

# Reconsidering the Status and Rights of Climate Refugees Under International Law

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**Abstract:** In recent years, much ink has been spilled over legal and policy initiatives concerning climate change. While the argument about the most responsive, acceptable, and equitable way to manage our changing environment continues, a secondary concern is emerging. As the effects of our changing climate become more widely and deeply felt, climate change is increasingly being blamed for the relocation of individuals, communities, and, in some cases, entire nations. However, the struggle of those been displaced otherwise known as climate refugees goes mostly unnoticed and unsupported by the international community and poses serious legal difficulties for international law. The causing and escalating of mass migrations of people as a result of both short-term and long-term climatic disasters are mostly lacking in the mainstream public discourse. The issue of how to regulate and protect climate refugees is complex, and the answer will rely on how well each state can adapt to the changing environment. Studies predict that as many as 250 million people would have been displaced by the year 2050 either internally or across the borders because of climate change and this needs an utmost and urgent solution. However, it must be noted that the solution to this problem lies not only in terms of the determination to solve this issue but also a resolute to amend the legal regime underlying the challenge. Current legal frameworks are ambiguous as to whether and to what extent climate refugees should be protected under international law. The historic ruling of the United Nation Human Rights Committee in *Ioane Teitiota v. New Zealand* further increased academic interest in the matter and the increasing numbers climate refugees underscore the importance of this topic. The paper highlights the plight of climate refugees and suggests how the current protection gap in international law might be remedied. It proposes a creation of an international refugee protection framework that includes the recognition and protections for climate refugees. The proposed framework should create obligations to deal with both prevention and remediation of the climate refugee problem by establishing guarantees of human rights protections and humanitarian aid for climate refugees. It should also spread the burden of fulfilling those guarantees across the home state, host state, and international community and should also form institutions to implement the provisions within this framework.

**Keywords:** Climate Refugees, Human Rights, Climate Change, Legal Protection, International Law

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## 1. Introduction

For the global community, the influx of climate refugees poses a significant threat. Recognition and coverage of the role of climate change in causing and escalating mass migrations of people as a result of both short-term and long-term climatic disasters are mostly lacking in the mainstream public discourse. Although estimates of the magnitude of migration caused by climate change vary greatly,

the numbers are still increasing. Since 2008, weather-related calamities like floods, storms, wildfires, and extremely high temperatures have forced an average of 21.5 million people to flee their homes per year, according to the United Nations High Commissioner for Refugees (UNHCR). According to projections from the international think tank Institute of Economics and Peace (IEP), 1.2 billion people may be displaced worldwide by the year 2050 as a result of climate change. These numbers are likely to rise sharply in the ensuing decades. In a similar line, the Internal Displacement

Monitoring Centre (IDMC) claimed that from 2008 to 2018, natural disasters caused the displacement of about 253.7 million people, three to ten times more than conflicts and wars worldwide [1].

Despite the fact that a number of proposals have been put forth to address the issue of climate refugees, it is anticipated that it will be challenging to extend the 1951 Refugee Convention's protection to include climate refugees since it would diminish the value of the current refugee protection because climate refugees do not flee state persecution and do not meet the criteria outlined in Article 1 of the Refugee Convention [2]. The key distinction between a regular refugee and a climate refugee is that under international law, the latter is only entitled to the fundamental rights guaranteed to all people. Due to the fact that they are not refugees [3], they are ineligible to apply for asylum under international law.

The phrase climate refugee, according to critics, is too vague to accurately describe or measure migration caused by climate change [4]. Some critics, including Bierman and Boas, used the term climate refugee to refer to those who have been forced to leave their homes due to changes in their natural environment brought on by climate change. These changes can be the result of sea level rise, extreme weather events, or a lack of water and food. However, these critics argued for the introduction of a *sui generis* system, distinct from the preexisting legal order. In particular, they suggested that climate refugees should not be treated differently based on whether or not they have crossed a country's border. [5].

Many have argued that the lack of a universally accepted definition of climate refugees prevents the international coordination and collaboration needed to put in place the required legal and material infrastructures to address the displacement challenges [6].

