

# GLOBAL GOVERNANCE TO CLIMATE CHANGE MIGRATION: IN SEARCH OF RECOGNITION IN INTERNATIONAL LAW

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## 1. Introduction

The link between climate change and environmental vulnerability has now been well established. The impacts of climate change can be evidenced by, inter alia, the increased incidence of droughts, desertification, rising sea levels, and extreme weather patterns.<sup>2</sup> These impacts, consequently, are likely to affect the lives of millions of people around the globe. The loss of livelihoods and living space, as a result, threaten to dramatically increase human movement both within states and across international borders.<sup>3</sup> Almost twenty years ago, the First Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) (1990) warned that the gravest effect of climate change would likely be on human migration.<sup>4</sup> Thus the human impact on the environment is creating a new kind of global casualty<sup>5</sup> – the increasing number of people displaced as a direct result of climate change.<sup>6</sup> It is believed that

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<sup>2</sup> Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2007: Impacts, Adaptation and Vulnerability* (2008) New York: Cambridge University Press. In its 2007 report the IPCC highlights the acceleration of climate change and its factual severe impacts on the environment and human lives.; G. C. Hegerl and others, 'Understanding and Attributing Climate Change', in S. Solomon and others (eds), *Climate Change 2007: The Physical Science Basis: Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2007); IPCC, November 2007; N. Stern, *The Economics of Climate Change: The Stern Review* (Cambridge: Cambridge University Press, 2007) vi–ix.

<sup>3</sup> Camillo Boano, 'FMO Research Guide on Climate Change and Displacement' (FMO Research Guide, Forced Migration Online (FMO) 2008) 3.; Koko Warner, 'In Search of Shelter: Mapping the Effects of Climate Change on Human Migration and Displacement' (Report, Cooperative for Assistance and Relief Everywhere (CARE), 2009) 1.

<sup>4</sup> Intergovernmental Panel on Climate Change (IPCC), *Climate Change 1990: Impacts, Adaptation and Vulnerability* (1990) New York: Cambridge University Press.; *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc A/HRC/10/61 (2009), 18, para 55.

<sup>5</sup> According to Norman Myers – 'The issue of environmental refugees thus 'promises to rank as one of the foremost human crises of our times' (Norman Myers, 'Environmental Refugees', (1997) 19 (2) *Population and Environment* , 167, 175.

<sup>6</sup> Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', (2008) 30 (4) *Law & Policy*, 502-529, 504.; Molly Conisbee and Andrew Simms, *Environmental Refugees The Case for Recognition* (2003) 36.

between 50 and 200 million people may move by the middle of the century, either within their country or across borders, on a permanent or temporary basis.<sup>7</sup> The available literature confirms that this potential catastrophe will surpass all known refugee crises in terms of the number of people affected.<sup>8</sup> In this context, climate change displacement can be seen to represent a rapidly emerging problem for the international community.<sup>9</sup>

The climate change induced displaced persons are plainly entitled to enjoy the full range of civil, political, economic, social, and cultural rights set out in international and regional human rights treaties and customary international law.<sup>10</sup> Nevertheless, the existing international legal framework - including its laws and institutions - does not adequately address the emerging crisis. There are no legally binding mechanisms of protection or support for the environmentally displaced people.<sup>11</sup> Still, no internationally accepted term exists for persons moving for environmental reasons.<sup>12</sup> Terms and concepts such as environmental migration, climate change-induced migration, ecological or environmental refugees, climate refugees, climate change migrants and environmentally induced forced migrants are found scattered throughout the emerging literature.<sup>13</sup> They are not yet recognised in international law as an identifiable group whose rights are expressly articulated,<sup>14</sup> or as a formal legal category of people in need of special protection.<sup>15</sup>

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<sup>7</sup> United Nations High Commissioner on Refugees (UNHCR), 'Forced Migration in the Context of Climate Change: Challenges for States under International Law' 19 May 2009. 1.

<sup>8</sup> Biermann and Boas, above n 2, 3.

<sup>9</sup> Williams, above n 6, 506.

<sup>10</sup> Since States are obliged to respect their human rights obligations with respect to all people within their territory or jurisdiction: see *Lopez Burgos v. Uruguay*, Communication No. R.12/52 (1981); Human Rights Committee, 'General Comment 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (21 April 2004), para 10; Concluding Observations of the Human Rights Committee: Israel, UN Doc. CCPR/C/79/Add.93 (18 August 1998) para 10; Concluding Observations of the Human Rights Committee: Israel, UN Doc. CCPR/CO/78/ISR (21 August 2003) para 11.

<sup>11</sup> Lehman, above n 11, 1.

<sup>12</sup> International Organization on Migration (IOM), 'Migration, Climate Change and the Environment', (IOM Policy Brief, IOM, 2009) 4.

<sup>13</sup> Generally, persons forcibly displaced across borders for environmental reasons have been referred to as "environmental refugees" or "climate refugees". No existing legal instrument explicitly protects people who flee environmental threats. For a definition of that group, therefore, one must turn to academic literature, in which there is a lively theoretical debate. Most of those who study environmental migration discuss the broader class of environmental refugees rather than the more specific subset of climate change refugees. They use a variety of terms to refer to this group of people and its subcategories. In this paper, the available terms are interchangeably used.

<sup>14</sup> Cf women, children, refugees, indigenous peoples, migrant workers, stateless people.

<sup>15</sup> Jane McAdam and Ben Saul, 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law' (Sydney Centre Working Paper No 4, Sydney Centre for International Law, 2008) 2.

In this context, this paper first outlines the interrelationship between climate change and forced migration. Then it discusses the existing refugee norms and structure available to those persons displaced by environmental disasters. In doing so, it highlights the gaps or limitations in the relevant applicable regimes of international refugee law. To curb the current inadequacy of legal responses, the paper proposes to develop a new international agreement that seeks to specifically recognise the plight of such individuals and provide a framework for their protection.

