

# Casting a Wide Net: Climate Change, Migration, and the Hidden Victims of the Fishing Industry

---

By Kelly Ann Whelan

---

At the end of January, the United Nations Human Rights Committee ruled for the first time that countries may not deport refugees who face climate change-induced conditions that put their lives at risk, or place them in danger of cruel, inhuman, or degrading treatment.<sup>1</sup> While the landmark judgment is not binding, it does emphasize that countries have a legal responsibility to protect people whose lives are threatened by the climate change crisis.

Yet, refugees fleeing climate change are not the only victims of the crisis. Many have lost their livelihoods and have been caught up in migrant smuggling and human trafficking networks that have expanded globally as a result of climate change. Some have fallen prey as victims to professional smugglers and traffickers while others have been persuaded to work for the networks themselves, often being used as pawns to take criminal responsibility, or in highly dangerous roles. In particular, the diminishing fishing industry in Oceania has caused many fisherman and boat crews to lose their livelihoods. As a result, migrant smuggling networks in the region have steadily employed them in roles that have greater danger involved and expose them to criminal liability, creating unforeseen victims.

In this brief, we look at migrant smuggling briefly and how the impacts of climate change have brought many into the mire of criminal forced migration in Southeast Asia and Oceania.

## **Shrinking Livelihood Spaces, Increasing Migration**

Climate change impacts different parts of the world in vastly diverse ways, but with the same consequences. Rising ocean water levels in Oceania, encroaching desertification in the Sahara, and a

landslide disaster in the Western Ghats, while greatly differing in conditions, have the same impact on human beings: disappearing opportunities to make a living along with disappearing spaces to live safely with enough resources. As a result, globally, millions have migrated either within their countries or overseas in order to escape both a lack of economic opportunity and the danger that the impacts of climate change pose.

It is difficult to ascertain how many people migrate due to long-term, slow-onset climate change impacts. In 2018, the World Bank estimated that three regions – Latin America, sub-Saharan Africa, and Southeast Asia – will generate 143 million more climate migrants by 2050.<sup>2</sup> However, statistics regarding climate-related disasters are more widely available. At the end of 2019, around 5.1 million people in 95 countries and territories were living in displacement as a result of disasters that happened not only in 2019, but also in previous years.<sup>3</sup> In 2019, nearly 2,000 disasters triggered 24.9 million new internal displacements across 140 countries and territories; this is the highest figure recorded since 2012 and three times the number of displacements caused by conflict and violence.<sup>4</sup> Most of the disaster displacements were the result of tropical storms and monsoon rains in South Asia and East Asia and Pacific; four countries accounted for more than 17 million new internal displacements due to disaster: India (5 million), the Philippines (4.1 million), Bangladesh (4.1 million), and China (4 million).<sup>5</sup>

While many migrants seek refugee or asylee status, many seek to migrate primarily for economic reasons. Due to the nature of stringent immigration regulations in economically prosperous countries, migrants seek out the assistance of smugglers.

According to the United Nations Convention Against Transnational Organized Crime, migrant smuggling is defined as “the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident.”<sup>6</sup> In contrast to human trafficking, migrant smuggling is considered to be voluntary and victimless. The two phenomena are related, and often migrant smuggling turns into human trafficking. For example, an individual may use a migrant smuggler to facilitate travel to a work arrangement in a more economically prosperous country, only to find the promised employment exploitative.

Migrant smugglers offer a range of services including, but not limited to, organization and provision of travel and accommodation, border entry facilitation, fraudulent travel/residency documents, and work arrangements at various, and often high, prices.<sup>7</sup> In order to facilitate services, professional smugglers either create organizations of smugglers or employ “laymen” to help them, sometimes a mix of both. Many professional smugglers exploit vulnerable people to act as drivers, guides, boat operators, and police lookouts – placing them in the most exposed positions to taking full criminal and economic responsibility for the crime.<sup>8</sup>

### **Unforeseen Victims of Climate Change**

While the obvious victims of climate change are those who are forced to flee their homes for safety, access to resources, and the ability to provide for themselves and their families, those who must remain are also impacted by the resulting migration patterns. One group in particular that is significantly impacted by both climate change and resulting changes in migration patterns are those who have traditionally worked in the fishing industry in Southeast Asia and Oceania – especially Indonesia.

