environmentally-induced migration formulated a definition which additionally distinguishes between internally and internationally displaced victims of climate change as:

'People who can no longer gain a secure livelihood in their homelands because of droughts, soil erosion, desertification, deforestation, and other environmental problems. In their desperation, they feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt. Not all of them have fled

their countries, many being internally displaced. But all have abandoned their homelands with little hope of a foreseeable return' (Meyers 1994).

2.3 Legal significance of the term

Although the term 'climate refugees' is widely used, it carries no legal significance. The definition of a 'refugee' according to the 1951 Geneva Convention is based around very narrow, specific requirements - a person must flee due to their well-founded fear persecution based on race, religion, nationality, membership of a particular social group or political opinion. Climate change and environmental degradation are not within the qualifying criteria, neither are they considered as agents of persecution. The UNHCR expressed serious reservations with respect to the terminology and notion of environmental or 'climate refugees' as these terms have no basis in international refugee law (UNHCR 2008:7). By the same token, McAdam argues that using the term 'climate refugee' is not only 'erroneous as a matter of law, but is conceptually inaccurate as well' (McAdam 2011:3).

Associating the term 'refugee' with people displaced as a result of climate change has been contested by those, who believe that using the term in relation to environmental migrants will only undermine and compromise the seriousness with which the 'classical' (political) refugees are treated (Bauer 2010). On the other hand, the supporters of using this term believe that the very word 'refugee' is a powerful tool carrying moral connotations and implications of extreme vulnerability and the need of protection, therefore 'by using this term, the protection of 'climate refugees' will receive the legitimacy and urgency it deserves' (Biermann and Boas 2010).

Regardless of the number definitions, interpretations and debates over who is a 'climate refugee' and whether or not the term carries any legal significance, the reality on the ground remains unresolved. According to McAdam, singling out those who deserve protection from those who do not based solely on the reasons for plight is arbitrary and unjust. Who is to say that a person who flees due to a sudden natural disaster is eligible for assistance more than a person who flees due to an ongoing degradation of environment? McAdam questions the reasoning of policymakers and

argues that the focus should be shifted from 'what drives the plight' to 'what are the needs of those who flee' (McAdam 2011:14).

2.4 Climate change and migration: empirical evidence

According to the IPCC, 'the net effect of human activities since 1750 has been the one of warming'. Global warming inevitably affects the environment; the number of environmental disasters has doubled from 200 to over 400 in the last twenty years; nine out of ten natural disasters can be attributed to climate change (Kolmannskog and Myrstad 2009:1).

An estimated 262 million people were affected –including displacement– by climate disasters from 2000 to 2004, 98 per cent of the affected populations were those of developing countries. Brown estimates that between 400 and 600 Mexican subsistence farmers abandon their rural homes every day as the arable land becomes gradually salinised and eroded to the point where it is no longer possible to survive off it (Brown 2004). According to the Asian Development Bank (ADB), nearly 4000 villages face abandonment in the Gobi Desert as a result of the desert expansion by as much as 10.5 square kilometer each year (Brown 2004). The 2005 Hurricane Katrina displaced North Gulf residents for months and years. In 2010 the population of New Orleans was still reduced by 25.4% compared to the population size from before the hurricane; neighbouring Texas received over 250, 000 Katrina migrants, many on a permanent basis (Foresight 2011:13).

While the environmental disasters (whether anthropogenic or not) such as flooding, earthquakes, hurricanes, etc. cause mostly temporary displacement, the effects of slow-onset changes such as desertification and rising sea levels are irreversible and force people into a permanent exile. Even though low elevation coastal zones (less than 10 meters above sea level) account for only 2.2% of all dry land, they are home to over 600 million people, nearly half of whom live in the Least Developed Countries (LDC) (Piguet 2008). IPCC estimates that by the end of this century the sea levels will rise between 28 and 43 centimeters. Other scientists are much bolder in their estimations; according to Brown, by the end of the century in some parts of the world oceans will rise by as much as 150 centimeters (Black 2008).

Egypt is estimated to lose 12-15 % of its arable land which will directly affect and potentially displace 14 million people (Stojanov 2004:8). Bangladesh is likely to lose 30% of coastal land which will result in displacement of up to 30 million people before 2050 (McAdam 2011:10).

In the Pacific area there are over half a million people who face an immediate threat of displacement due to rising sea levels (Lynas 2007, 52-53). Southern Pacific has some of the smallest and lowest lying countries in the world. They are also one of the least-developed and poorest ones. If the sea levels keep rising at the current pace, many small, low-lying coastal states will entirely disappear from the surface and their populations will have to be absorbed by third countries. Papua New Guinea's Carteret islands are estimated to be uninhabitable by 2050 (McAdam 2010:8). In 2005, the national government ordered the mass evacuation of the entire population of 980 people from the Carteret islands to the nearby Bougainville (Papua New Guinea). The islanders have become the first 'official' 'climate refugees' who underwent a planned and government-sponsored evacuation (Piguet 2008: 5). They, however, remained within the national borders of their country. The residents of Tuvalu, another small Pacific island-state, are facing a much more complicated challenge. With the lowest elevation point of just one meter above the sea level and the highest at barely 4.5 meters, the entire country is said to become uninhabitable by 2050 (McAdam 2010:8). The population of nearly 12,000 will have to be received by third states on a permanent basis. But in the absence of clear international laws or even guidelines which would govern the relocation, the fate of the islanders and other victims of climate driven displacement remains unclear.

2.5 Conclusion

The term 'climate refugee' was first introduced to the world in the 70's. 'Climate refugee' is a person who has been forced to leave the traditional habitat due to deteriorating natural environment caused by climate change which lowers the living standards and puts survival at risk. Despite it being widely used, the term carries no legal significance. According to international law and the 1951 Refugee Convention, refugees are the victims of persecution based on their race, religion, nationality,

membership of a particular social group or political opinion. Climate change is not considered a qualifying criterion therefore 'climate refugees' do not fall under the same protection as 'classical refugees'. Some argue that using the term 'climate refugee' is erroneous and other terms such as 'migrants' or 'displaced persons' should be used instead. Regardless of the definition and the terminology, the problem on the ground remains unresolved. Over 260 million people were displaced between 2000 and 2004 alone, some of them on a permanent basis, but there is still no law dedicated solely to regulating their status.

CHAPTER III

CLIMATE CHANGE AND MIGRATION: CAUSE AND EFFECT

3.1 Introduction

This chapter demonstrates how climate change adversely impacts human rights which can ultimately lead to migration. Migration is a result of complex socio-economic and political factors. Climate change alone does not cause migration but it can contribute to the deterioration of living conditions to the point where migration is the only logical response. The chapter has been divided into three parts. The first part illustrates the importance of natural environment for the full enjoyment of human rights. Furthermore, this part proves the link between climate change and migration. The second part describes how the severity of the impact and the inability to cope with the changes influence the migration. The third part explains the responsibility to protect the victims of human rights violations in the context of environmental changes.

3.2 Climate change - human rights nexus

Climate change, added to the already existing socio-economic hardships, will aggravate the situation but it will rarely, on its own, cause the migration. Mr. Abu M. Kamal Uddin, the Bangladeshi Government's Disaster Programme Manager accurately described in his own words:

‘Let’s say that one person is able to carry 40 kilograms on his shoulders. That’s his limit. Now, I put another kilogram on top of that. So now the question is: what killed him? Was it the 40 kilograms he was already carrying or the one kilogram I have put on top of that?’ (McAdam 2011:13).

All displaced persons are entitled to their fundamental human rights, such as the right to life, food and water, shelter, adequate housing and movement. These rights are owed to all human beings as enshrined in major international human rights protection instruments, and the reasons for flight as well as the destination should be of no relevance. In this chapter I will illustrate how environmental degradation adversely affects the fundamental rights of peoples and how it may eventually lead to displacement.

Half of the world's hungry people depend for their survival on lands which are inherently poor and which may be becoming less fertile and less productive as a result of the impacts of repeated droughts, fires, floods, climate change and unsustainable land use. Salinisation of arable land, deforestation, desertification and degradation of marine life directly impact the food security of those who live off farming and fishing. Inundation of the land, hurricanes and coastal erosion threaten the physical well-being as well as the right to housing and shelter (UNHRC A/HRC/7/5). Migration is often the most logical response to such circumstances.

The close relationship between the climate change and human rights has been reaffirmed in the United Nations Human Rights Council (UNHRC) resolution on 'Human rights and climate change':

'impacts of climate change would have direct and indirect implications on the effective enjoyment of human rights, e.g. the right to life, the right to adequate food, the rights to highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation' (UNHRC Res. 10/4).

The right to life and the right to healthcare fundamental and inalienable rights and they are a pre-requisite to the enjoyment of all other rights. In case of environmental hazards both of these rights can be seriously endangered. The connection between the right to life and the healthy environment has been supported by Judge Weeramantry of the International Court of Justice (ICJ) who in one of his

rulings stated that: ‘the protection of environment is a vital part of the right to health and the right to life itself.’¹

A number of subsequent judicial rulings have reaffirmed the important role that natural environment plays in the fulfillment of the right to life. In another advisory ruling, the ICJ’s Judges stated that:

‘the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment and the right to life’.²

Interpreted as such, the right to life has been expanded to include the right to healthy environment as a pre-requisite of a survival and, by the same token, some environmental risks could give grounds to claims from the environmentally displaced. In fact, Tully argues that ‘neighbouring states are obliged to relocate individuals at risk from immediate and known risks in order to respect their right to life’ (Tully 2007:13). According to Tully’s reasoning, a person whose house is in danger of being permanently inundated by rising sea waters could potentially claim asylum in a neighbouring country based on the threat to their right to life (Zetter 2011:17). However, in the absence of a clear-cut internationally binding agreement, Tully’s theory remains a morally just idea with no spine.

According to article 25 of the Universal Declaration of Human Rights (UDHR), everyone has the right to the standard of living which is adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care. Furthermore, the International Covenant on Economic, Social and Cultural Rights (ICESCR) additionally underlines the importance of ‘the fundamental right of everyone to be free from hunger’ (ICESCR Art 11(2)).

¹International Court of Justice Case concerning Gabcikovo-Nagymaros Project (Hungary/Slovakia)

²International Court of Justice Ruling on Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I. C. J. Reports 1996, pp. 241 -242, para. 29.

The African Charter and the Organisation of American States consider the right to healthy environment as an integral part of the right to life and health. In its landmark case, the Organisation of African Union found the Nigerian Government guilty of violating the African Charter of Human and Peoples Rights. It was ruled that the Nigerian authorities failed to protect the Ogoni community from the consequences of the oil operations which caused air pollution, contamination of the soil and water supplies, decrease in fisheries and harvesting leading to malnutrition and starvation in the affected area (which subsequently led to displacement). In addition, the Nigerian Government was found guilty of violations of ICESCR which protects the cultural right of the people to cultivating their traditional subsistence lifestyle, the right to self-determination protected by ICCPR which gives the people the right to 'freely dispose of their natural wealth and resources', and the right to adequate housing and standard of living of people whose very survival so much depends on the natural environment (Salcedo Mesa 2007:96).

3.3 Vulnerability and resilience

People's vulnerability to climate change depends on the extent to which they depend on ecosystems and the extent to which they are able to adapt to changes which occur as a result of climate change. Those who rely on the natural environment for subsistence suffer the most:

'the more people are dependent on climate sensitive forms of natural capital, and the less they rely on economic and social forms of capital, the more at risk they are from climate change' (Barnett and Adger 2007:3).