## 2. Climate Change and Forced Migration

The human consequences of climate change will be immense.<sup>16</sup> A significant body of literature has emerged over the last two decades documenting the potential and observed impacts of climate change on many different natural and social systems.<sup>17</sup> The IPCC predicts an increased frequency and severity of climate events such as storms, cyclones and hurricanes, as well as longer-term sea level rise and desertification.<sup>18</sup> These impacts of climate change have impacted upon and will continue to place great stress on ecological and livelihood systems. Thus these undermine the viability of ecosystem-dependent livelihoods (such as rained agriculture, herding and fishing) and impact upon people's ability to subsist in certain parts of the world. For example, the degradation of soil, water and forest resources will exacerbate the vulnerability of people. Shoreline erosion, coastal flooding, increasing salinity and increased severe weather events<sup>19</sup> are among others have great impact upon agricultural viability, vital infrastructure and services, the stability of governance, and ultimately human settlement.<sup>20</sup> As early as 1990, the IPCC<sup>21</sup> highlighting the effects of climate change on humans stated that 'the gravest effects of climate change may be those on

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<sup>16</sup> Mary Robinson, 'Forward', to the International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, Versoix, Switzerland, (2008), iii.

<sup>17</sup> Boano, above n 3, 3.

<sup>18</sup> Jane McAdam, Environmental Migration Governance, available at <http://ssrn.com/abstract=1412002> (accessed on 29.06.2009.), 1.

<sup>19</sup> G. C. Hegerl and others, 'Understanding and Attributing Climate Change', in S. Solomon and others (eds), *Climate Change 2007: The Physical Science Basis: Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2007); IPCC, November 2007; N. Stern, *The Economics of Climate Change: The Stern Review* (Cambridge: Cambridge University Press, 2007) vi-ix.

<sup>20</sup> McAdam and Saul, above n 1.

<sup>21</sup> A United Nations scientific body that won the 2007 Nobel Peace Prize for its comprehensive and objective reports on climate change. IPCC, About IPCC: Why the IPCC Was Created, <http://www.ipcc.ch/about/index.htm> (last visited Apr. 6, 2009).

human migration as millions are uprooted by shoreline erosion, coastal flooding and agricultural disruption.<sup>22</sup> The drivers of such movement include the inundation of settled land due to sea-level rise, accelerated desertification among currently cultivated lands (leading to migration in search for food), and more frequent and severe climatic disasters such as drought, floods and tropical storms.<sup>23</sup> More recently, the United Nations Office of the High Commissioner for Human Rights (OHCHR) has begun to pay specific attention to climate change, noting that it could affect hundreds of millions of people in numerous ways, including through 'permanent displacement.'<sup>24</sup> In February 2008, the Deputy High Commissioner for Human Rights said: 'by 2050, hundreds of millions more people may become permanently displaced due to rising sea levels, floods, droughts, famine and hurricanes. The melting or collapse of ice sheets alone threatens the homes of 1 in every 20 people. Increased desertification and the alteration of ecosystems, by endangering communities' livelihoods, are also likely to trigger large population displacements.'<sup>25</sup>

### **3. Still No Internationally Recognised Term Exists for Climate Change Induced Displaced Persons**

With all the predicted dangers likely to appear due to the effects of climate change still there is no internationally recognised definition developed to identify the environmentally or climate change displaced person - one who leaves his or her home and seeks refuge elsewhere for environmental reasons. The term environmental refugee is most popular among the definitions describing the plight of those displaced due to environmental change.<sup>26</sup> This

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<sup>22</sup> Norman Myers with Jennifer Kent, Climate Inst., *Environmental Exodus: An Emergent Crisis in the Global Arena* 134 (1995), available at <http://www.climate.org/PDF/Environmental%20Exodus.pdf> (citing a 1990 IPCC report).

<sup>23</sup> James Morrissey, 'Environmental Change and Forced Migration' (RSC Background Paper, Refugee Studies Centre (RSC), 2009) 2. Robert Stojanov, 'Environmental Refugees – Introduction' (2004) 38 *Geographica*, 77-84, 79. Events in recent years, such as floods and landslides in Philippines and Bangladesh, Hurricane Katrina, the Southeast Asian tsunami, the Pakistan earthquake, as well as bird flu and continuing droughts in Africa, dramatically illustrate the increased frequency and potential vulnerability of human society

<sup>24</sup> OHCHR, United Nations Joint Press Kit for Bali Climate Change Conference: The Human Rights Impact of Climate Change, U.N. Doc. DPI/2483 (Nov. 2007), available at <http://www.un.org/climatechange/pdfs/bali/ohchr-bali07-19.pdf>.

<sup>25</sup> Kyung-wha Kang, OHCHR, *Climate Change, Migration and Human Rights*, at the Conference on Climate Change and Migration: Addressing Vulnerabilities and Harnessing Opportunities 3-4 (Feb. 19, 2008).

<sup>26</sup> The examples of environmental displacement are - the Yanomami people of the Brazilian rain forest; the Ukrainians around Chernobyl; the Indians affected by the Bhopal disaster; Nicaraguans whose homes were destroyed by Hurricane Mitch; Ethiopians, Rwandans, and Somalis suffering from drought and lack of sustainable agriculture; Central Asians harmed by years of poor Soviet agricultural practices; Nigerians suffering from increased pollution and the loss of their land due to government policies towards oil companies--

term has now been in circulation for almost forty years. It was first formally used by Lester Brown from the World Watch Institute in 1970<sup>27</sup> and was subsequently used in a 1984 briefing document published from the London-based International Institute for Environment and Development.<sup>28</sup> Finally, it was an intergovernmental agency - the United Nations Environment Programme (UNEP) - that formally defined the term environmental refugee for the first time in 1985.<sup>29</sup> UNEP defined environmental refugees in a manner consistent with the humanitarian mission of their agency rather than using more analytic criteria.<sup>30</sup> El-Hinnawi of UNEP expounded the standard definition of 'environmental refugees' as 'those 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 jeopardized their existence and/or seriously affected the quality of their life.'<sup>31</sup> By 'environmental disruption' in this definition is meant 'any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life.'<sup>32</sup>

In this definition, he identified three major types of environmental refugees: those temporarily dislocated due to disasters, natural or man-made; those permanently displaced due to drastic environmental changes, such as the construction of dams; and those who migrate due to the gradual environmental degradations.<sup>33</sup> He also included an additional smaller category of those people who were displaced by the destruction of their environment as a result of warfare.