Indonesia has generally always been dependent on the fishing industry, and 95 per cent of the industry consists of small-scale, individual fisherman.<sup>9</sup> Climate change has generally weakened the industry significantly due to rising water levels and

temperatures, strong variation in the traditional monsoon season, and resulting overfishing due to lower fish populations.<sup>10</sup> Across the Southeast Asia region, 64 per cent of the fisheries’ resource base is at a medium to high risk from overfishing and other climate change effects, impacting the approximately 3.7 million fishermen in the region.<sup>11</sup> As a result, millions have had their livelihoods greatly impacted and have had to turn to other means to support themselves and their families.

Unfortunately, loss of livelihood can often mean increased vulnerability, and many can be lured into working for smugglers as boat operators. The smuggling route between Indonesia and Australia, which is notoriously difficult for migrants to access, is well established. Migrants from Afghanistan, Iraq, Iran and Sri Lanka are smuggled by sea to Australia. Indonesia is used as a transit country where professional smugglers dispatch migrants on sea journeys to Australia on boats manned by fishermen.<sup>12</sup> Sometimes the ‘captain’ is an experienced fisherman or seafarer who has been recruited by the smuggler specifically for his skills; the smugglers may even have tested his capabilities before the journey is undertaken. Often, where fishermen are recruited by smugglers for the seafaring skills and their knowledge of particular waters and land masses, the smuggler will sometimes offer the fisherman more money to transport a group of migrants than he could possibly make otherwise. Persons who are tempted into accepting such an offer may or may not know of the risk they incur and the illegality of what they are being asked to do, but it is clear that the smugglers pass the risk of prosecution on to those they recruit.<sup>13</sup>

As such, the Australian government actively patrols the waters between the two countries and often apprehends boats taking migrants from Indonesia to Australia. And, it is the economically struggling fishermen acting as boat operators who are sent to prison in Australia for the crime of migrant smuggling, rather than the professional smugglers themselves. Nearly all cases of migrant smuggling recorded in Australia’s cases filed with the United

Nations SHERLOC case law database involve this route and Indonesian fishermen as defendants. Many indicated that they did not understand exactly what they were becoming involved with and did so out of economic desperation.<sup>14</sup>

Thus, it is clear from the Indonesian example that climate change migration casts a wider net than the obvious impacts. What is important to take away

from the Indonesian example is that not all those involved in migrant smuggling are professional criminals. Some are dealing with climate change the same as the migrants they are helping to move.

---

<sup>1</sup> *Ioane Teitiota v. New Zealand*, U.N.H.R.C., CCPR/C/127/D/2728/2016 (2016).

<sup>2</sup> Kanta Kumari Rigaud, et. al., *Groundswell: Preparing for Internal Climate Migration*, THE WORLD BANK (2018) at 2.

<sup>3</sup> Norwegian Refugee Council, *Global Report on Internal Displacement 2020*, INTERNAL DISPLACEMENT MONITORING CENTRE (2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> United Nations General Assembly, United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Res. 55/25, November 15, 2000; The Protocol against the Smuggling of Migrants by Land, Sea and Air.

<sup>7</sup> Marika McAdam, *A Short Introduction to Migrant Smuggling*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) (2010).

<sup>8</sup> *Id.*

<sup>9</sup> Food and Agriculture Organization of the United Nations (FAO), *Fishery and Aquaculture Country Profiles: The Republic of Indonesia*, FAO FISHERIES DIVISION, [www.fao.org/fishery/facp/IDN/en#:~:text=In%202012%2C%20Indonesia's%20fishery%20production,production%20comes%20from%20artisanal%20fishermen.](http://www.fao.org/fishery/facp/IDN/en#:~:text=In%202012%2C%20Indonesia's%20fishery%20production,production%20comes%20from%20artisanal%20fishermen.)

<sup>10</sup> *Id.*

<sup>11</sup> Kim J. DeRidder, Southeast Asia's Fisheries Near Collapse from Overfishing, THE ASIA FOUNDATION (28 March 2018), [www.asiafoundation.org/2018/03/28/southeast-asias-fisheries-near-collapse-overfishing/](http://www.asiafoundation.org/2018/03/28/southeast-asias-fisheries-near-collapse-overfishing/).

<sup>12</sup> Marika McAdam, *Issue Paper: Migrant Smuggling at Sea*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) (2011) at 18.

<sup>13</sup> *Id.* at 30.

<sup>14</sup> United Nations Office on Drugs and Crime (UNODC), *SHERLOC Case Law Database*, UNODC (2020), [www.sherloc.unodc.org/cld/v3/sherloc/](http://www.sherloc.unodc.org/cld/v3/sherloc/).