Their vulnerability is additionally determined by the extent to which the affected communities are able to resist and adapt to the risks posed to the economic and environmental rights and 'the ability to absorb the shocks, the autonomy of self-organisation and the ability to adapt both in advance and in reaction to shocks' (Adger 2006:269). Needless to say, it is the poorest groups in the society that are affected the

most and are most likely to become displaced; they are the most exposed, defenseless and at the same time, they have very few tools at their disposal to adapt to changes and recover from disasters.

3.4 Responsibility to Protect (R2P) in the environmental displacement context

Under international law, national governments have the primary responsibility to protect the population in its territory. The governments have both negative and positive obligations towards the people within their jurisdiction; they must not only abstain from any actions through which the rights are violated but they also are obliged to pro-actively engage in protecting the rights against the violations by third parties. In the environmental migration context, this means that the governments are obliged not only to preserve the natural environment and prevent its degradation by the non-state actors, but also to secure timely, efficient and sustainable solutions should a disaster occur.

Under ICSECR, the primary responsibility for the fulfillment of right lies with the country of origin but the third states are also strongly encouraged and even obliged to ‘protect, respect, provide and fulfill’ the rights of all, even those who are not under their jurisdiction and ‘effective control’. International cooperation with regards to technical and financial assistance is encouraged and expected from the international community which was emphasised by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comments:

‘Art 2 (1) and 11 (1) and 23 of ICSECR require that State parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the rights inscribed in the Covenant’ (CESCR 19/2008).

The scope of extraterritorial obligations stretches far beyond the responsibility to 'respect' and 'protect' which oblige the third states to abstain from activities which could have a negative impact on economic and social rights of peoples elsewhere- and potentially lead to displacement. Third states are in fact obliged to fulfill at least the most basic economic needs, if the country of origin is unable or unwilling to meet those needs. According to Vandehole, all OECD Member States (i.e. developed States) should be made particularly responsible for providing assistance to populations affected by climate change which could be potentially interpreted as an obligation to grant asylum to those who have been displaced (Ammer 2009:36).

Responsibility goes hand in hand with accountability, however in the context of climate change and environmental degradation, this relationship gets somewhat diluted. It is hard to hold countries accountable for their emissions under international human rights law. What makes it difficult is the multiplicity of offenders (i.e. polluters, both state and non-state actors) and also the difficulty to prove in court that one country's emissions caused particular damage in another country. Carbon emissions, the major cause of climate change spread with no regard to national borders. Therefore the efforts to protect the persons displaced as the result should be a matter of international responsibility and cooperation.

3.5 Conclusions

Climate change, added to the already existing socio-economic hardships, will aggravate the situation but it will rarely, on its own, cause migration. Climate change adversely impacts the human rights such as the right to life, food, water and shelter. Migration is often the most logical (or the only) response. Moreover, people's vulnerability to climate change depends on their ability to absorb the shocks and to adapt. Needless to say, it is the poorest people who will suffer the most. The primary responsibility for the most vulnerable victims of environmental displacement falls on the national governments. However, if the national governments are not able or are not willing to offer protection, the international community must step in and ensure that the needs of those people are met.

CHAPTER IV

THE GLOBAL SOUTH PERSPECTIVE

4.1 Introduction

Climate change is a widespread issue which affects all parts of the world, but it is the countries of the Global South that will suffer the gravest consequences, including those of human displacement. As already mentioned in Chapter 3, the geographical location and the widespread poverty make the developing countries particularly vulnerable to climate change. This chapter focuses on the countries of the Global South; countries which played a minimal role in causing the problem, but are paying the highest price.

The chapter has been divided into two main parts. The first part focuses on Bangladesh. Bangladesh is said to become one of the most affected countries on Earth in terms of climate change consequences, and looks at various displacement scenarios the country is facing and the responses of the local government. In the second part of the chapter the focus moves to the Pacific island states, in particular Tuvalu and Kiribati, two small island states said to become uninhabitable by 2050. The situations of the affected populations, the potential relocation scenarios and also the ideas of those countries on what the role of the international community should be will be studied. Moreover, it will be shown that despite facing a seemingly similar problem, the affected populations' needs differ-and so should the solutions.

4.2 Bangladesh

Since its Independence in 1971, Bangladesh has achieved a considerable progress in reducing the poverty amongst its people. The GDP and the food production have more than tripled, which combined with the reduced birthrates made Bangladesh a largely food-secure state. Despite all these achievements, Bangladesh still belongs to the group of LDCs, with nearly third of its population (approx. 50 million) still living

in poverty. Climate change and environmental disruptions are a major stumbling stone in country's development. More than 40 million people in Bangladesh live in the coastal areas, or other ecologically fragile areas such as flood plains or river islands. These areas are prone to flooding, cyclones and storm surges which have increased significantly in the last years (BCCSAP 2008).

With most of its territory situated in the delta of three biggest rivers in the world, the Brahmaputra, the Ganges and the Meghna, a quarter of the country gets flooded every year. For Bangladeshis this has become the bitter 'fact of life' to which they got used to and adapted (i.e. elevated houses). However, in the last twenty years there have been six irregular major floods, two biggest ones in 1988 and 1998, each one of them inundating up to 60% of the territory, killing thousands and displacing as many as 45 and 30 million people respectively. After each disaster, fewer and fewer people bounce back; the inability to cope and adapt pushes more and more of them into the already overcrowded slums of the nearby cities. The IPCC estimated in one of the reports that a sea level rise by 40-45 cm will cause a permanent displacement of 5.5 million Bangladeshis and will irreversibly inundate 10% of the country (IPCC 2001). At the Hearing Panel for the Coastal Region of Bangladesh in 2009 it was stated that:

'no country in the world will face greater devastation from global warming, and nowhere will the potential political fallout be harder to manage. Millions of people will be permanently displaced, made into environmental refugees' (Hodgkinson et al 2009:23)

For now, most migration will take place within Bangladesh but according to Hodgkinson, it is only a matter of time before the migration wave spills over the borders (Ibid, p. 23).

4.2.1 Government's responses

It is predicted that the majority of the climate displaced people will remain within the borders of Bangladesh. Therefore the primary responsibility for the victims of displacement falls mainly under the national government. The Government of Bangladesh has produced two documents through which it pledged the utmost efforts

to cope with the effects of climate change: ‘National Adaptation Programme of Action’ (NAPA) and ‘Bangladesh Climate Change Strategy and Action Plan’ (BCCSAP). Both of them, however, fail to deal with the problem of migration in a direct and concrete way.

4.2.1.1 National Adaptation Programme of Action

In 2005, the Bangladesh Ministry of Environment and Forest, together with various groups of stakeholders (policy makers, academics, environmentalists, civil society, ethnic groups, etc.) produced the ‘National Adaptation Programme of Action’ (NAPA). NAPA recognizes that Bangladesh, due to its ‘low economic strength, inadequate infrastructure, low level of social development, lack of institutional capacity and a higher dependency on the natural resources base’ will be one of the most affected places on earth due to climate change. NAPA identifies main consequences of climate change which will have impact on the quality of life of the people affected. It proposes preventative measures but it does not deal directly with the problem of displacement or suggest what to do with the people which have already been displaced. For instance, the action plan promotes ‘adaptation of coastal crop agriculture to combat salinisation’ which could prevent the affected community from migrating into cities and so that ‘the social consequences of mass scale migration to cities would be halted’ (NAPA). The document stipulates that the improvement and adaptation of agricultural processes, especially in the areas prone to floods, would be a long-term solution to the problem of migration into cities. But it does not propose how to prevent further salinization of the land. Neither does it suggest any rights-based solutions to facilitate the resettlement from the areas which have already become uninhabitable.

4.2.1.2 Bangladesh Climate Change Strategy and Action Plan

The Bangladesh Climate Change and Action Plan (BCCSAP) was published in 2008 and was a reflection of the newly elected government’s modern vision of ‘the future economic, human and social development of the country’. The document is a ten year action plan to ‘build the capacity and reliance of the country to climate change’. BCCSAP shares a lot of similarities with NAPA. It does emphasize

the country's vulnerability to climate change and it identifies the main consequences of climate change and their adverse impact on the country's development. But it also goes one step further compared to NAPA by making a direct connection to climate change displacement. BCCSAP recognizes that the saline erosion of the land will contribute to the displacement of hundreds of thousands of people and if the sea levels rise at the current pace, 'six to eight million people could be displaced by 2050 and would have to be resettled'. It urges the communities around the world to stay alert and closely monitor the occurring changes, and calls for creating 'an adequate institutional support for the proper resettlement of the displacement victims' (BCCSAP).

But in practical terms, similarly to NAPA, BCCSAP does not provide any clear-cut solutions. The main shortcoming is the fact that despite acknowledging the fact that six to eight million people would have to be resettled, the government provides no concrete proposals or ideas on how to deal with the resettlement. The need for 'close monitoring' and 'providing an adequate institutional support' is emphasised in the paper but there are no guidelines on what exactly 'adequate support' is and how it should be provided. By the same token, BCCSAP highlights that climate change has the largest impact on the poorest in the society and it is of the utmost importance to care for these people's rights and needs such as the food and water, housing, healthcare and employment. But the government does not specify how it is going to achieve the fulfillment of those rights. Except assigning the problem of the environmental migration to the Ministry of Environment and Forest and the Ministry of Home Affairs, BCCSAP provides little added value as far as practical solutions are concerned.

4.2.2 International versus domestic solutions

In recent years a strong tendency has developed amongst the governments of developing countries, and Bangladesh is no exception, to push for an internationally binding agreement on environmentally displaced persons and to hold the industrialised world accountable for causing the problem. The government of Bangladesh appears to focus a lot of its attention on defining the status of 'climate refugees' on the international stage. In 2009, in the interview with *The Guardian*, the Bangladeshi

Finance Minister Abul Maal Abdul Muhith stated that the UK and other developed countries should accept millions of displaced people who will have to leave Bangladesh in the next forty years. He called on the UN to revise the already existing refugee protection regime to include environmentally displaced peoples: 'The convention on refugees could be revised to protect people. It's been through other revisions, so this should be possible' (Grant et al 2009). Mr Muhith was the first high-rank political figure publically demanding that wealthier countries of the West take a 'physical' responsibility for creating the problem. He reminds that the international migration of millions is inevitable but if well-managed, it does not have to be a burden: 'We can help in the sense of giving the migrants some training, making them fit for existence in some other country. Managed migration is always better – we can then send people who can attune to life more easily' (Grant et al 2009).

Mr Muhith's statement was countered by the UNHCR's Jean-Francois Durieux, the Official responsible for climate migration. He acknowledges the urgency for action but also asks those in favour of amending the Refugee Convention for caution when raising the issue on the international stage. It is a sensitive topic and during the times of austerity and growing nationalism, calling on the West to open its doors to climate migration could backfire and result in tightening the protection measures altogether instead of loosening them. 'The climate in Europe, North America and Australia is not conducive to a relaxed debate about increasing migration. There is a worry doors will shut if we start that discussion', he said (Grant et al 2009).

For many countries endangered by climate change the question of the West accepting 'climate refugees' is a valid one. Bangladesh, however, has the potential to deal with its own problems and focusing on the international resettlement may unnecessarily divert the attention from the possible domestic solutions. Bangladesh has a lot of state land which could be donated to the IDPs and the common language, culture and traditions are a huge advantage. This does not waive the international community from the responsibility to help. But the help should be directed at facilitating the solutions within Bangladesh, not outside of it.