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all of these groups of individuals have one thing in common: they have been displaced, forced to move from their homes and traditional habitats due wholly or in part to environmental reasons.

<sup>27</sup> Morrissey, above n 23, 3.

<sup>28</sup> See Richard Black, 'Environmental Refugees: Myth or Reality?' (Working Paper No 34, UNHCR, 2001) 14.

<sup>29</sup> Frank Biermann and Ingrid Boas, 'Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees' (2010) 10 *Global Environmental Politics*, 8.; Morrissey, above n 23, 3.

<sup>30</sup> Diane C. Bates, 'Environmental Refugees? Classifying Human Migrations Caused by Environmental Change', (2002) 23 (5) *Population and Environment*, 465-477, 466.

<sup>31</sup> Essam El-Hinnawi, *Environmental Refugees* (1985), United Nations Environmental Programme, Nairobi, Kenya, 4.

<sup>32</sup> *ibid.*

<sup>33</sup> Boano, above n 3, 6.

Though El-Hinnawi received credits for providing a formal definition of environmental refugee for the first time, critics question the usefulness of the concept. They are critical of the vague and simplistic conceptualisation of the term 'environmental refugee'. According to them, he very plainly identified environment as the sole driver of migration while people decide to migrate for various reasons.<sup>34</sup> As Bates commented - 'El-Hinnawi did not provide generic criteria distinguishing environmental refugees from other types of migrants, nor did he specify differences between types of environmental refugees.'<sup>35</sup> So this definition seems very wide covering many people under the umbrella of environmental refugee.

Though faced much criticism, El-Hinnawi's work is often taken as the starting point for work on the environmental migration.<sup>36</sup> Authors began to elaborate on the relationship between environmental change and human mobility based on his literature and provide new definitions further contributing to current environmental migration discourse.<sup>37</sup> His broad definition contains many elements from which they pick and choose.

For example, Jacobson, in the same vein with El-Hinnawi identified different types of environmental refugees as 'those displaced temporarily due to local disruption such as an avalanche or earthquake; those who migrate because environmental degradation has undermined their livelihood or poses unacceptable risks to health; and those who resettle because land degradation has resulted in desertification or because of other permanent and untenable changes in their habitat.'<sup>38</sup>

Similarly broad is the influential definition of environmental refugees used by Myers and Kent, who also provided some early estimates of environmental refugees in 1995.<sup>39</sup> Myers

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<sup>34</sup> Morrissey, above n 23, 4.

<sup>35</sup> Bates, above n 30, 466.

<sup>36</sup> For example, Myer, Bates and others authors started to give definitions based on El-Hinnawi's definition.

<sup>37</sup> Morrissey, above n 23, 3.

<sup>38</sup> Jodi L. Jacobson, *Environmental Refugees: A Yardstick of Habitability* (1988) World Watch Institute, Washington D.C., 37-38.

<sup>39</sup> Myers (1996) has suggested the total number of environmental refugees may be as high as 25 million, putting this group numerically well ahead of the 'political' refugees currently of concern to UNHCR. Myers claims that there were at least 25 million environmental refugees in the mid-1990s, and that this unrecognised category exceeded the then 22 million refugees as officially defined. He thought the number of environmental refugees

and Kent conceptualized environmental refugees as persons ‘who can no longer gain a secure livelihood in their traditional homelands because of environmental factors of unusual scope, notably drought, desertification, deforestation, soil erosion, water shortages and climate change, also natural disasters such as cyclones, storm surges and floods.’<sup>40</sup>

In line with El-Hinnawi, Jacobson and Myers, Bates suggests a categorization of environmental refugees based on criteria related to the origins of the environmental disruption (natural or technological), its duration (acute or gradual), and whether migration was a planned outcome or not.<sup>41</sup> She defines environmental refugee as ‘people who migrate from their usual residence due to changes in their ambient non-human environment’.<sup>42</sup> She argues that migration flows resulting from unintended outcomes or disruptions can be divided into three categories: disasters, expropriations and deterioration.<sup>43</sup>

More recently, Renaud et al identifies three different categories of ‘environment-related mass movement of people’: environmentally motivated migrants; environmentally forced migrants; and environmental refugees.<sup>44</sup> They correlated these categories to the nature of an environmental trigger, as well as to the type of assistance available to affected communities.<sup>45</sup>

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might well double by the year 2010, and could rise even more quickly as a result of global warming. As many as 200 million people could eventually be at risk of displacement by this century (Myers (1997), above n 4, 167-82.)

<sup>40</sup> Norman Myers and Jennifer Kent, *Environmental Exodus: An Emergent Crisis in the Global Arena* (1995), Climate Institute, Washington D.C., 18–19.

<sup>41</sup> Bates, above n 30, 468.

<sup>42</sup> Ibid

<sup>43</sup> ‘Disaster refugees originate in acute events that are not designed to produce migration. These may be divided between those events caused by natural events and those caused by technological accidents; expropriation refugees result from acute anthropogenic disruptions in the environment that intentionally dislocate target populations. These may be further divided into two groups based on whether the disruptive event was caused by economic development or warfare; deterioration refugees migrate as a result of gradual, anthropogenic changes in their environments that were not intended to produce migrants. Deterioration refugees tend to come from ecosystems that have gradually degraded to a point where people cannot survive on the local resource base. This type of refugee may be analytically separated into sub-groups by the source of the degradation in terms of pollution and depletion’ (Bates, above n 30, 469.)

<sup>44</sup> Febrice Renaud et al, ‘Control, Adapt or Flee: How to face Environmental Migration?’ (Intersection – Interdisciplinary Security Connections’ Publication Series of UNU-EHS No. 5/2007, UNU-EHS, 2007) 29.