The concept of climate refugees is not without merit. The term refugee draws in part on the language of rights, which is typically associated with binding legal authority. Forcibly returning (*refoulement*) refugees to a country where they risk danger or discriminating between categories of refugees is illegal under international law, as is providing sanctuary to those in need. As a result, there are real-world repercussions to being labeled a refugee, such as the need of host governments to provide for and protect them in a way that goes beyond mere hospitality. [7] As a result of not citing purposeful human aggression as a motive for their escape, the 1951 Geneva Convention of refugees does not currently provide provisions for climate refugees. If the term climate refugee had legal standing, it could be claimed that it carried additional power and relevance. The reality, however, is rather different. In fact, the legal weight of the current category of refugees has been emphasized as a positive aspect of the phrase. Its legitimacy has obvious, real-world consequences for those who can lay claim to it [7]. Nevertheless, the concept of a climate refugee remains without legal standing, and the baggage of the term refugee itself is extensive.

## 2. Legal Protection Dilemma for Climate Refugees

However, there is a lack of clarity and resources about the legal rights and standing of those who relocated due to disasters, climate change, or environmental degradation. Refugees are defined by international law as those who are outside of their home country due to a well-founded fear of persecution. Most persons do not meet the international legal definition of a refugee because they do not leave their home country or because they are fleeing environmental harm rather than persecution [8]. As a result, the 1951 Refugee Convention and Protocol do not provide any further protections for them. There is a lack of protection for people who relocate due to environmental or climatic concerns because neither a clear nor approved description for such people exists, nor does an international treaty.

The 1951 Convention Relating to the Status of Refugees was analyzed to show its limitations in the context of climate refugees. This convention codifies the customary international law principle of non-*refoulement* by imposing an obligation on state parties to not return refugees to a territory where there is a risk of persecution. In fact, governments continue to rely on the definition established in article 1A (2) of the Refugee's Status Convention, despite the fact that the causes of displacement have evolved dramatically over time. The obligation of non-*refoulement* was established by the United Nations Convention of 1951, and it states that no country shall return any individual who has a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion [9]. Article 3 of the Convention protects individuals against discrimination by requiring that states apply its protections without regard to a person's race, religion, or national origin [10]. Article 31 guarantees that nations will not impose penalties on refugees for entering or being in the country without permission if they are fleeing a country where they fear for their safety or freedom.

In accordance with article 33, the principle of non-*refoulement* states that no nation "shall expatriate or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political opinion. However, it is impossible for individuals or communities to articulate a well-founded fear of persecution if they are forced to leave their country of origin due to climate-related events like famine, drought, or flooding, and so they may not meet the requirements stipulated in Article 1 of the 1951 Convention's definition of a refugee. [11]. The court in *Wellington*, for instance, has shown the challenges of applying the present refugee categories to climate refugees through the landmark case *Ioane Teitiota v. New Zealand*.

In light of this, the UNHCR, which is responsible for upholding the Refugee Convention of 1951 and the Protocol of 1967, does not use the phrase climate refugees to describe anyone affected by environmental disasters. People displaced

due to natural catastrophes and climate change are what it actually talks about [12]. A person must be fleeing persecution in order to qualify for refugee status under the 1951 Refugee Convention. Such individuals or groups were required to be protected from being sent back to the territory's border if doing so would endanger their lives or violate their human rights. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, however, states that there is no universally accepted definition of persecution [12]. Harms as varied as rape, beatings, attempted murder, and death threats are all part of the spectrum of abuses that make up persecution.

Concerning those who have been forced to flee their homes as a result of climate change, the question of whether or not discrimination falls within the category of persecution is of the utmost importance. In the UNHCR Handbook, it is written that where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. [13]. The actions and inactions of the government regarding the climate frequently have varying effects on different sub-groups of the country and are classic examples of discrimination. This type of discrimination may rise to the level of persecution if it means that members of those groups or sub-groups are reasonably fearful for their future existence. The most important factor in determining whether or not such worries amount to persecution is determining whether or not the actions or inactions of the government were done intentionally.

According to the statements made by Professor Gaim Kibraeb, the only time environmentally induced persons may be regarded as refugees is when the state uses the environment as an instrument of political oppression. This stipulation is necessary due to the fact that the concept of persecution is predicated on the failure of the state to provide adequate protection [14].