In order to launch a successful resettlement program within the country, an effective communication is required between the government, civil society and the affected communities. A lot of the villages which slowly become uninhabitable are

remote and with little access to government structures. Grass-roots civil society could act as a mediator in voicing the communities concerns and advocating for their rights. The Government needs to formulate a clear rights-based strategy document including the issues of housing, health care, livelihoods, etc. for the resettled populations. Institutions responsible for particular aspects for resettlement need to be identified and made widely known and accessible to the people. The government must keep the transparency and tackle corruption which is a major problem in the country. So far the government of Bangladesh has not offered the concrete solutions on how to address the issue of migration. New clear strategies and action plans need to be created. NAPA or BSCCAP do acknowledge the need for action but fail to point the direction which needs to be taken and this is not enough. A comprehensive and clear set of guidelines involving all necessary sectors (as cross- sector cooperation is necessary) would be the first step. The land acquisition, planning and implementation of relocation strategies must start immediately. The relocated communities will need access to healthcare, education, infrastructure, labour market, etc. which should be addressed in the action plan as well. All kinds of assistance need to be made available in order to empower the people and ensure the sustainability of the move.

In the past, the government of Bangladesh implemented a number of planned relocations of landless communities and communities affected by natural disasters. Lessons learnt from two of these programs, the Adarsha Gram and Ashrayan cluster villages could be used for future projects. The relocated families were trained and encouraged to support their own livelihoods and received land. The projects were not entirely successful due to the low sustainability, mostly caused by poor implementation of strategies and corruption. But the model could be adapted and improved, and with a better transparency and execution it could be a success.

Bangladesh, despite the economic hardships and widespread poverty, has the potential to help itself. A carefully designed, pre-emptive resettlement within its borders has a better chance of success than post-disaster emergency evacuation. The international community must assist both by providing finance and expertise but the initiative needs to come from the government of Bangladesh.

4.3 Pacific Island States

The South-Pacific is home to over half a million islanders whose current subsistence-based lifestyle and beloved and sacred land are, quite literally, sinking (Hodgkinson et al 2009). Kiribati and Tuvalu are two small atoll island nations with the lowest elevation points just above one meter which makes them extremely vulnerable to rising sea levels. Both belong to the group of Least Developed Countries, rely heavily on the international aid and both face a pretty gloomy future scenarios as their territories are said to become unable to sustain its people by 2050 (Ibid, p.13). Two of Kiribati's uninhabited islands, Tebua and Bikeman have already been completely inundated. Both nations are heavily dependent on the fisheries, as the soil is poor for agriculture, even more so now with the increased saline erosion of the land. With very little development opportunities, both nations belong to some of the poorest in the world.

The challenge faced by the governments of Tuvalu and Kiribati is of a slightly different nature to the one faced by the Bangladeshis. Due to the disappearing land, the whole territories are said to eventually become uninhabitable or completely inundated. The adaptation strategies in the small pacific island states should still be developed but many ask if it is not too late for them to change anything. Mass relocation of the population may seem like the only reasonable option left.

Relocation is not a new phenomenon for the small Pacific island states. In the past, the population of the Banaba Island (Kiribati) has been relocated to the nearby Rabi Island. In the 90's, over 5,000 islanders have been resettled from South Tarawa due to overpopulating of the atoll (McNamara and Gibson 2009:12). Nearly 1,000 Carteret Islanders have been evacuated to the nearby Bouganville, both in Papua New Guinea (Ibid, p. 5.). This is a complex operation even if the transfer occurs within the national borders. But moving the entire population to a foreign land presents a completely new challenge. These are not individuals who could get scattered around the world, the transferred nation needs to stay together in order to have the slightest chance of preserving the national identity, culture and traditions while on a foreign land. Finding such land, relocating the people, ensuring the sustainability of the move and securing the just legal status of the people is a major task and the entire international community needs to assist with it (Leckie 2013).

4.3.1 'We want to stand up and fight'

Even though the Pacific islanders are often dubbed as one of the world's first 'climate refugees', the leaders of the Association of Small Island States collectively refuse to have their people categorized this way. And it is not because of the dubious legal significance of the term, as discussed in Chapter 1, but it because of the notion of helplessness and victimization the term may imply. The media present the 'climate refugees' as little, weak people who quietly wait for the worst to come. Using the dramatic headlines such as 'Will Tuvalu disappear beneath the sea'?, 'apocalypse', 'extinction', 'sink or swim' sells the papers and creates the drama around the issue but does not accurately portray the situation or the islanders.

In 2004, Karen McNamara and Chris Gibson conducted a series of interviews with the UN Ambassadors of seven Pacific island states: Federated States of Micronesia, Marshall Islands, Nauru, Papua New Guinea, Samoa, Tonga and Tuvalu (Kiribati at the time did not have a representative at the UN therefore it was not included in interviews). The findings were somewhat surprising. All ambassadors strongly rejected the apocalyptic vision of the future and they did not want to focus on migration as the ultimate solution. In fact, they collectively agreed that the relocation had to and still could be prevented. Exodus, for them, was simply not the part of the future scenarios and this position had not changed since 1987 when the first field work on this topic was conducted (McNamara and Gibson 2009:479).

Already in the 80's, the Maldives President Maumoon Gayoom argued that the affected islanders did not want to leave their homes and appealed to the international community to help them stay:

'There must be a way out. We don't want to drown. Neither do we want our lands eroded nor our economies destroyed. Nor do we want to become environmental refugees either. We want to stand up and fight. All we ask is that the affluent nations and the international community help us fight (Ibid, p. 479).

The idea and hope of holding on to the land for as long as possible was shared by all other interviewed Ambassadors. So was the belief that the root cause of

the problem should be tackled first and that the international community should mobilize efforts to curb the climate change first instead of debating on who should accept the migrants. One of the Pacific Ambassadors noted during an interview: ‘instead of relaxing the immigration laws, all industrialized countries should relax their emissions’ (Ibid, p. 479). The strong and proud stand of the Pacific leaders carries the risk of antagonizing the NGOs who are strong supporters of using the term ‘climate refugees’ as it carries moral connotations and implies emotional reactions such as compassion and sympathy. But they stay undeterred and believe the nations they represent are ‘proud islanders who do not want to look for another place to migrate to. What they want is to protect their land, to ensure the sustainability and the survival of the communities’ (Ibid, p. 480). The approach based on the right to self-determination and creating the identity far from the one of being helpless victims is what the leaders of those countries advocate for. ‘We are not going to go quietly. We are sovereign states. It is not a question of running away and finding another place and asking the big countries to open their gates to us’ (Ibid, p. 483). Based on those interviews, one may conclude that in general the Small Island Nations’ claims towards the international community do not focus on re-writing the Refugee Convention or creating a separate instrument to protect those displaced across borders. Instead, they proudly hold on to their sacred land and call on the international community to limit the emissions and not to give up on the idea of preserving the islands and their communities.

4.3.2 Possible relocation scenarios

For now, the primary concern of the governments of nations discussed in this chapter is not finding the new land, but finding the ways to keep their own. But the idea of possible relocations is not completely ignored and is being investigated to an extent. In 2005, Kiribati’s President Tong publically acknowledged the need to consider moving his entire population elsewhere (he emphasized many times that this is not what he wants but he is forced to do it). In September 2012, he disclosed in a radio interview with ABC Radio Australia that East Timor has come forward with an offer regarding the land for possible relocation. There have been rumors that Kiribati’s requested the governments of Australia and New Zealand to donate some land for

future 'climate refugees' and that the request has been denied. The information, however, was never confirmed by either party and therefore is not reliable. Similarly, the government of the Maldives announced in 2008 that despite keeping the hope that the results of climate change can still be halted, a chunk of its GDP was accumulated each year in a special savings account in order to purchase a new homeland. Sri Lanka and India are considered as the most logical choices due to similar cultures. However, Australia is also looked into due to the large availability of an uninhabited land (Hodgkinson et al 2009:2). Again, it was emphasized by the President of the Maldives that he was forced to take this action by the circumstances: 'we do not want to leave. But we also do not want to be 'climate refugees' living in tents for decades' (Ibid, p. 2).

The neighbouring wealthy nations of New Zealand and Australia are naturally expected to come forward with assistance. For now, President Tong hopes for loosening the labour migration restrictions to enable more islanders to work and support their families through remittances. The Pacific Access Category (PAC) is one of the measures allowing exactly that. It is an agreement between New Zealand and the governments of Tuvalu, Fiji, Kiribati and Tonga. Each country has been allocated a modest quota of citizens who receive a permanent residency in New Zealand together with the right to work. PAC is often wrongfully quoted as New Zealand's response to the problem of climate change migration. But in fact, it is a measure designed solely to fill the shortages in the local labour market. The qualifying criteria are restrictive and include the age limitation (18-45 years of age), good physical health and command of English, sufficient savings, etc. The most vulnerable victims of climate change fall outside of possibly all of these criteria which makes it evident that PAC is driven by economic, not human rights or humanitarian motives.

Scott Leckie, the Director of Displacement Solutions (DS) is strongly involved in the work with the South-Pacific island nations. Displacement Solutions is an international NGO which carries out projects aimed at relief and support to both internally and internationally displaced environmental migrants at bringing sustainable and durable solutions. During the interview which took place in April 2013 Scott Leckie said that with such complex problem there was no universal solution that would suit all and that all possible options needed to be explored. Not a single islander

he talked to wants to leave and the developed world is obliged to help them stay for as long as possible by implementing appropriate adaptation measures. At the same time, Leckie says, it becomes increasingly difficult to believe they will stay forever. But need to be pragmatic (and to think of possible relocation scenarios) does not need to collide with or exclude the islanders' objective to remain on their sacred land; both strategies can be and must be explored in parallel. Therefore aside from supporting the adaptation measures on the islands, Displacement Solutions also looks into various resettlement possibilities. Fiji has been considered as one of the possible destinations for Tuvaluans. This would be a natural choice seeing as one of Fijian islands, Keoa, has been inhabited entirely by Tuvaluans for decades. They have become Fijian citizens but they retained their language, culture and traditions. In addition, the size of Keoa is comparable to the size of Tuvalu. These are not futuristic scenarios but current political issues that are being discussed in the Fijian political institutions. In terms of defining the legal status of entire nations relocated to one place, this should be regulated on a bilateral level by the sending and receiving states. Again, the international community should assist but ultimately, the conditions should be negotiated by the nations directly involved.

Generally speaking, even though Tuvalu and Kiribati are 'in the same boat', Tuvaluans want to hold on to their land for as long as possible, whereas Kiribati lean towards 'dignified migration' (Leckie 2013). This only goes to prove that each community or nation despite facing the same problem may need its own, individually tailored solution. And the rights-based approach would be to respect the individual circumstances and integrate the wishes of the community into finding answers instead of imposing a 'one fits all' solution.

4.4 Conclusions

Bangladesh, Tuvalu and Kiribati are amongst the countries that are most vulnerable to climate change. These largely underdeveloped and poverty stricken nations have very limited capacity to adapt to climate change. If the sea level continues to rise at the current pace, Bangladesh is predicted to lose up to 10% of its territory. Similarly, Tuvalu is said to become completely uninhabitable in the next four

decades. The government of Bangladesh has created two national strategy papers (NAPA and BCCSAP) which reaffirm the existence of the problem but fail to produce any concrete solutions. There is a general tendency amongst the Bangladeshi government leaders to call on the West to amend the Refugee Convention and open the doors climate migrants. The governments of the Pacific island states, on the other hand, generally focus more on the adaptation measures and domestic solutions as opposed to planning the relocations. This only illustrates that two seemingly identical problems may require two very different responses. The solutions should be tailored to the local needs and rights- based approach is key in providing durable solutions.