<sup>45</sup> Ibid

Though Myer indicates that the notion of environmental refugees includes climate refugees,<sup>46</sup> climate refugees have become a staple of popular discourse in recent years.<sup>47</sup> In 2007, the link of climate change to ‘large-scale migration’ became even part of the rationale for awarding the Nobel Peace Prize.<sup>48</sup> Some authors, notably Biermann & Boas and Docherty & Giannini, have identified the need to address climate change refugees in particular. According to Biermann & Boas, ‘its (definition of environmental refugee) breadth makes it impossible to specify or quantify climate-related migration. In fact, there does not seem to exist a clear definition of climate refugees so far.’<sup>49</sup> At times, the term ‘environmental refugee’ has been replaced with the term ‘climate refugee’<sup>50</sup> in the definitions without any detail specification.<sup>51</sup>

Docherty and Giannini define climate change refugees as distinct from environmental refugees as ‘an individual who is forced to flee his or her home and to relocate temporarily or permanently across a national boundary as the result of sudden or gradual environmental disruption that is consistent with climate change and to which humans more likely than not contributed.’<sup>52</sup> While their definition is based on the primary legal model - the Refugee Convention<sup>53</sup> and previous academic definitions of environmental refugee including that of El-Hinnawi and Myers, it adapts these models to the particularities of climate change.<sup>54</sup> Their

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<sup>46</sup> See *generally*, Myers and Kent, above n 22.; Norman Myers, ‘Environmental Refugees: A Growing Phenomenon of the 21st Century’ (2002) 357 (1420) *Philosophical Transactions: Biological Sciences* 609, 611.

<sup>47</sup> Biermann and Boas, above n 29, 4. Recently, Barac Obama in his remarks at United Nations Secretary General Ban Ki – Moon’s Climate Change Summit on September 22, 2009 used the term ‘climate refugee’. (Barac Obama, Remarks by the President at United Nations Secretary General Ban Ki-Moon’s Climate Change Summit, United Nations Headquarters, New York, September 22, 2009.)

<sup>48</sup> Norwegian Nobel Committee 2007. The Nobel Peace Prize was awarded jointly to the Intergovernmental Panel on Climate Change and the climate campaigner and former U.S. Vice-President, Albert Gore. Cited in - Biermann and Boas, above n 29, 4.

<sup>49</sup> Biermann and Boas, above n 29, 5.

<sup>50</sup> See Friends of the Earth, ‘A Citizen’s Guide to Climate Refugees’ (Friends of the Earth, 2007) 1.

<sup>51</sup> Morrissey, above n 23, 8.

<sup>52</sup> Bonnie Docherty and Tyler Giannini, ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’ (2009) 33 *Harvard Environmental Law Review*, 349-403, 361.

<sup>53</sup> See 1951 Refugee Convention, art. 1(A)(2).

<sup>54</sup> Docherty and Giannini, above n 52, 361.



proposed definition covers relocation that is both temporary and permanent.<sup>55</sup> Rather than enveloping environmental migration widely, as most definitions do, their definition ‘hones in on disruption that is consistent with climate change.’<sup>56</sup> But the only limitation is that their definition deals with only people move across national borders due to impacts of climate change while a large number of people will be displaced internally due to impacts of climate change.<sup>57</sup>

While Docherty and Giannini propose for a separate convention, Biermann and Boas presented a definition of a climate change refugee arguing for a global governance system to protect climate refugees within the UNFCCC framework.<sup>58</sup> They defined the term as ‘people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity.’<sup>59</sup> Their definition is made tailored to climate change as it seeks to encompass all those who flee the most direct impacts of climate change. Biermann and Boas, in their definition, make no distinction based on the character of the migration. To them, it is not a matter whether relocation is permanent or temporary.<sup>60</sup> They are also against making any distinction between internal and trans-boundary migrants.<sup>61</sup> Instead, Biermann and Boas base the parameters of their definition on the cause of relocation, i.e., climate change.<sup>62</sup> Their definition encompasses both sudden and gradual environmental change because climate change can cause both. To ensure they cover only climate-induced migration, they limit the types of environmental disruptions that can qualify refugees for assistance to three ‘direct, largely undisputed climate change impacts’: “sea-level rise, extreme weather events, and drought and water scarcity”.<sup>63</sup> They do not cover events that they say are only peripherally related to

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<sup>55</sup> Docherty and Giannini, above n 52, 369.

<sup>56</sup> Docherty and Giannini, above n 52, 370.

<sup>57</sup> The issue of internal and trans boundary movement of people is discussed in detail in section 5.5 below.

<sup>58</sup> See, *generally*, Biermann and Boas, above n 29, 17.

<sup>59</sup> Biermann and Boas, above n 29, 8.

<sup>60</sup> Biermann and Boas, above n 29, 6.

<sup>61</sup> *Ibid*

<sup>62</sup> Docherty and Giannini, above n 52, 368.

climate change.<sup>64</sup> For example, they exclude from their definition impacts only marginally linked to migration (e.g., heat waves), migration caused by mitigation measures (e.g., construction of dams to alleviate water shortages), migration from other types of environmental disasters (e.g., industrial accidents and volcanoes), and impacts only indirectly linked to climate change (e.g., conflicts over natural resources).<sup>65</sup>

The variety of definitions is evident from the above definitions. The current wide range of definitions might undermine the protection regime. So it is urgently necessary to develop a uniform internationally recognised definition for an effective protection regime.

#### **4. Current Refugee Norms and Structure is not Adequate Enough to Deal with Climate Change Displacement**

While the number of people who have been displaced for environmental reasons is on the rise, the existing refugee norms and structure are not adequately equipped to protect these individuals. Some commentators have sought to argue that environmentally displaced persons are implicitly included under the Convention refugee definition and, thus can avail themselves of the Convention's protection.<sup>66</sup> In her article, Jessica Cooper proposed that environmental refugees should be considered under the 1951 Refugee Convention.<sup>67</sup> But, refugee law does not strictly apply to those forced to move because of climate change.<sup>68</sup> This is not because of the time dimension, but rather because of the legal requirements of the 'refugee' definition in international law.<sup>69</sup> The term 'refugee' has a precise meaning in

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<sup>63</sup> Biermann and Boas, above n 29, 6.

<sup>64</sup> Docherty and Giannini, above n 52, 368.; Biermann and Boas, above n 29, 6.

<sup>65</sup> Ibid.; Biermann and Boas, above n 29, 6.

<sup>66</sup> See, Jessica B. Cooper, 'Environmental Refugees: Meeting the Requirements of the Refugee Convention', (1998) 6 *New York University Environmental Law Journal*, p. 501-02.; Brooke havard, above n ..., p. 74.