### **3. Climate Refugees Framework: An Alternative Paradigm for Recognition of Climate Refugees**

This paper proposed a new framework that would provide asylum to those who had been displaced because of climate change. A new Convention might operate as a stand-alone treaty or as an addendum to the Refugee Convention or the United Nations Framework Convention on Climate Change. Docherty and Giannini, however, disagree, arguing that the key qualities of a treaty controlling climate refugees do not align with the object and purpose of either the Refugee Convention or the UNFCCC. Therefore, an autonomous treaty is recommended by Docherty and Giannini [15]. Hodginson et al., who contend that such a Convention should include internal displacement in addition to trans-border migration, share the same viewpoint [16].

However, some academics disagreed with the notion of a new treaty. McAdam offers three justifications for why a new

treaty would not be the best way to address climate-related migration [17]. Firstly, slow-onset climate processes that do not mesh with the current framework of refugee law pose a threat to the Pacific Islands in the case of sea level rise. The precise moment at which the sluggish procedure equates to meeting the requirement would be crucial because refugee law calls for a certain level of harm would be experienced. Secondly, it would be impossible to distinguish between the conceptual problems discussed earlier, i.e., between people who migrate forcibly owing to climate change and people who do so voluntarily due to other push-and-pull causes. Thus, McAdam argued that it would be unclear to address one of the causal factors in a multicausal situation. [18]. Thirdly, and perhaps most significantly, McAdam mentions the political challenges that a new treaty's drafting faces [17]. The argument is comparable to the one that Biermann and Boas presented regarding the revision of the Refugee Convention, and it is summarized by McAdam as follows: states currently lack the political will to negotiate a new instrument requiring them to provide international protection to additional groups of people [19].

## **4. Guiding Principles for the Climate Refugees Framework**

### ***4.1. The Early and Sustainable Response Principle***

A cynic would ponder how many people need to die before the rest of the world wakes up; whenever anything like this happens, hundreds of thousands or millions of people are forced to from their homes, and many of them do not find permanent housing [20]. On the other hand, it is unlikely that widespread photos of a storm surge impacting a little island that may be considered paradisiacal will compel the world community to wake up and accept the reality of climate refugees.

In order to reduce the number of people forced to flee their homes as a result of climate change, the international community ought to take advantage of the fact that climate migrations are predictable and quickly come to an agreement on how to treat climate refugees. On the other hand, in contrast to applications for political asylum, climate refugees can be predicted well in advance. In-situ adaptation for the short term should not be sought out until after due consideration has been given to a longer-term convention [20]. The danger is that exaggerated claims of in-place adaptation serve as a justification for the international community to forgo examining the need to draft a new treaty governing the status and rights of climate refugees. Not only should a good convention that controls the climate refugee situation be established early, it should also be durable enough to avert any more tragedy.

Given the differences in their circumstances, substantive equality of rights for climate refugees may call for specific forms of action. Those who have been forced to from their homes due to the effects of climate change should, from the very beginning, be considered and treated as permanent

immigrants and given the same rights as citizens [21].

To ensure the long-term viability of resettlement programs, refugees fleeing the effects of climate change should be accorded a status that is both stable and permanent, which will give them access to various forms of protection. In point of fact, if climate change refugees are going to spend the remainder of their lives in the country in which they have taken sanctuary, there is no reason why that government should not grant them citizenship [21]. Naturalization is the method that would be most effective in ensuring that climate change refugees are not exploited once they have relocated and in ensuring that political justice is maintained. However, the fact that climate change victims are granted automatic citizenship is a contentious issue.

#### ***4.2. The Principle of Safeguarding Individual and Collective Rights***

The agreement needs to leave no room for doubt on the necessity of the respect for human rights being an inherent component of any policy response to the problem of climate refugees [21]. People do not live in isolation; rather, membership in communities fulfills a fundamental requirement for humans on the economic, social, and political fronts. In light of this, one might reason that if certain individual moral rights exist [22].