CHAPTER V

RESPONSES OF THE GLOBAL NORTH

5.1 Introduction

This chapter describes the responses of the Global North to the growing problem of environmental displacement. No region in the world is immune to climate change but the impacts, at least in terms of migration, will be considerably smaller in the Global North than in the Global South. A smaller proportion of the Global North's economy is in sectors such as agriculture that are most sensitive to climate. Moreover, most countries of the Global North are located in cooler higher latitudes and their adaptive capacity is higher. They have more resources to invest in adaptation and their economies more flexible to increase resilience to climate change (Stern 2006).

The chapter has been divided into four main parts. The first one focuses on national policies of the countries and regions of the Global North and the steps they take to provide assistance to the victims of climate change and environmental disasters. The migration policies as well as the plans to create new, more specialized human rights protection instruments aimed specifically at environmental migrants will be analyzed. The initial focus is on the European Union, followed by Australia/ New Zealand and the United States. The three cases have been selected based on the fact that they are the Global North states largely responsible for creating the pollution, all have strong historic and political ties with the regions mostly affected by climate change, and they are believed to be potential destinations for environmentally induced migrants from the developing countries. Next, public opinion in the developed world, the general knowledge about 'climate refugees' and the attitudes towards the new emerging group of migrants will be looked at closely. The third part of this chapter describes the role of the civil society and the United Nations. And lastly, the world of academia involved in the research and creation of proposals for new laws, such as the The Convention for Persons Displaced by Climate Change will be studied.

5.2 State and regional policies in the Global North

5.2.1 The European Union

Between 1998 and 2002 Europe suffered from over 100 floods which left 700 people dead and over half a million displaced (CoE 2008) not in reference list, what is it?. The Netherlands and Denmark have some of the lowest lying coastal zones in the world which makes them most vulnerable to rising sea levels. However, as discussed earlier in Chapter 3, Europe's ability to cope with these circumstances is much higher than it is in case of Tuvalu or Kiribati, which makes the former much more resilient than the latter.

According to the Stern Review, Europe as a developed region will become largely affected by the migration flows from the areas affected by environmental disasters, although the fleeing population size and the migration patterns are at this point hard to predict. Javier Solana, former Secretary General of the Council of the European Union noted that Europe will ultimately bear the consequences of climate change- inter alia in the form of mass migration (Ammer 2009:11). Some of Europe's neighbouring regions such as Africa and the Middle East are amongst the most vulnerable ones.

Professor Roger Zetter, Director of the Refugee Study Centre of Oxford University has an opposing view. He hardly sees Europe ever becoming a major destination for environmental migrants. According to him it will be tens rather than thousands or even hundreds. Most affected countries and regions will be the ones of the Global South and it is unlikely, for mostly practical reasons, that many environmental migrants will make journeys to the old continent. The poorest people, who are most vulnerable, have limited resources to travel far and therefore, they will most likely not reach Europe in large numbers. Another reason, according to Zetter, is that Europe is simply unlikely to open its gates to 'climate refugees' when it is already relatively difficult for the 'classical refugees' to be granted a legal status in Europe. For the reasons above, he believes that there is a great need to focus on the international cooperation and external policies instead of engaging in endless debates about the potential consequences for Europe.

In fact, Zetter believes that Europe already is relatively pro-active and conscious in terms of its external policies on disaster reduction, adaptation, response and recovery in regions affected by natural disasters and climate change. Europe, he says, is active in terms of advocacy and developing responses with a lot of the energy and resources devoted to supporting the affected regions rather than lobbying to open the EU gates to potential migrants (Zetter 2012).

Regardless of the potential consequences for Europe, the Parliamentary Assembly of the Council of Europe issued a draft resolution on the 12th December 2008, in which it recognizes the gravity of the problem and urges the European institutions to take actions:

‘despite the huge number of people already affected and even greater numbers potentially involved in the future, there is no international consensus about how to define the environment-migration phenomenon. There is not a single international organisation today that explicitly focuses on the problems and protection of people moving or having to move their places of habitual residence mainly or exclusively for environmental reasons. Europe needs to take a pioneer role in this area’(Ackefoft 2008).

The Assembly calls on the member states to incorporate this consideration into their national migration policies, as well as to create appropriate mechanisms to help finance adaptation measures, migration projects and humanitarian responses.

The Common European Asylum System (CEAS), the first phase of which was implemented in 1995 was not specifically aimed at environmental migration. The three pillars of CEAS are: harmonization of asylum policies throughout the EU, strengthening the cooperation between the Member States, and increasing the solidarity and the sense of responsibility. However, two instruments created under CEAS: The EU Temporary Protection Directive (TPD) and The Qualification Directive (QD) can be potentially interpreted in a way that includes the environmental migrants in the protection scope.

5.2.1.1 EU Temporary Protection Directive and environmental migration

The catalyst for creating in 2001 the Temporary Protection Directive (TPD) was the conflict in the former Yugoslavia which resulted in mass influx of refugees into Europe. The purpose of this Directive is to:

‘establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin’ (Dir 2001/55/EC)

For the purpose of the Directive, the following definition of displaced persons has been adopted:

‘third country nations or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

- (i) persons who have fled the areas of armed conflict or endemic violence
- (ii) persons at serious risk of, or who have been the victims of, systematic or generalized violations of human rights’ (TPD Art 2 (c))

The official minutes of the negotiation meeting show that the Finnish delegation pressed for the ‘persons affected by natural disasters’ to be included in eligibility criteria. The idea has been eventually abandoned due to the strong opposition from the Spanish and Belgian delegations who claimed that ‘such situations were not mentioned in any international legal document on refugees’ (Kolmannskog

and Myrstad 2009:316). It must be pointed out though that TPD does not provide an exhaustive list of plight scenarios giving eligibility for protection. Therefore, even though natural disasters are not explicitly mentioned as qualification criteria, they still can be considered as situations where people are 'are unable to return in safe and durable conditions' as the application of the Directive is decided on a case-by-case basis (Art 5) and it largely depends on interpretation of the Council.

The lack of a clear-cut definition of displaced persons makes the Directive more open to discretion of the states and leaves a lot to their 'good will'. The UK Home Office Minister Des Brown expressed his hopes that the Directive will be used as a tool to assist the victims of climate change and natural disasters:

'the Directive that we are implementing will ensure that each European Member State plays its part in providing humanitarian assistance to people forced from their homes by war and natural disasters and will enable a quicker and coordinated response to prevent human suffering' (UK Home Office 2004).

The weakness of TPD is, however, that it only applies to mass influx of populations ('giving temporary protection in the event of a mass influx of displaced persons'). Mass-influx refers to situations where masses of people are suddenly displaced and where it is not feasible to treat applicants on an individual basis (Kolmannskog 2009). The Directive does not provide a more explicit definition of 'mass influx'; it is to be decided on a case-by-case basis by the majority of the Council.

The scope of application of TPD in terms of the grounds for plight is relatively inclusive. But the fact that it discriminates against individuals adds considerable limitations to its applicability. The temporary character of protection further adds to the shortcomings. The prescribed length of a stay in the receiving country is one year (Art 4), with a possibility of extension up to another year (Art 4 and Art 6 (1) (b)). In accordance with the non-refoulement principle, a person whose temporary protection status has ended cannot be forcefully returned to their country of

origin if their lives and general well-being are endangered. Art 22 (2) of the Directive states:

‘In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases’ (TPD Art 22 (2)).

TPD clearly prohibits refoulement. But it also fails to set out clear guidelines on the subsequent status of the migrants who, as a result, are often left in a limbo.

5.2.1.2 EU Qualification Directive: subsidiary protection and environmental migration

The Qualification Directive (QD) was issued in 2004 in order to harmonise the guidelines for treatment of all asylum seekers, also those who do not fulfill the qualification criteria as prescribed in the Geneva Refugee Convention (GRC). The Directive strives to:

‘set out minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection’ (Dir. 2004/83/EC).

The Directive is the first supranational codification of the protection guidelines on the EU level. It regulates the eligibility criteria and it minimizes the degree of discretionary practices. It does not create new obligations; it pulls together and standardizes the already existing ones into a common set of principles and guidelines. The Qualification Directive defines the subsidiary protection as:

‘recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection’ (QD Art 2 (f)).

On one hand, the Directive aims to fill the protection gaps by addressing the needs of those who do not fall under the umbrella of the Geneva Convention. But on the other hand, its qualification criteria seem to very closely resemble those of the GRC. Art 15 of the Directive, for instance, describes persons eligible for protection as those who are at serious risk of:

- ‘(a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict’ (QD Art 15).

With this narrow approach it is difficult to pull climate change and environmental disasters under the Directive’s qualification criteria. They could potentially qualify under ‘inhuman or degrading treatment’ claim but this would largely depend on the approach and good will of the authorities. In the first proposed draft of the Directive, Art 15 (c) granted protection to persons fleeing as ‘a result of systematic or generalized violations of human rights’. This, however, was subsequently narrowed down to violation of human rights caused by armed conflicts. According to the German, Belgian, Spanish and French delegations, using the general term ‘human rights’ would make the Directive too vague and inclusive. Moreover, using wording such as ‘treatment’ and ‘acts’, clearly implies that only anthropogenic incidents qualify for consideration. It was later confirmed by the Chair of the Danish presidency, during which the negotiations were taking place, that using such wording was most deliberate and it was to ‘ensure that only man-made situations, and not for instance situations arising out of natural disasters or the situations of famine, will lead to granting subsidiary protection’. The German delegation deliberately opposed to the notion of including the environmental disasters based on the fact ‘risks to which a population of a country is generally exposed normally do not create in themselves an individual threat qualify as serious harm’ (Kolmannskog and Myrstad 2009:320-321).

5.2.1.3 European Court of Human Rights

In the meantime, McAdam argues that a breach of socio-economic rights and the lack of resources guarantying survival and human dignity can also be legitimate grounds for seeking complementary protection. The European Court of Human Rights (ECoHR) repeatedly ruled that it is not its job to ‘iron out socio-economic differences between States’ and noted that a broader interpretation of securing economic rights does not have to open flood gates of economic migrants escaping poverty back home. It is unlikely that a general rule of accepting migrants based on socio-economic hardships will ever emerge but some single cases have been known. ECoHR found the Belgian government in a breach of non-refoulement obligations by returning a handicapped Afghan failed asylum seeker back to Greece and knowingly subjecting him to a detention and living conditions below human dignity. In the court ruling we read:

‘(he would be subjected to) living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live. Added to that was the ever-present fear of being attacked and robbed and the total lack of any likelihood of his situation improving. It was to escape from that situation of insecurity and of material and psychological want that he tried several times to leave Greece’ (McAdam and Albert 2012:75).

By the same token, ECoHR has ruled against the UK that returning the claimants to Somalia was in also breach of non-refoulement principle due to dire humanitarian conditions in some areas of Somalia (overcrowding, droughts causing extreme shortages of water and food, lack of sanitation facilities, etc) (McAdam and Albert 2012:76).

Moreover, the English Court of Appeal noted that the assessment of harm should not depend on the source of a hardship but on the real threat to life and well-being:

‘whether the lack of sufficient resources in the receiving State occurs as a consequence of some malign influence by that State or

because of benign matters, the effect on the individual is the same in either case and it either reaches the threshold set by the ECtHR or it does not' (McAdam and Albert 2012:75).