<sup>67</sup> Cooper, above n 66, 485.

<sup>68</sup> McAdam, above n 18, 12.

<sup>69</sup> Ibid

international law.<sup>70</sup> The most widely accepted definition of refugee comes from the 1951 Refugee Convention.<sup>71</sup> This Convention is the yardstick for granting a refugee status. According to the convention, a refugee is someone who holds a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or, owing to such fear, is unwilling to return to it.'<sup>72</sup> Clearly, someone who are forced to move as a result of climate change do not fit the international legal definition of 'refugee'.<sup>73</sup> Rather there is resistance to categorising refugees on these grounds.<sup>74</sup> However, this section explores whether the 1951 Refugee Convention provides protection for environmental refugees and how far the environmental migrants fit within the existing 'refugee' definition under the Refugee Convention.<sup>75</sup>

The definition of 'refugee' consists of five elements. First, the refugee must have a well founded fear of persecution. Second, the persecution must be related to the refugee's status in a particular group, i.e., 'race, religion, nationality, membership of a particular social group or political opinion. Third, the refugee fled his or her country. Fourth, the refugee must be unable or unwilling to return home.<sup>76</sup>

#### **4.1. Well-founded Fear of Persecution**

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<sup>70</sup> Stephen Castles, 'Environmental Change and Forced Migration: Making Sense of the Debate' (Working Paper No. 70, UNHCR, 2002) 8.

<sup>71</sup> Docherty and Giannini, above n 52, 361.

<sup>72</sup> Article 1A(2) of the Refugee Convention. The treaty has 144 states parties.

<sup>73</sup> Ben Saul, Jane McAdam, Alicia Lyons and Danielle Mawer, *Climate Change and Human Rights*, 2008, Submission to the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, September 2008, p. at <http://www.law.usyd.edu.au/scil/pdf/Sub-ClimateChangeHRSept08.pdf> 20 April, 2009.

<sup>74</sup> Molly Conisbee and Andrew Simms, *Environmental Refugees: The Case for Recognition* (2003) 26.

<sup>75</sup> Convention Relating to the Status of Refugees, opened for signature July 28, 1951, 189 U.N.T.S. 150 [hereinafter Refugee Convention].

<sup>76</sup> For this breakdown of the Refugee Convention's definition, see Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law* (2007), p. 37.; see also James C. Hathaway, *The Law of Refugee Status*, at vi-vii (1991) (describing persecution as "risk of serious harm against which the state of origin is unwilling or unable to offer protection").

The refugee must have a well founded fear of persecution arising out of certain political reasons. But, persecution is a controversial term that the Convention leaves undefined.<sup>77</sup> Persecution has been defined as ‘a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.’<sup>78</sup> Persecution has also been characterized by confinement and torture, including substantial economic deprivation constituting a threat to an individual's life or freedom<sup>79</sup> or the infliction, under government sanction, of suffering or harm upon persons who differ in a way regarded as offensive.<sup>80</sup> This ‘persecution’ is proved by establishing that a situation exists in which a reasonable person in the same circumstances would fear persecution.<sup>81</sup> This can either be based on past persecution or be a fear of future persecution if the individual is returned to the state from which he or she fled.<sup>82</sup>

It can be argued that the persons likely to be affected by the effects of climate change may be fearful.<sup>83</sup> But the problem is whether fear coming from environmental degradation due to the impacts of climate change can be characterised as persecution.<sup>84</sup> The climate change induced displaced people do not have a well-founded fear of persecution under the Refugee Convention. Because it requires the affected persons to be persecuted for one of the specific reasons listed in the definition: race, religion, nationality, membership in a particular social group, or political opinion.<sup>85</sup>

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<sup>77</sup> Docherty and Giannini, above n 52, 362.

<sup>78</sup> *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985).

<sup>79</sup> *Borca v. I.N.S.*, 77 F.3d 210 (7th Cir. 1996), at 215-17.

<sup>80</sup> *Abdel-Masieh v. U.S. I.N.S.*, 73 F.3d 579, 583 (5th Cir. 1996).

<sup>81</sup> *See I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

<sup>82</sup> Convention Relating to the Status of Refugees.

<sup>83</sup> Dana Zartner Falstrom, ‘Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment’, (2001) 1 *Colorado Journal of International Environmental Law and Policy*, 1-28, 13.

<sup>84</sup> Ben Saul *et al*, above n 73, 5.

<sup>85</sup> Falstrom, above n 83, 13.

These commentators also reason that environmental migrants, generally, are forced to flee for both environmental and political reasons.<sup>86</sup> It is argued that the requirement of governmental persecution or governmental acquiescence to persecution takes the form of ‘government involvement in environmental crises’. It is this governmental involvement in environmental crises that gives weight to the proposition that environmental migrants can and should be brought within the protections of the Convention refugee definition.<sup>87</sup> For example, with respect to natural disasters, it is often the government that places certain groups of people at greater risk, and it is this same government that often does not properly come to the aid of disadvantaged groups.<sup>88</sup> Thus, some contend that ‘with governments playing so pertinent a role in the occurrence of environmental crises, refugees seeking refuge from the resulting environmental degradation are effectively seeking refuge from their governments.’<sup>89</sup>

However, the environmental degradations are not always caused by deliberate acts of a government (or group of individuals a government is unable to control) aimed at persecuting an individual or group based on one of the five grounds enumerated in the definition of 1951. The environmental problems may be result of environmentally-unfriendly policies for long years on the part of all states and all individuals. In many situations concerning climate change displacement, the nation state instead of becoming ‘persecutor’ is rather simply unable to offer any assistance to its citizens. Sometimes, the impacts of climate are so severe that international support is the only viable option (e.g., where rising sea levels threaten the existence of small island states).<sup>90</sup> So, the environmental migrants do not fulfil the criterion of well founded fear of persecution.