A convention that addresses climate refugees has the challenging task of striking a balance between the protection of the collective identity of displaced groups and the fundamental rights of each individual. This may be a very challenging assignment. Biermann and Boas proposed that a climate refugees' regime should be adapted not to the requirements of individually persecuted people as the existing UN refugee regime is, but rather to the needs of entire groups of people, such as the populations of villages, towns, provinces, or even entire states. [22]. This is in contrast to the current UN refugee regime, which is suited to the needs of individuals who have been persecuted individually. Giving climate refugees sovereignty over their new home, whether by cession or lease of land, would be an intriguing alternative because it would allow them to fully preserve their sense of national identity.

#### ***4.3. The Principle of a Global Approach of Climate Migration***

The third guiding approach is that the adopted convention should have a global scope, both in terms of its physical location and the subject matter it addresses. Because the major greenhouse gas emitters are frequently located in regions of the world that are geographically removed from nations that are directly impacted by climate change and because instability in one part of the world can spread to other areas of the globe, addressing climate change requires a global approach. [22]. Adopting a new framework on climate refugees is a requirement for both equity and efficiency. It is a requirement for equity because it ensures that those states responsible for climate change pay for its consequences.

However, it is also a requirement for efficiency because it includes both developed countries of the global North as well as affected countries, most of which are located in the global South. Because of this, it is clear that the convention will not be able to totally sidestep the problem of internal displacements caused by climate change. Only granting asylum to those who are unable to be protected in their home country may, under some conditions, offer an incentive for less-than-ideal domestic policies that do not take adaptive steps with the intention of getting rid of vulnerable populations [23]. A truly global approach to the problem of climate refugees would need the various parties involved to strike a balance between the costs and advantages of international relocation and adaptation in situ. In addition, the adoption of a new framework for climate refugees ought to be synchronized with the implementation of initiatives to reduce the effects of climate change. This may pave the way for national contributions to an international fund that is indexed on the level of emissions of greenhouse gasses and/or on the reduction of these emissions. Depending on how things play out, this may open the door to both of these possibilities. [24].

## **5. Conclusion**

Over the next century, millions more people will be forced to leave their homes due to climate change. Small island states risk being engulfed by rising sea levels. Large areas of currently inhabited land will become uninhabitable as a result of desertification. More powerful storms will force people to temporarily move to safer areas, likely across international borders. Although the majority of scientists concur that human activities all over the world contribute to climate change, it is an environmental phenomenon. The world community should bear responsibility for reducing the climate refugee catastrophe because the nature of climate change is global and humans contributed to it. Before the situation reaches a more serious crisis level, states and international organizations should devise an innovative, global, and interdisciplinary solution that can be put into action.

It may be difficult to create a new convention, however there are solid grounds for optimism that states will support the new convention, as well as civil society and impacted communities. Both the host and home states as well as the larger international community would have reasons to pursue such an autonomous tool. Assistance would be provided to states immediately affected by a scenario of climate refugees to deal with it. A climate refugee convention would encourage home governments to sign on since it offers support for both corrective and preventive actions when there are identifiable people at danger. Averting refugee flows and maintaining communities would help to better protect the cultural and, in some circumstances, national integrity of the home states.

The establishment of such a convention would be advantageous to the rest of the world community for a variety of reasons. Some states may be motivated by humanitarian needs. Given the close relationship between emissions reductions and economic growth, states may be more willing

to agree on humanitarian aid than emission reductions. Some states have defended their lack of action on emission reductions by expressing concern over the economic expenses of dealing with emissions in the future and arguing over who is to blame for the historical consequences of industrialization and emissions. Therefore, there have been both historical and forward-looking obstacles to obtaining an emissions accord. A refugee regime would be more humanitarian in focus and would not involve the same types of trade-offs about future economic decisions related to emissions.

The simplest option to get beyond the restrictive requirements of current legal systems is to create a climate refugee convention that is distinct and independent from the existing refugee and climate conventions, nations would be motivated to accept such a new instrument. The proposed agreement would probably bring the growing issue of climate refugees to the attention of the public, and it would give room for multidisciplinary solutions that use the legislation pertaining to human rights, humanitarianism, and the environment to assist people in need.

The international community should reconsider climate refugees' status and legal rights in light of the issues with how they have been warped and distorted by exclusionary and divisive policies and language.

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