An English Court of Appeal noted that the assessment of harm of a person should not depend on whether the lack of resources is caused by malicious and pre-meditated actions of the state or due to an uncontrollable chain of events. The effect on a person is always the same and, according to McAdam, this should be the primary focus. It is also worth noticing that the Australian Migration Act does address socio-economic hardships as potential 'persecuting factor'. It refers to 'significant economic hardship that threatens the persons capacity to subsist', 'denial of basic services, where the denial threatens the capacity to subsist', and 'denial of capacity to earn a livelihood of any kind' as forms of persecution. Based on the rulings above, climate change can be interpreted as 'agent of persecution' hence it could be considered as ground for protection. McAdam argues that the threshold should be about the survival. If the survival is threatened, the source of that threat should be irrelevant.

5.2.1.4 The Scandinavian model

The 'Scandinavian model' is a term commonly used for the Swedish and Finnish Aliens Acts (2005:716 and 301:2004 respectively) which include environmental migrants in their asylum policies and recognise them as people 'deserving protection'. The Swedish Aliens Act offers a subsidiary protection to a person who is:

‘outside the country of his/ her nationality, and he or she is unable to return to the country of origin because of an environmental disaster’.

By the same token, the Finnish Aliens Act offers temporary protection to those who are

'under threat of death penalty, torture or other inhuman treatment or treatment violating human dignity, or if they cannot return there because of an armed conflict or environmental disaster'.

As progressive as both provisions may seem, Glahn argues that it is a theoretical concept which has little, if any, reflection in reality as not a single person has ever been granted subsidiary protection based on environmental grounds in Sweden or Finland since adoption of both Acts. The lack of subsequent jurisprudence makes the character of both acts rather symbolic. But at the same time, the acts set an example towards implementing environmental migration into national asylum laws.

5.2.1.5 Ad-hoc humanitarian schemes: the UK and the Montserrat case

Even in case of absence of specific legislations, some countries undertake steps to assist migrants fleeing from natural disasters. A lot of times they choose post-disaster emergency relief as opposed to pre-emptive prevention measures aimed at long-term, slow-onset changes in environment. These efforts are also mostly driven by humanitarian motives rather than the rights-based approach. This type of reactive assistance is much less binding as it is left entirely up to the countries' discretion to decide on a case-by-case basis when and where they want to get involved.

Although the UK national legislation does not address environmental migration in the Aliens Act, there have been cases in the past where the UK granted protection within its borders to victims of natural disasters. After the eruption of the Soufrière Hills volcano in Montserrat (British overseas territory in the Caribbean) in 1995, the Montserratians obtained a two year long exceptional leave to enter and stay in the UK, but provided they had a UK sponsor. In 2007 some financial assistance was offered to the migrants but prior to that all fees, including the airfare, had to be incurred by the migrants themselves. The migrants were granted full access to employment, health care, education and benefits. In 2007 there were over 3,500 Montserratians in the UK (McAdam 2012).

As an additional measure, in 1997 the UK government established the Assistance Regional Voluntary Relocation Scheme which assisted the Montserratians in relocations within the Caribbean, but also in the US and Canada. The financial assistance was, however, modest. The amount of 2,400 GBP was offered per person for the period of six months, plus additional 600 GBP per child under 18 years of age (McAdam 2012).

At the beginning of 2008, all relocated Montserratians were granted an indefinite residency status as, even though the initial two year period expired, further eruptions on the island prevented people from returning home. In May 2002, all Montserratians were granted British citizenship as a result of the British nationality law reforms. This new law extended the UK citizenship to all nationals of the British overseas territories. The reform, however, was not designed to help the environmental migrants; the implementation of the new law just happened to coincide with further eruptions of the volcano.

Despite the seemingly progressive character of the scheme, it was in fact severely criticized for bad implementation which left people affected in the limbo for lengthy periods. The UK government faced severe criticism for the reluctance to act. The Prime Minister of Antigua-Barbuda expressed his concern that the half-hearted and sluggish response of the British government put an immense strain on the other developing states in the Caribbean region. While he pledged his continuous support to the affected fellow Caribbean islanders, he said that ‘appropriate arrangements should have been made primarily by the Government of the United Kingdom whose responsibility Montserrat remains’ (McAdam 2012).

5.2.2 The United States

The United States is the second biggest polluter (after China) and one of the most industrialized countries in the world. Based on the historic contribution to the problem of climate change, one can easily point at the US as the one who should be particularly pro-active in securing the future for the victims of climate change induced displacement. However, this is not the case. On the contrary, the US proved exceptionally reluctant to get involved, let alone lead the debate. This is caused by the fact that taking the responsibility for ‘climate refugees’ would be an acknowledgement

of wrongdoing and consequently would imply an unspoken pledge to curb the emissions. And judging by the US continuous refusal to the Kyoto Protocol, this is not the intention.

Nevertheless, the US immigration laws do offer certain relief to the people affected by environmental changes. Two most widely used and best known are post-disaster temporary relief measures namely Temporary Protected Status (TPD) and Deferred Enforced Departure (DED).

5.2.2.1 Temporary Protected Status and Deferred Enforced Departure

Temporary Protected Status (TPS) is a piece of legislation created in 2007 and it enables some groups of environmental migrants from designated countries to obtain a temporary residency and the work authorization if they are 'temporarily unable to safely return to their home country because of an ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions'. The sending country must officially apply for TPS stating that it is temporarily unable to provide protection for its citizens due to a natural disaster, but it will be able to do it when the conditions in the country improve. The Department of Homeland and Security then decides which nations are eligible for TPS and for how long. For examples, TPS was granted to 48, 000 Haitians following the devastating earthquake of 2009 (it has been extended multiple times and is still applicable in 2013 as the conditions in Haiti have not improved sufficiently). Following the Indian Ocean tsunami in 2004, no affected country was granted TPD. Moreover, it has not been granted to the citizens of Pakistan which devastated the country killing 100,000 people and displacing further 3, 5 million. Another flaw of this piece of legislation is the fact that it is only extended to the citizens of the designated countries who already reside in the US (whether documented or undocumented migrants). And because a formal request to be considered for TPS needs to come from the government of a sending state, the citizens of countries such as Burma, North Korea or other uncooperative regimes are also left outside the scope.

Deferred Enforced Departure (DED) is a measure similar to the TPS and it gives the President of the US the authority to designate a country whose

nationals' deportations are temporarily put on hold (eligibility criteria are similar to those of the TPS).

5.2.2.2 Treaty of Friendship between the United States of America and the Republic of Kiribati

In 1979, the governments of the US and Kiribati signed a treaty based on the principles of peace, cooperation and mutual assistance in the times of need. The language used in the treaty creates potential future obligations of the United States to assist the Pacific state. Both countries agreed to:

‘consult together on matters of mutual concern and interest in time of need, and, in particular, to promote social and economic development, peace, and security in the Pacific region’ (Treaty of Friendship Art 2).

Rising sea levels and salinization of the land can be viewed as an emergency and ‘intime of need’. Climate change driven displacement in this case qualifies as an issue of ‘mutual concern’ and it could be the basis for climate-related aid including land rights for I-Kiribati. The US is one of the biggest importers of the Kiribati’s fisheries and marine industry. Collaboration based on the mutual concern and economic interests could prove a life-saver for Kiribati. Moreover, Art 2 of the treaty mentions promoting the ‘peace and security in the Pacific region’. The language of the treaty does not suggest the nature of the threat and therefore the rising sea levels which threaten the very existence of the state could definitely qualify as a threat to security and integrity of Kiribati.

In reality, however, despite the obligations suggested by the treaty, the United States has no real binding responsibility to provide assistance under its provisions. The document was created in the time of the Cold War and one may presume that the security provisions related to security of the military nature. Climate change was a non-existing topic at the time when the Treaty was created. Secondly, Kiribati would have a problem enforcing the compliance with the treaty provisions as the US is not under the jurisdiction of the International Court of Justice.

5.2.3 Australia

The Asia- Pacific region, ‘the world’s climate change ticking bomb’, is said to face climate migratory pressures on an unprecedented scale. Tuvalu, Kiribati, Fiji and Tonga, just to name a few, face somber scenarios of mass evacuations. Australia, being just ‘around the corner’ has naturally become considered as potential home for the migrating islanders.

Many argue that Australia should take the lead in regulating the climate change induced migration. The broader region where Australia is located accounts for 60% of the world’s population and it is the region that has been dramatically affected especially by growing sea levels. Moreover, according to Friends of the Earth Australia, the country should open its gates to the ‘climate refugees’ because of its disproportionate contribution to the problem. Australia with its population of approximately 23 million accounts for 0,03% of the global population but it is responsible for producing about 1.4% of the world’s greenhouse gases which makes it one of the world’s biggest per capita polluters (Friends of the Earth 2007). This fact alone combined with the geographical factors such as the relative proximity, climate, available space and resources make Australia a desirable home for the Pacific islanders.

5.2.3.1 Complementary Protection Act 2011

Australia’s Migration Act 1958 does not specifically refer to environmental migrants. However, the more recent Migration Amendment (Complementary Protection) Act 2011 potentially creates a loophole for legitimization of protection claims based on environmental grounds. Similarly to the EU’s Temporary Protection and Qualification Directives, the Australian Complementary Protection Amendment can apply to those who do not qualify as refugees under the Refugee Convention but need protection due to a real risk of being subjected to ‘serious harm’ if returned to their countries of origins. The qualification criteria include those of the risk of death, torture, to cruel or inhuman treatment or punishment, and degrading treatment or punishment. The Amendment defines degrading treatment or punishment as: ‘an act or omission that causes, and is intended to cause, extreme humiliation’ and cruel or inhuman treatment or punishment is

defined as actions resulting in: 'severe pain or suffering, whether physical or mental, is intentionally inflicted on a person'. These provisions could potentially serve as grounds for a claim for environmental migrants.

5.2.3.2 Humanitarian Visas

The Australian Department of Migration and Citizenship runs special visa programs which are offered on humanitarian grounds to those who need temporary protection. The Onshore Protection visa (PV) is offered to those who are already in the country and who do not qualify as refugees but due to non-refoulement obligations cannot be returned to their country of origin. The Special Humanitarian Program (SHP) is another category of humanitarian assistance available to those who stay in a third country (outside of their country of origin but not in Australia either) due to a threat to their lives and physical/ mental well-being but who do not qualify as refugees. In case of the offshore applicants, the entry to Australia must be officially requested for them by an Australian citizen, permanent resident, or an Australian-based organisation. This considerably limits the applicability to those who know eligible persons or organisations who can apply on their behalf. Yet, the number of SHP applications is overwhelming, at least compared to the number of visas approved. Out of 23,000 SHP applications received in 2011 alone, only 700 were granted.

5.3 Civil society

This section presents the findings from studying the civil society and international and intergovernmental organisations and their attitudes and approaches to the issue of environmental migration.

5.3.1 Non-governmental Organisations

The understanding of the issue by the non-governmental organisations has developed dramatically especially in the last decade. The early predictions of masses of environmental migrants pouring into Europe did not materialise. It was expected that Europe would be involved directly to a much greater extent than it really is. The initial debate was led by the environmental NGOs. Currently there is a lot more

involvement from the development, migration and human rights sector. The cross-sector research and analysis has contributed to a much better understanding of this complex and multi-layered problem. With this better understanding of the growing problem, it was easier to convince the academia and the politicians to jointly put more effort into gathering the evidence that climate change does affect human rights and leads to involuntary migration.