#### **4.2. Membership in a Particular Social Group, i.e., ‘race, religion, nationality, membership of a particular social group or political opinion’**

In order to meet the refugee definition, a person needs to show that the persecution arises because of his or her race, religion, nationality, political opinion, or membership of a

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<sup>86</sup> Brooke Havard, ‘Seeking Protection: Recognition of Environmentally Displaced Persons under International Human Rights Law’ (2007) 18 *Villanova Environmental Law Journal*, 65 – 82, 75. See Cooper, above n 66, 502.

<sup>87</sup> See, Cooper, above n 66.

<sup>88</sup> See Cooper, above n 66.

<sup>89</sup> Havard, above n 86, 75. See Cooper, above n 66.

<sup>90</sup> Williams, above n 6, 510.

particular social group. The indiscriminate nature of climate change significantly complicates establishing the requisite nexus. The environmental migrants who flee homes for environmental reasons are rarely fall into this category. Environmental degradations, occur gradually or suddenly, are most often haphazard and affect people indiscriminately, without regard to race, religion, nationality, political opinion or membership in a particular social group.<sup>91</sup>

However, commentators suggest that they can form a social group for protection under the Refugee Convention because they are a group of politically powerless individuals who lack the political power to protect and preserve their environment and prevent the environmental degradation.<sup>92</sup> They also argue that environmental migrants often live in countries where the gap between the elite minority and the remainder of the population is great and where government corruption runs rampant.<sup>93</sup> In such situations, the people displaced by environmental factors are left without political leverage to address its environmental concerns.<sup>94</sup> To them, a government that does nothing to prevent environmental events from occurring is somehow persecuting the affected people on account of their membership in a particular social group.<sup>95</sup>

This sort of argument, however, cannot be made under the existing refugee law. Firstly, even if the government did not prevent soil erosion from occurring, these are not actions that rise to the level of persecution. As discussed above, acts of persecution are specific acts targeted at specific individuals for specific reasons.<sup>96</sup> Environmental displacement of people is not generally a concerted government action targeted at a specific group of people with common, immutable characteristics.<sup>97</sup> Moreover, the political powerlessness is not an immutable characteristic that will make a person or group of persons member of a particular social

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<sup>91</sup> Falstrom, above n 83, 14.

<sup>92</sup> Cooper, above n 66, 524.

<sup>93</sup> See Cooper, above n 66, 524. Cited in - Havard, above n 86, 75.

<sup>94</sup> See Cooper, above n 66, 524. (Cited in Havard, above n 86, 75.

<sup>95</sup> See, Cooper, above n 66, 503-04.

<sup>96</sup> Falstrom, above n 83, 13.

<sup>97</sup> Falstrom, above n 83, 12.

group.<sup>98</sup> On its own, therefore, it cannot be an adequate basis for protection under the existing refugee definition.<sup>99</sup>

### **4.3. The Refugee must have Fled his or her Country**

Refugee law is based on the fundamental principle that a person needs legal protection because they are outside of their country of origin due to persecution by a government actor or an actor the government cannot control.<sup>100</sup> So, one has to be outside ones country of nationality to be determined a refugee. There are no exceptions, as international protection cannot be given to people who have not crossed an international border as they are still in the territorial jurisdiction of their home country. Most climate migrants will not leave their home countries, but still be able to enjoy protection of their governments.<sup>101</sup> So, while refugees are lack the protection of their state and therefore look to the international community to provide them with security. Environmentally displaced people, on the other hand, can usually count upon the protection of their state, even if it is limited in its capacity to provide them with emergency relief or longer-term reconstruction assistance.<sup>102</sup>

So, the requirement of exile under the 1951 Convention poses difficulties for peoples who have not yet moved but are facing habitat destruction, or those who are internally displaced.<sup>103</sup> While the UNHCR has agreed to assume some responsibility to ensure the protection of internally displaced peoples, this protection is limited to Internally Displaced Persons (IDPs) forced to move as a result of conflict, rather than climate change.<sup>104</sup>

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<sup>98</sup> Falstrom, above n 83, 14.

<sup>99</sup> Ibid

<sup>100</sup> See, Refugee Convention.

<sup>101</sup> Biermann and Boas, above n 29, 14.

<sup>102</sup> United Nations High Commissioner for Refugees, *The State of the World's Refugees*, at [http://www.unhcr.ch/refworld/pub/state/97/box1\\_2.htm](http://www.unhcr.ch/refworld/pub/state/97/box1_2.htm) [hereinafter UNHCR]. cited in Falstrom, above n 83, 12.

<sup>103</sup> Ben Saul *et al*, above n 73, 5.

<sup>104</sup> Ibid

Moreover, the distinction between refugees and internally displaced persons is a fundamental and integral characteristic of traditional refugee law defining the extent to which assistance will be made available to displaced persons.<sup>105</sup> As the Refugee Convention is limited to situations where forced migration results in persons crossing state borders, the plight of those displaced internally falls outside the remit of the Refugee Convention, and, thus, such individuals are not protected by the framework of international refugee law.<sup>106</sup>

#### **4.4. The Refugee must be Unable or Unwilling to Return Home**

In traditional refugee concept, the people are unable or unwilling to return home due to present adverse situation in the country of origin. They cannot turn to their own governments for protection because nation-states are often the source of their persecution. So, they need international intervention to ensure there is safe refuge.<sup>107</sup> The statement ‘unable or, owing to such fear, is unwilling to avail himself of the protection of that country’ implies there are circumstances that are beyond the will of the person, for example a state of war or civil war which prevents the national authorities from protecting that person or makes that protection ineffective. In addition, protection by the country of nationality may have been denied to that particular person. The term ‘unwilling’ refers to refugees who refuse to take up protection of the government of their nationality, as they fear persecution.<sup>108</sup>

The definition in the Convention is premised on the notion that the nation-state has failed in its responsibilities towards its citizens.<sup>109</sup> But the displaced people as a result of climate change could, in theory, still rely on the protection of their national government. There is no

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<sup>105</sup> Catherine Phuong, (2005) *The International Protection of Internally Displaced Persons*. Cambridge: Cambridge Univ. Press.; Geissler, N. (1999) “The International Protection of Internally Displaced Persons,” *International Journal of Refugee Law* 11: 451–78. Cited in Williams, above n 6, 510.

<sup>106</sup> Williams, above n 6, 510.