Moreover, despite the common assumption that the NGOs concerned with 'climate refugees' share common goals and follow similar paths, this is very much not the case. Lots of development organisations refuse to even put climate migration on their agendas largely because of the political character of the issue. Migration is in general a sensitive topic in the West -even more so now in the current economic climate- and the development organisations fear to lose their independent donors. They rely on public funding and the fear is that if they move to such political topic the financial support will vanish. This issue is very divisive in the EU politics so the financial risks are too great.

The environmental NGOs are the ones that traditionally pushed the issue of climate change forward. But naturally their approach has always been concerned mainly with science, the impact on ecosystems. The human factor was not at the centre. Only recently the environmental NGOs started getting involved in migration as this was an opportunity to give a human face to the issue which so far it was seen as strictly scientific.

Paradoxically, the most reluctant to even talk about the 'climate refugees' are the refugee organisations. They fear to take up the issue of climatic migration because according to them there are a lot more pressing and immediate issues which require urgent attention. Especially now with the financial cuts not only in the UK and Europe but also globally it has been more difficult to engage certain organisations.

In the wide spectrum of views and opinions, the most basic clashing point is the terminology referring to the environmentally displaced people. Some organisations insist on using the term 'migrants' instead of 'refugees'. The latter implies the enforced and involuntary character of movement that some would like to avoid. Other organisations come from the opposite spectrum and insist on using the term 'refugees' as it carries strong moral significance and implies the sense of

urgency. Such 'technical' details, seemingly trivial, are in fact a huge stumbling block in building the common ground between NGOs.

To complicate things further, there is also divergence between the NGOs as far as solutions are concerned. London-based Climate Outreach Information Network(COINet), for instance, does not support the idea of a global instrument. One document will not be able to facilitate all types of needs, no matter how comprehensive and inclusive. COINet supports the idea of playing this out on the regional, more localized level through the already existing mechanisms which ought to be mainstreamed into the local development plans. Hanna Smith, COINet's Defending Rights Programme Manager believes that most people in the affected areas do not want to leave their homes but if they have to, they will not want to travel far. It is important to get the global community involved in supporting neighbouring countries which could absorb the migrants. But pointing the finger at those who historically caused the most pollution and forcing them to take responsibility cannot be the main focus of the efforts. This is not to say that the biggest polluters should be let 'off the hook'. But in terms of accountability, it is difficult, if not impossible, to establish whose pollution contributed to which natural disaster and who should take the biggest blame for the consequences. The developing countries' claims that they are the ones suffering the most despite causing little pollution should be acknowledged. But we cannot let this blame game become a stumbling stone in the negotiations because there is simply no time for it.

In contrast, another London-based member of the Coalition, Environmental Justice Foundation (EJF) strongly advocates for an international binding agreement to deal with the problem of 'climate refugees'. Tori Timms, EJF's Campaigns Officer believes that a strong international cooperation resulting in a global treaty is the way to tackle the problem. The existing tools and mechanisms lack the capacity and are too fragmented therefore the need to create a new, comprehensive internationally binding instrument is now greater than ever.

Moreover, EJF takes it one step further and brings up the issue of security threat which is posed by climate change has a potential impact on human migration, therefore it should be taken into consideration by the advocates and scholars researching climate change and migration.

‘Climate change amplifies existing and emergent pressures, such as high population growth and resource demand, poverty, mass displacement, poor governance and state fragility, and creates tipping points or fuels existing conflicts. Climate change will undoubtedly have an impact on defense activities, and research into how climate stress will affect areas will help indicate to militaries the locations and types of operation that future equipment will have to undertake’ (Timms 2012).

At EJF it is believed that climate migration could potentially turn into a threat to peace. Climate change can put a massive strain on the natural resources, especially water and arable land and it can amplify the already existing pressures. Floods of ‘climate refugees’ pouring into neighboring countries can create situations where violence erupts. Illegal border crossings, competing for natural resources with local populations, overcrowding, all can potentially ignite a conflict situation. This has been acknowledged by the UN Security Council and later reaffirmed by the UN General Assembly resolution 63/281 ‘Climate change and its possible security implications’. Article 39 of the United Nations Charter mandates the Security Council to:

‘determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken’

In April 2007 the Council addressed climate change as a potential threat to security. Most developing countries strongly opposed the notion of involving Security Council in the climate change debate due to the fact that five permanent voting members of the Council: US, UK, Russia, China and France themselves are heavy polluters.

5.4 Academia

Similarly to the non- governmental sector, the world of academia also lacks a unified voice. This section discusses two major discourses ruling in the academic circles: one advocating for a global, legally binding protocol, and another one which argues for a regionalized and possibly soft-law path based on moral values and social justice.

5.4.1 A global protocol- for or against?

Professor Frank Bierman and Ingrid Boas, both associated with VU University in Amsterdam (Vrije Universiteit Amsterdam) are strong supporters of creating a comprehensive global protocol and they have published multiple proposals for such document in both social science and environmental academic journals. They propose a separate and independent regime created under a Protocol on Recognition, Protection, and Resettlement of Climate Refugees to the United Nations Framework Convention on Climate Change. The agreement would operate based on five main pillars:

- pre-emptive, voluntary and planned resettlements as opposed to emergency relief and post-disaster evacuations
- planning for a permanent stay in the receiving country as often ‘climate refugees’ will not be able to return to their homes
- ‘climate refugee’ regime must be tailored to facilitate groups, not individuals (entire villages, cities, provinces or even nations)
- emphasis on supporting the states in providing for its IDPs
- involving the global community, and especially the wealthy industrialised countries in burden sharing and taking responsibility for contributing to the problem of ‘climate refugees’ (Bierman and Boas 2010:23).

Bierman and Boas state repeatedly that the industrialised countries of the Global North have a moral obligation towards the developing states. It is neither practical nor realistic to expect that the developed world would ever become home to 200 million ‘climate refugees’. But it is more than fair, according to Bierman and Boas to expect from the wealthy Western states to take the responsibility to finance and facilitate the protection and resettlement of ‘climate refugees’.

The most important mechanism under the Protocol would be the International List of Affected Populations. The list would suggest administrative areas (villages, provinces, entire states) which are in need of a resettlement. Only states parties would be able to propose the areas of concern under their jurisdiction. Taking into consideration the sovereignty principle of the UN, the assistance would not be offered without a prior official request by the government of the affected territory. Therefore, the proposed regime would potentially not work in places like Myanmar, where after the devastating cyclone in 2008, the military junta initially rejected any foreign help. Moreover, assuming that the wealthy states are able to assist their own citizens, the Protocol would be mostly aimed at the refugees from the developing countries. Thus, the protocol would not consider the residents of hurricane hit New Orleans as eligible for assistance.

The decision-making body of the protocol, the executive committee, would comprise of members from both developed and developing states. This would give both sides an equal say and the veto right over the implementation and the future evolution of the Protocol. Bierman and Boas suggest that the Executive Committee and the Climate Refugee Protection and Resettlement Fund (the funding body) should be the only new organs created by the Protocol as there is no need for creating additional bureaucracy. The implementation of operations under the Protocol should be assumed by the already existing UN bodies, such as the United Nations Development Fund (UNDP) and the World Bank (WB). Mike Hulme from University of East Anglia, argues against this model. He does not necessarily dispute the idea of a legally binding, global instrument. Instead, he criticizes the suggested way of assigning the 'climate refugee' category to populations on a preemptive basis years or even decades before the crucial change in natural environment takes place. This, according to Hulme, would unnecessarily inflate the projected numbers of 'climate refugees'. But most of all, he questions the ability of the Executive Committee to accurately assess which habitats will be made impossible to live in and by when, and the ability to decide 'which areas are deemed as being too difficult to protect through the adaptation and in the long- term, therefore should be evacuated. Adaptation is not a technical process which can be determined or imposed by some distant UN committee' (Hulme2008:14). Bierman and Boas defend their idea against Hulme's

argument by quoting the Precautionary Principle: ‘the lack of unequivocal scientific certainty should not delay the establishment of strong international institutions to protect the poorest victims of climate change’ (Ibid, p. 14).

Another similar exercise is the ‘Draft Convention on the International Status of Environmentally Displaced Persons’ proposed by Professor Marguénaud and Professor Prieur of the University of Limoge. The global protocol based on their draft convention is, according to creators, the only way forward seeing as the current framework is not applicable to environmental migrants. It should be a widely adopted and legally-binding instrument based on which ‘each Contracting Party undertakes to accept environmentally- displaced persons’ (Marguénaud and Prieur 2008:3).

The draft convention is a synergy between the human rights law and the environmental law. It aims to arrange for the reception of the migrants and also their voluntary return, and emphasizes the importance of the rights-based approach to protecting the displaced persons:

‘The purpose of the present Convention is to guarantee the rights of environmentally-displaced persons and to organise their reception as well as their eventual return, in application of the principle of solidarity’ (Ibid, p. 3).

Article 1 of the 2nd Chapter of the draft underlines the importance of the migrants’ right to information and participation in determining the optimal solutions. The principles of the convention are as follows: common but differentiated responsibility (CBDR), proximity (‘the least separation of persons from their cultural area’, proportionality (relating to sharing the financial burden), and effectiveness (creation of The World Agency for Environmentally- Displaced Persons to govern and monitor the implementation of the convention) (Ibid, p. 3). The draft convention appeared in 2008 in ‘Revue Européenne de Droit de l’Environnement’ but it was never developed into anything tangible.

The Convention for Persons Displaced by Climate Change created by a group of legal scholars from Australia, is an undertaking of a similar character. It does, however, encompass both internal and international displacement. The special focus is

given to small island states which are slowly becoming uninhabitable. The document's creators, Hodgkinson et al, propose a detailed organizational structure i.e. Climate Change Displacement Organization which would designate the population eligible for protection, orchestrate the relocation (also pre-emptive), and monitor and manage the mandatory donations through its Climate Change Displacement Fund.

For Prof Zetter all three undertakings are nothing more than 'interesting academic exercises'. He strongly contests the very concept of a single-standing global treaty and he is convinced that both proposals are unlikely to ever become laws for three reasons. First of all, the displacement scenarios are highly individualized and one document cannot cater for all different needs. Secondly, most of displacement will take place within the borders of the states. And lastly, it is improbable that many developing states would accede to such convention. McAdams agrees with Zetter's opinion that a treaty per se will not solve the problem. She opposes the 'widespread, non-critical assumption, predominantly among those not trained in international law, that a treaty will produce the answer to climate change related displacement' (McAdam 2011:5). Her concern is that the treaty has become the main focus of the policy development and more immediate and alternative responses may be overlooked in the meantime. Drafting the treaty requires a precise definition of who is a victim and where (i.e. outside or inside his or her country of origin) and while such deliberations take place, other opportunities get missed and people's lives are put on hold. The lack of mobilization and consensus stems out of the lack of the political will, McAdams says. Being a legal scholar herself, she admits that creating new laws is not always the best remedy. It is the lack of the political will, not the absence of laws, which needs to be tackled. She brings up as an example of the Refugee Convention which, despite having over 140 state parties to it, strong institutional and field presence, it still fails to resolve the issue of millions of displaced around the world.

5.5 Conclusions

Countries of the Global North have largely contributed to climate change, therefore they have a strong moral obligation to take the lead in regulating the status of those who are forced to leave their homes as the result. But despite this, there is a

general reluctance from the developed countries towards creating a legally binding document creating an obligation to accept 'climate refugees'. Currently there is no law dedicated solely to protecting 'climate refugees'. Some forms of complementary protection such as Temporary Protected status (USA), Humanitarian Visas (Australia) or Temporary Protection Directive (EU) are offered. But they are inadequate as they only offer temporary and post-disaster responses. This automatically excludes the victims of slow-onset disasters who may require a pre-emptive, permanent relocation.