<sup>107</sup> Khalid Koser, ‘Gaps in IDP Protection’, (2008) 31 *Forced Migration Review*, 17.; Robin Bronen, ‘Forced Migration of Alaskan Indigenous Communities due to Climate Change: Creating a Human Rights Response’ at <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/events/docs/abstract.pdf> 29 July, 2009, 5.

<sup>108</sup> UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1992

<sup>109</sup> Bronen, above n 107, 5.



evident reason why environmentally induced migrants cannot call on their own governments to provide support and recovery assistance.<sup>110</sup>

Moreover, it is assumed that the refugees will return home when the situation will overcome and conflict will be resolved.<sup>111</sup> However, in contrast to those displaced by conflict, many of those displaced by the consequences of climate change may never be able to return home because their places of origin have been destroyed or inundated.<sup>112</sup>

#### **4.5. Some Scholars who Oppose the Term Refugee and Suggest Alternative Terms**

There are some other scholars who seriously oppose using the term refugee. They argue that the application of the term ‘refugee’ with environmentally displaced people raises many legal and extra legal complexities as this does not adhere to the internationally accepted definition of a refugee in the 1951 Convention or the 1967 Protocol.<sup>113</sup> The term ‘refugee’ has been vigorously criticised by some scholars as unhelpful, unsound, controversial<sup>114</sup> and legally meaningless having no practical value.<sup>115</sup> Given the existing international law on refugees, many articles and studies emerged since 1990s started debate on the question of whether the people forced to migrate as a consequence of environmental degradation should be described as environmental or climate change refugees.<sup>116</sup> The debate circles around the concern with ascertaining whether a particular individual fits the definition of a refugee under the Refugee Convention.<sup>117</sup>

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<sup>110</sup> See A. Lopez, ‘The protection of Environmentally-Displaced Persons in International Law’, (2007) 36 *Environmental Law*, 365-409.

<sup>111</sup> Koser, above n 107, 17.

<sup>112</sup> Ibid

<sup>113</sup> See, Williams, above n 6, 507-508.

<sup>114</sup> Bronen, above n 107, 5.

<sup>115</sup> See Black, above n 28. He leaves the reader in no doubt that he sees the concept as a myth – and a misleading, highly politicised and potentially damaging one at that.

<sup>116</sup> Tess Burton and David Hodgkinson, *Towards a Convention for Persons Displaced by Climate Change: A discussion note on an ethical response to the human impacts of climate change and its implications for the relationship between adaptation and displacement*, The Hodgkinson Group – Climate Change and Aviation Advisors (Publications) p. 8. <<http://www.hodgkinsongroup.com/documents/Draft%20Discussion%20Note%20Adaptation%20and%20Displacement.pdf>> at 23 July 2009.

To them, defining the term as 'environmental refugees' or 'climate change refugees' appears not to serve any purpose other than raising the profile of the issue as this does not create new international legal regimes.<sup>118</sup> Rather, using a non-legal definition might undermine protection of the vulnerable community. In reviewing the debate over whether the appropriate label should be 'refugees' or 'forced migrants', Castles argues that using a non-legal definition can be not only incorrect and misleading from an international refugee law perspective, but also 'possibly harmful.'<sup>119</sup> He reasons that 'it potentially erodes the concept of international protection as it may 'encourage receiving states to treat [refugees] in the same way as "economic migrants" to reduce their responsibility to protect and assist'.<sup>120</sup> It can be used by those who want to restrict asylum opportunities for refugees to support claims that those who arrive on our shores are not genuine victims of persecution, but are in fact fleeing environmental degradation and impoverishment.<sup>121</sup> If people making refugee claims are not real refugees in the sense of the 1951 Convention then the case for exclusion is strengthened.<sup>122</sup>

The above discussion indicates that traditional concept of refugee which was developed in the Second World War context<sup>123</sup> is ill suited to address the contemporary complex phenomenon/challenges of environmental migration.<sup>124</sup> So, the limitations as to the

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<sup>117</sup> Burton and Hodgkinson, above n 116. 11.

<sup>118</sup> Maria Stavropoulou, 'Drowned in Definitions?', (2008) 31 *Forced Migration Review*, 12.

<sup>119</sup> Castles, above n 70, 10.

<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> So Stephen Castles describes - "By now it should be clear that the term 'environmental refugee' is simplistic, one-sided and misleading. It implies a mono-causality which very rarely exists in practice." (Castles, above n 14, 8.)

<sup>123</sup> The Refugee Convention was first adopted to deal with the vast numbers of people displaced after the Second World War and was approved by a special UN conference in July 1951. The first draft was mainly aimed at protecting Europeans; it was extended in 1967 to include peoples from around the world. It is also alleged that it is 'Eurocentric' in its origins and ignores the reality of mass displacement through war and generalised conflict in countries of the South. The majority of persons in need of protection and assistance do not count as refugees. Created in response to the escalating refugee flow in postwar Europe, the Refugee Convention adopts a restrictive definition consequently limiting refugee status to a fairly narrow legal interpretation. Initially the 1951 Convention applied only to "events occurring before 1 January 1951," but the scope was later extended by the 1967 Protocol Relating to the Status of Refugees.

<sup>124</sup> Williams, above n 6, 510.

applicability of the 1951 Refugee Convention,<sup>125</sup> together with widespread confusion and skepticism regarding the term ‘refugee’<sup>126</sup> render the definitions of environmental or climate refugee debatable leading to disagreement on protection mechanism. So, the UNHCR considers – ‘lumping both groups together under the same heading would further cloud the issues and could undermine efforts to help and protect either group and to address the root causes of either type of displacement.’<sup>127</sup>

Therefore, environmentally displaced persons do not meet the required criteria established in the definition of refugee in the Refugee Convention.<sup>128</sup> The argument that the Refugee Convention include environmental migrants though carries some academic merit and bears the impression of ensuring international protection for environmental migrants, ultimately makes the situation complex leaving them unprotected.