The civil society organisations and the world of academia in the West often have different ideas on what the optimal solution to the 'climate refugee' crisis is. Some groups, such as COINet support more decentralised, regional responses. Other, i.e. EJF, are in favour of creating a universal, global agreement.

The countries of the Global North clearly lack the unified voice and the political willingness to offer a more comprehensive protection to 'climate refugees'. The current complementary protection is insufficient and exclusive. The civil society is becoming increasingly vibrant about this issue but as this is the early stages of the 'climate refugee' discussion, their strategies are not fully defined, neither are the goals.

CHAPTER VI

THE UNITED NATIONS

6.1 Introduction

This chapter examines the role of the United Nations in protecting ‘climate refugees’. Three agencies of the UN have been examined in more detail: UNEP, UNHCR and UNFCCC.

6.2 United Nations Environmental Programme

The United Nations Environmental Programme (UNEP) was the first United Nations Agency to publish a report on climate induced migration in 1985. Since the publication of the report, UNEP has frequently acknowledged the link between climate change and migration. The former director of the Agency, Klaus Toepfer on many occasions repeated the dire predictions that ‘by 2010 the number of environmental refugees would be 50 million’ (UNEP). However, in recent years there has been a significant shift in UNEP’s discourse. According to a representative at the agency’s disaster management branch:

‘There is a new focus on assessing the environmental impacts of refugees and awareness-raising, on the need for appropriate preventative remedial actions to protect the environment from refugee and internally displaced persons’ situations and flows’ (McNamara and Gibson 2009).

The focus changed from the environmental change responsible for creating the displacement, to environmental change caused by the displaced persons. Three decades ago UNEP was a pioneer in acknowledging the climate displacement issue. Nowadays, its approach to the problem has shifted significantly to the point where any

further involvement in resolving the ‘climate refugees’ issue is very unlikely. A Regional Environmental Affairs Officer for UNEP Bangkok confirmed the Agency’s stand in an interview which took place in 2004:

‘For environmental refugees to be included in our mandate you need all sort of political backups. At UNEP we work on a governing council basis made up of certain donor governments, whereby everything comes up through governments and is funded by governments. So sensitive political issues such as this are not within our mandate’ (McNamara and Gibson 2009:14).

6.3 United Nations High Commissioner for Refugees

As already discussed in Chapter 1, the UNHCR strongly opposes including ‘climate refugees’ in its scope of concern. UNHCR’s mandate is very clear on the eligibility criteria and the victims of climate change are viewed as ‘non-legitimate category of movers/ mobile populations’. This position is unequivocal and has been reaffirmed by a former Manager at UNHCR who said in an interview with McManamara:

‘If you mention this issue [climate refugees] at UNHCR, a lot of people will sigh and will not even discuss it with you. The standard response at UNHCR is that by using or appropriating the concept refugee, it blurs the boundaries between what UNHCR consider to be a refugee and what other displaced people are. We convene protection to refugees and it is impossible to be an environmental refugee because of the grounds of becoming a refugee as stipulated in the 1951 Convention does not contain any reference to environmental issues’ (Ibid, p. 17).

Despite its exclusive and restrictive mandate and the general unwillingness to directly get involved in environmental migration, UNHCR still has an obligation, if

not legal then at least moral, to address the issue in some way and cannot completely cut itself off from the problem. It is a well-established, powerful and highly respected organization with over 140 state parties to its convention. Using the UNFCCC forum as a platform for advocacy, UNHCR could potentially influence policies on both international and state level. Without necessarily amending its mandate, UNHCR could play a key role in mainstreaming climate change migration into the disaster risk and poverty reduction planning, contingency preparedness and human mobility planning. This needs to be a cross-sector cooperation which could initially be led by UNHCR. Moreover, now that the climate induced migration has gained some momentum through the Cancun Adaptation Framework, a lot of stakeholders will seek specific information about displacement and planned relocation. This is an opportunity for UNHCR to use its knowledge and experience on the ground to frame issues and formulate responses. And last but not least, the agency's endorsement would help in awareness raising and give environmentally induced migration the well-deserved attention.

It is, however, very unlikely that UNHCR will actively engage in advocating for the rights of the environmentally displaced. The lack of political willingness at the UN level reflects to the lack of political willingness of the majority of the UN states. One of the reasons is the changing attitude toward multilateralism and growing xenophobia which leads Western states to believe that they need to protect their borders from the mass influx of immigrants. The second reason is the environmental factor. Protecting 'climate refugees' by the international community is heavily reliant on states accepting the blame for causing the environmental degradation. And not surprisingly, not many states are likely to hold their hands up. A senior diplomat with one of the Pacific missions at the UN Headquarters in New York explains:

'if you have an environmental refugee, you normally have a cause for that and somebody has produced that cause. And, not a lot of countries would be happy to admit guilt on that part' (Ibid, p. 18).

In fact, the most powerful states which hold most power at the UN are the ones which historically polluted the most and they are very unlikely to officially accept the blame.

6.4 United Nations Framework Convention for Climate Change

The United Nations Framework Conference on Climate Change (UNFCCC) is possibly the only UN agency which has taken on the issue and included it in its policy processes. The Convention deals directly with climate change but mostly from the prevention point of view. It does, however, indirectly refer to environmental migration as well. This concept was first introduced at the UNFCCC Conference of Parties (COP) 13 in Bali in 2007. This session established the Ad-Hoc Working Group on Long-term Cooperative Action (AWG-LCA), a subsidiary body with a mission to prepare the ground work for a future climate change treaty. Around the same time, the civil society and academia mobilized their efforts to ensure that the environmental migration makes it to the UNFCCC negotiating table. As a result of effective lobbying, The Cancun Adaptation Framework, a document enhancing an international cooperation on adaptation, contains a paragraph not only confirming the that climate change induced relocation is a pressing issue but also encourages and puts a moral obligation on the Parties to:

‘to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels’ (Cancun Adaptation Framework para 14 (f)).

It is vital that the UNFCCC forum gives an equal voice to all Parties, regardless of their size, population or power held. It is a highly anticipated and highly publicized forum which guarantees that any item on the agenda will receive a substantial media coverage as well as political attention. The very presence of climate migration on the negotiation table has confirmed its legitimacy and the sense of urgency. It is a venue for a multidisciplinary and multilayered debate where the issues

of climate, migration, security and human rights overlap and can to be merged into one discussion.

The above-mentioned paragraph 14 (f) swiftly gained the approval of the Parties due to its voluntary, non-binding character. However, currently there has been no substantial proposal among the UNFCCC Parties to create a single-standing convention specifically targeting ‘climate refugees’ as this would imply new obligations on states (Warner 2011:13). But this does not mean the future commitments will not arise out of this process. There have been examples in the past of similar UN-based forums which created a platform for other, more specific forums (such as the Rio Earth Summit which in 1992 ‘gave birth’ to the UNFCCC and two other environment-related binding treaties). For the time being all efforts should be vested in aligning the interests among the Parties, building a dialogue on sensitive issues such as liability and compensation, and most of all, trying to any avoid overly complex strategies as they will be difficult to implement at this early stage. A good starting point at the UNFCCC level, Warner suggest, would be to advocate for the creation of Guiding Principles on Climate Induced Displacement based around the guidelines for IPDs. The guiding principles would start preparing the state parties on how to deal with the emerging issue of ‘climate refugees’ until a more permanent, possibly binding solution is agreed upon.

6.5 Conclusions

The United Nations quite decisively excludes and de-centralises the role of the UN in solving the issue of ‘climate refugees’. Migration is a politically sensitive topic and the Agencies such as UNEP will not take it up as a priority if the funding governments do not want to get involved. UNHCR’s narrow definition of a refugee also excludes environmental migration from its scope of protection. In general, the UN agencies operate on clear-cut mandates which they strictly adhere to. This puts constrains on the areas where the UN agencies get involved and at the same time shows that climate related displacement is not a priority issue at the UN level.

CHAPTER VII

PUBLIC OPINION

7.1 Introduction

The public opinion also plays a huge part in shaping policies and creating laws. It is a less direct role but still an incredibly vital one. There can be no successful changes in protecting the rights of ‘climate refugees’ without the adequate public support. This chapter will deal more closely with the general public; its knowledge about the problem, the attitudes towards environmental migration, and the sense of responsibility for the victims of such migration.

7.2 General global trends

Transatlantic Trends, a comprehensive annual survey of American and European public opinion conducted a survey on immigration and published its findings in a report titled ‘Key Findings on Immigration 2009’. One thousand respondents in each country (Spain, Germany, Italy, France, the Netherlands, UK, US and Canada) have been asked the following question:

‘As a result of worldwide climate change, some people in other countries may need to move away from their homes because of things like sea level rise or more frequent droughts. Can you tell me to what extent you support or oppose (COUNTRY) allowing these people to settle in your country?’

A majority in all European countries surveyed—an average of 68%—were in favor of allowing people who are displaced by climate change effects such as sea level rise or more frequent droughts to settle in their country. The most support for environmental migrants has been shown by the Spaniards; 80 per cent of the

respondents in the country expressed their solidarity with the victims of environmental displacement. The second highest scoring European country was Germany (74%), followed by the Netherlands and Italy (both 68%). Even in the United Kingdom, where the highest proportion of respondents saw immigration as a problem, the majority (57%) supported admission of environmental migrants. Also Canadians and Americans showed a high support for environmental migrants settling in their countries (75% and 59% of respondents respectively). Moreover, the same report has shown that there was a lot more support for environmental migrants than for economic migrants. This, however, indicates the lack of knowledge that environmental migrants very often are, to some extent, economic migrants (Transatlantic Trends 2009).

7.3 Survey results

In February 2013 I conducted a questionnaire with 100 respondents of various nationalities and backgrounds. The questionnaire was designed to test the general knowledge as well as the attitude towards climate change induced migration. Eighteen different nationalities participated in the survey with a third of respondents coming from the countries of the Global South (Thailand, Philippines, Kenya, Venezuela, and Vietnam). Other nationalities included European countries (Germany, Italy, The Netherlands, Spain, Greece, Poland, Estonia, Switzerland, France and Lithuania), and also Brazil, Canada and Saudi Arabia. The respondents answered 7 simple questions:

- 1) Have you ever heard the term 'climate refugee' (before participating in this questionnaire)
- 2) Can you describe who a 'climate refugee' is?
- 3) Did you know there was no international legal framework to protect 'climate refugees'?
- 4) Do you think that 'climate refugees' deserve the same protection as 'classical' refugees (victims of religious, political, racial, etc. persecution)?
- 5) Do you think that industrialized countries should take the lead in protecting 'climate refugees' due to their historic pollution and contribution to climate change?

6) If your government held a public referendum to decide on whether or not to allow a large number of 'climate refugees' into your country, how would you vote?

7) What is your general attitude towards immigration into the Western countries?

Based on the answers, I concluded that:

1) 45 % of the respondents have not come across the term 'climate refugee' before seeing the questionnaire. The overwhelming majority of those who answered 'no' come from the European countries (nearly 90%). The respondents who answered 'yes' have mostly heard about the term from the news, both via TV and the Internet.

2) Two thirds of the respondents have been able to provide me with a simple but accurate definition of a 'climate refugee'. In most cases it read: 'A person who is forced to flee due to climatic changes which made their home country hard to live in'. Some of the respondents admitted though that they only researched the definition because of the questionnaire, otherwise they would not know it.

3) 75% of the respondents did not realize there was no international legal framework to protect 'climate refugees' (vast majority coming from Europe). Most of the 25% who answered 'yes' explained that they were aware of it because of their educational or professional background (legal, media-related).

4) When asked whether they thought 'climate refugees' deserved the same protection as the 'classical' refugees, two thirds answered 'yes', the remaining one third was split between those who disagreed and those who had no opinion. One respondent who answered 'no' justified their opinion based on the fact that they believed that 'climate refugees' were in many ways similar to economic migrants, and therefore, they should not get the same level of protection as someone who flees from genocide. All of those who had no opinion or answered 'no' come from European countries.

5) Almost a third of respondents had no opinion on whether or not the industrialized countries should take on the lead in resolving the 'climate refugee' issue because of their historic contribution to climate change. Both those and the ones who

answered 'no' (just under 5%) justified their opinions mostly by their belief that it was a global issue and all countries should cooperate on the same level and make equal efforts. No country should be singled out to pay a higher price than the other.

6) Surprisingly, a vast majority of respondents would be in favour of allowing large numbers of 'climate refugees' into their countries. If their governments held a public referendum on this, 85% would vote 'yes'. The few respondents, who 'voted' against, quoted economic difficulties in their countries and the fact that there is growing poverty in the Western states which should be tackled first before accepting more refugees. One Dutch respondent wrote that the Netherlands was already overpopulated and too many people lived off the social welfare benefits as it was, and accepting the large numbers of refugees would be an economic suicide. All 5% who answered 'no' came from Europe.

7) The last question was of a general nature, not specifically related to climate induced migration but migration in general. Half of the respondents expressed a concern that the numbers of immigrants from developing states should be slightly reduced in the future (again, quoting economic crisis and overpopulation), but at the same time they do see the benefits of immigration. Some of those respondents (two thirds are Europeans) mentioned that even though they are not completely against immigration, they think that accepting refugees is not a long-term fix and instead the Western states should focus on tackling the push out factors. 15% of the respondents are strongly in favour of immigrants from developing states (all respondents from Western Europe) and only a few had no opinion on this matter.

7.4 Conclusions

The public generally lacks the knowledge about the problem of 'climate refugees'. Almost half of the respondents never heard of the term. A vast majority supported the idea of their governments accepting 'climate refugees' but at the same time many expressed a concern that migration into the West should be controlled better. A large number of respondents believed that 'climate refugees' are the same as economic migrants and therefore did not deserve the same protection as 'classical' refugees.

CHAPTER VIII

CONCLUSIONS

8.1 Conclusions

Migration, also driven by environmental changes is a natural form of adaptation to changes. People have always migrated in the search of more fertile pastoral and arable land, cleaner water and other natural resources, especially when those available to them have run out. What has become alarming in the last two decades is the rapidly growing number of people fleeing from environmental and climate change related natural disasters (whether slow- or rapid- onset) which are largely attributed to pollution and other unsustainable human actions. Different scholars provide different estimates of future migration waves but one of the most prominent researchers, Norman Meyers predicts that as many as 200 million people will get displaced due to environmental disruptions by the end of this century.

Despite this vastly growing number, currently there is no adequate human rights instrument which would be dedicated solely to protecting 'climate refugees'. The issue has received an increased attention in the last two decades, however there are no concrete indications that the solution will be created in the nearest future.

The main actors involved in the debate on the future of 'climate refugees' are: the national governments, supranational bodies such as the EU and the OAU, the civil society and intergovernmental organisations, and the world of academia. The general public also plays a vital role.

The involvement and efforts of the national governments of the Global North are inadequate despite the fact that it is the Global North who historically contributed the most to climate change. Some forms of complementary protection are offered but they do not address the problem sufficiently, they have a limited applicability and they mostly deal with temporary displacement as a result of rapid onset disasters. The EU's Qualification Directive and Temporary Protection Directive have been created to fill the gap in the refugee protection regime. However, QD's

qualification criteria closely resemble those of the Refugee Convention. Temporary Protection Directive is opened to those who have to leave their countries of origin and are unable to return. Neither of the two clearly mentions environmental disruptions as valid reasons for plight. Consequently, both QD and TPD offer little real value to 'climate refugees'.

The United States has created a piece of legislation called Temporary Protected Status. It allows some groups to obtain legal residency and work authorization in case they are unable to return to their countries of origin due to a devastation caused by a natural disaster. However, this is a temporary measure applicable only to those who are already on the territory of the US. This again excludes the victims of slow-onset changes, or victims of natural disasters who remain outside of the US when the disaster occurs. Therefore, TPS is not an adequate tool to resolve the problem either.

Australia's Complementary Protection Act 2011 creates a potential loophole for legitimization of protection claims based on environmental grounds. It applies to those who do not qualify as refugees under the Refugee Convention but need protection due to a real risk of being subjected to 'serious harm' if returned to their countries of origins. Moreover, the Onshore Protection Visa and Special Humanitarian Program are also offered to those who cannot safely return home due to the risk of harm. Still, they are difficult to obtain; the former is only open to those who are already in Australia, the latter can only be applied for on behalf of the victim by an Australian citizen.

All of the above are often quoted by the countries of the West as their answer to the plight to 'climate refugees'. In reality, they resolve very little. They are temporary humanitarian relief measures which are adequate in some cases but do not guarantee protection to victims of slow-onset changes such as rising sea levels or desertification.

The civil society's role in this matter has evolved considerably in the last two decades. Until recently, the debate on climate change was led by environmental organisations and scholars, and was focused on scientific findings but lacking the human factor. The recent cross-sector collaboration between the human rights, development and environmental organisations has resulted in a better understanding of

the problem. However, there is a lack of a unified path, common goals and ideas on what the best way forward is. Some organisations (i.e. EJF) support the idea of a global, legally binding instrument. Others, such as COINet and Displacement Solutions are in favour of implementing regional solutions and they believe that different affected populations have very different needs (i.e. Bangladesh and Tuvalu as discussed in Chapter 4).

The same divergence can be found in the world of academia. Some scholars favour the idea of creating a legally binding, global convention and even create draft conventions which could be used as an example for future legal instruments (i.e. ‘The Convention for Persons Displaced by Climate Change’, ‘The Draft Convention on the International Status of Environmentally Displaced Persons’). Other academic scholars, such as Prof. Zetter strongly oppose such initiatives calling them interesting academic exercises with no legal spine.

The public generally lacks the knowledge but about the ‘climate refugee’ problem (many do not even realize that such a group of migrants exists). While some members of the public express their sympathy and support of the idea of accepting the displaced peoples by their countries, many at the same time voice their concerns about the large numbers of migrants flooding Europe and the Western world. Some believe that ‘climate refugees’ are the same as economic migrants, therefore they do not deserve the same protection as political refugees.

There have been no known cases of asylum seekers (failed or successful) who entered another country and claimed asylum based on threats to life due to environmental changes. This can be attributed to the fact that- due to the current gap in legislation not recognising environmental changes as agents of persecution- such claims would not be accepted. Therefore, potential environmental migrants are more likely to claim asylum based on a different ground to secure their stay in the receiving country.

8.2 Recommendations

Protection of the environmentally displaced people should not stem out the Refugee Law. The ‘classical’ refugees and environmentally displaced people both flee

out of a fear for their lives but the agents of persecutions differ. And as much as Jane McAdam makes a valid point that the priority should be given to the needs and not the reason for plight, it is simply unrealistic to expect that these two groups will be ever put in the same category and considered for protection on the same level. This is not to say that one group is more deserving than the other. But proving the eligibility under the Refugee Convention is a much more clear-cut procedure than proving that a person fleeing from droughts really faces death due to starvation and is not 'just' an economic migrant. Environmental migrants should be subjected to a separate legislation which would consider them as priority and not merely an additional 'second class' category of refugees. Therefore amending the Refugee Convention to include the environmental migrants is not the right approach.

A globally binding instrument obliging the countries to accept 'climate refugees' is not the right approach. This is primarily due to the fact that not many countries (especially from the Global North) would rush to ratify it. Migration is a sensitive topic in the current economic climate. Agreeing to accept the responsibility for 'climate refugees' would mean accepting the blame for creating the problem and an unspoken agreement to curb the emissions. Moreover, the potential receiving states fear that such treaty would open the migration floodgates and create an enormous burden on their already stretched economies. For these and many other reasons, the focus should shift from the need to create a binding treaty to creating soft laws such as guidelines and recommendations. Soft laws carry moral authority and are more universal and often can achieve just as much, if not more, than the binding laws which are only be enforced on those who ratified them. Displacement Solutions (NGO) is working on a non-binding protection model which in the future could be adopted by governments, tailored to the circumstances and needs of both sending and receiving states. In the absence of hard laws, such a model, even though not legally binding, can be quoted in court rooms and implemented into national laws.

Think global, act local. Displacement scenarios differ and so do the needs of people affected. It is impossible to create a universal 'one fits all' standard and expect it will apply to all cases. Sooner or later a new, unforeseen displacement scenario will emerge and some group of affected people will be left out of the scope again. Regional and case-by-case solutions are often the best solutions. Not all

environmental migrants will want to move to Europe or the US. Most will want to stay as close to home as possible. In order to ensure the sustainability for those people it is important to facilitate the relocations into the close-by countries who share similar culture, climate, religion, etc. (just like Fiji is considered as a possible destination for the Tuvaluans and Sri Lanka for the Maldivians). This does not waive the West from its obligations of accepting the transferred populations, but instead it should provide the expertise and the financial assistance to facilitate the local solutions as much as possible.

Climate change, the root cause of the problem can still be prevented. The international community must mobilise in order to curb the emissions and prevent the further environmental degradation. A lot of slow-onset changes that have been taking place for years cannot be reversed but the further progress can be halted (by which the future number of environmentally displaced people can be reduced).

The role of the civil society and the UN is crucial now more than ever. The debate on protecting the 'climate refugees' is gaining a momentum but in the presence of a relatively weak political will, the UN and the civil society must make sure that it does not fall off the negotiating table. The grass-roots NGOs have a unique power because they have access to both the affected communities and to the policy-makers and the UN. They can, therefore, act as advocates and represent the affected communities in the political and the UN circles. It is important that the NGOs from different sectors communicate with each-other effectively and unify their goals (as described in Chapter 5 this is not always the case). The UN is a well-established, widely respected organization with over 140 members. It has not only legal but also moral authority and can influence state and regional policies. The UNHCR, regardless of its strict mandate which excludes 'climate refugees' from the protection scope, should still take the lead in representing the issue globally and pushing for tangible solutions. It should act as a knowledge resource to those states who seek guidance. This does not require changing the mandate.

Putting the people at the centre and respecting their needs and wishes is key. A lot of the times the human factor gets pushed on to the 'back burner'. The displaced people know their needs best and they should be consulted and involved in the process. Majority of the people at risk do not want to leave their homes (as

described in Chapter 4). They cling on to the sacred land where their ancestors are buried and where they want their children to cultivate their traditions. Resettlement to them would be a big tragedy but in many cases it can still be prevented. Therefore, if it is their wish to focus first on adaptation measures (creating physical barriers to prevent the saline intrusion of the land, developing irrigation systems to support the agriculture, creating alternative livelihoods, etc.), the international community should respect it. Resettlement is the ultimate adaptation measure which must be explored but the priority should be given to finding the ways to keep the people in their homes, if that is what they wish for the most.

The future research should focus less on definitions and reasons for plight, and more on practical aspects and finding and implementing optimal, tailored adaptation measures.

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