#### **5. Expansion of Refugee Convention to include ‘Climate Migrants’ is also not Feasible**

There are some researchers and humanitarian agencies who want to expand the traditional definition of ‘refugee’ to include individuals fleeing environmental degradation so that they can have access to the same international structure of humanitarian assistance and protection.<sup>129</sup> But it is difficult to conceive how the definition which was adopted to address certain post second world war scenario about fifty years ago can be expanded to fit those who left their homes due to environmental reasons.<sup>130</sup>

However, there are some instances of expansion of existing refugee definition which succeed to provide very limited protection to environmental migrants. The 1969 Organisation of African Unity (OAU) Convention Governing the Specific Refugee Problems in Africa, and the 1984 Cartagena Declaration, which covers Central America, Mexico and Panama, also include in their definitions of refugees those fleeing due to events causing the disruption of

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<sup>125</sup> United Nations 1951 Convention Relating to the Status of Refugees

<sup>126</sup> Williams, above n 6, 503.

<sup>127</sup> UNHCR, ‘The Environment: A Critical Time’ (2002) 127 *Refugees*, July

<sup>128</sup> Falstrom, above n 83, 13.

<sup>129</sup> Bronen, above n 107, 5.

<sup>130</sup> Falstrom, above n 83, 11.

public order. Under these definitions, people fleeing large scale environmental degradation can be categorised as disturbing public order and can access to refugee assistance.<sup>131</sup> Yet, while both of these documents fall under the auspices of the UNHCR, they only offer partial (often temporary) protection. In addition, neither document is legally binding. Thus, neither expanded definition provides complete protection for environmentally induced migrants.<sup>132</sup>

Moreover, the reality is that there is no consensus for extending the refugee regime. Most receiving states want to restrict it further rather than improve it.<sup>133</sup> Any changes in the Refugee Convention in the current climate are likely to be for the worse.<sup>134</sup> Since the end of the Cold War, receiving states have become more and more restrictive in their interpretations of the refugee definition.<sup>135</sup> So, the case is very weak for extending the 1951 Convention and 1967 Protocol to include the 'environmental migrants'.<sup>136</sup> So, there has also been little political mobilization to amend the Refugee Convention's core definition.<sup>137</sup>

## **6. Separate Framework for Climate Change Induced Displaced People**

While argument persists regarding the possibility of the Refugee Convention recognising climate induced displacement, some scholars are in favour of developing a separate framework for environmental or climate migrants. But most of them want to use the term 'refugee' in their definition. Obviously the definition will be adapted with the specific circumstances of climate change.<sup>138</sup> These scholars also argue that the term refugee has 'strong moral connotations of societal protection in most world cultures and religions.'<sup>139</sup> It

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<sup>131</sup> Lehman, above n 11, 4-5.

<sup>132</sup> Lehman, above n 11, 5.

<sup>133</sup> Castles, above n 70, 10.

<sup>134</sup> Ibid

<sup>135</sup> Castles, above n 70, 9.

<sup>136</sup> Roger Zetter, 'Legal and Normative Framework' (2008) 31 *Forced Migration Review* 62, 63.

<sup>137</sup> See, e.g., David Hodgkinson et al., Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses, *New Critic*, Sept. 2008, at 2, available at <http://www.ias.uwa.edu.au/new-critic/eight/?a=87815>.

<sup>138</sup> Docherty and Giannini, above n 52, 10.

<sup>139</sup> Biermann and Boas, above n 29, 8.

evokes a sense of global responsibility and accountability, as well as a sense of legitimacy and urgency it deserves for impending disasters.<sup>140</sup> They assert that international law though defines a ‘refugee’ in a particular way, there is nothing inherent in the ordinary meaning of the word ‘refugee’ that suggest that this does not mean that people fleeing flooded homes or homes destroyed by an earthquake or forest fire are not worthy of protection, or necessarily denied it. As Biermann argues that ‘there should not be any convincing reason to reserve the stronger term ‘refugee’ for a category of people that stood at the centre of attention after 1945, and to invent less appropriate terms - such as “climate-related environmentally displaced persons” - for new categories of people who are forced to leave their homes now, with similar grim consequences.’<sup>141</sup> Again, these scholars are against protection mechanism under the Refugee Convention. They argue that the Convention was constructed more than fifty years ago in response to a particularly discreet problem.<sup>142</sup> To them, it is problematic to incorporate the notion of environmental displacement to the Refugee Convention and would encounter prohibitively strict resistance from the international community.<sup>143</sup>

Moreover, studies predict that by 2050 the number of climate change refugees may dwarf the number of traditional refugees -- that is, those entitled to protection under the 1951 Refugee Convention.<sup>144</sup> So, the UNHCR and current framework is not prepared enough to deal with this vast number of refugees. For this, they advocate for developing a separate framework for environmental or climate refugee.

## **7. Conclusion: Towards a New Legal Framework for Climate Induced Displacement**

It is increasingly evident that the numbers of environmentally displaced people are growing at a rapid rate. This vast number of people is largely left unprotected in current refugee regime. States around the world have contributed to or have been affected by climate change. So, the displacement associated with it requires international attention. Since the nature of

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<sup>140</sup> Stavropoulou, above n 118, 12.

<sup>141</sup> Biermann and Boas, above n 29, 8.

<sup>142</sup> William, above n 6, 510.

<sup>143</sup> Ibid

<sup>144</sup> Docherty and Giannini, above n 52, 349.

climate change is global and humans play a contributory role, the international community should accept responsibility for mitigating climate-induced displacement.<sup>145</sup> States should develop an innovative, international, and interdisciplinary approach that can be implemented before the situation reaches a crisis stage.<sup>146</sup>

In recognizing the problem of climate change displacement, this paper has highlighted the present lacuna within the international legal system in terms of effectively recognising and responding to the needs of climate induced displacement.<sup>147</sup> One solution to the current inadequacy of legal responses may be developing a new convention that provides both assistance and protection to environmentally displaced persons and creates affirmative obligations for states to prevent the environmental disasters that force displacement.<sup>148</sup> The new instrument could help alleviate the emerging climate change displacement crisis.<sup>149</sup>

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<sup>145</sup> Ibid

<sup>146</sup> Docherty and Giannini, above n 52, 350.

<sup>147</sup> Williams, above n 6, 517.

<sup>148</sup> Ibid; Falstrom, above n 83, 7.

<sup>149</sup> Docherty and Giannini, above n 52, 391.