

Failing “Climate Refugees”: Insufficiency of the Present International Legal Protection Regime to the Plight of Climate Refugees

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Abstract

As the threat of climate change looms large, a new category of migrants emerges, those displaced by environmental degradation and its surging consequences. The status of climate refugees is yet to be determined, a phenomenon which is acknowledged in contemporary society, with the consequence that people fleeing their country of nationality to third countries are often subjected to human rights abuses and denied environmental justice. This is compounded by the fact that there is no legal protection for this category of persons under international law. This leaves millions vulnerable to human rights abuses and worsens inequalities. The research methodology used in this work is qualitative and it further employ the doctrinal research method which analyse primary and secondary data sources. This paper seeks to identify the flaws within the current refugee protection regime and offer useful suggestions that would better protect people who are forced to flee their countries of nationality as a result of climate related disasters. In the end, it stresses on the importance of expanding the 1951 Geneva Refugee Convention to incorporate ‘Climate Change Refugees’ as it will establish a solid foundation where people fleeing across borders as a result of climate change related disasters will be protected under international law.

Keywords: climate, climate change, refugees, climate refugees

1. Introduction

The term “climate refugees” has been coined to describe the increasing large-scale migration and cross-border movements of people because of weather-related disasters. The damaging waves of global warming on the environment and human life have made it an issue of international concern.¹ A major risk to the residents of islands, deltas, coastal regions, the Arctic, and permafrost areas, among other places, is the temperature rise brought on by global warming.² Extreme weather, rising sea levels, desertification, and ocean acidification are some of the environmental disturbances brought on by these changes, and they have caused population displacement in some areas.³ You could classify these people as refugees from the climate. Individuals, who are forced to leave their homes because of environmental changes that have an impact on their living conditions, either locally or globally, are referred to as climate refugees by the International Organization for Migration

¹ McAdam, Jane, (2012). *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

² Nicholls, Robert J., and Anny Cazenave, (2010). Sea-Level Rise and Its Impact on Coastal Zones. *Science*, 328(59).

³ Brown, O., (2001). Migration and Climate Change, IOM Migration Research Series, No. 31. *International Organization for Migration, Geneva*. p. 15.

(IOM) and Brown¹. Nevertheless, neither the United Nations Refugee Convention nor any other international legislation specifically recognizes climate refugees, despite their increasing numbers. They are consequently denied legal status, which makes them susceptible to more exploitation and displacement. However, the legal rights and status of those who move in the context of disasters, climate change, and environmental degradation remain unclear and insufficient. Under international law, refugees are people outside their countries of origin who have fled because of a well-founded fear of persecution. Since most people remain within their countries or are people whose cross-border movements are taken solely because of environmental harm and not persecution, they fall short of the international legal definition of a refugee,² thus, they are not afforded any special protections under the 1951 Refugee Convention and its Protocol. This leaves a gap in the protection of such people, as there is neither a clear or agreed-upon definition for persons who move for environmental or climate-related reasons, nor an international treaty protecting them leaving them in legal limbo. The lack of lawful migration opportunities forces many of those moving for climate-related reasons to do so without authorization and at risk of exploitation or abuse. And their precarious legal status makes it difficult for people to re-establish and support themselves once they have fled.

2. The Emerging Notion of ‘Climate Refugees’

The UN Refugee Convention, which governs individuals who flee their homes and lose their native countries, was signed by 147 UN member states in December 2008.³ The United Nations High Commissioner for Refugees (UNHCR), which was founded by the General Assembly in 1950, oversees UN legislation pertaining to refugees. The organization’s mission is to lead and coordinate international initiatives aimed at protecting refugees and resolving refugee issues on a global scale.⁴ A person who is outside their country of nationality and unable or unwilling to seek protection from that country due to “fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion” is considered a refugee, according to Article 1 of the UNHCR charter.⁵ The primary legal document that defines who is considered a refugee is the 1951 UN Convention pertaining to the Status of Refugees. According to the Swedish government’s 2010 human rights website, the Convention aims to provide for the victims of egregious human rights breaches. A protocol was developed in 1967 that eliminated the 1951 deadline and the geographic restrictions, making the Convention universal.⁶ According to international law, those who are covered by the UN Refugee Convention and who, following evaluation, are granted “refugee status” are entitled to asylum.⁷ In order to deny asylum to those who “had to flee the place they lived to escape danger,” countries now conceal behind the narrow interpretation of the UN Refugee Convention.⁸ That presents an issue for those who, as a result of climate change, lose their ancestral lands. It is difficult for the government to provide you with the necessary safety and assistance if you live in a third-world country and are forced to evacuate. Because living outside the borders of your country of origin is one of the requirements for being a refugee under the UN Refugee Convention.⁹

The concept of “refugee” had to be expanded in 1984 as the number of refugees from poorer nations increased. Leading to the provision of international protection at the end of the 20th century to individuals who are forced to move for a complex range of reasons, including persecution, widespread human rights abuses, armed conflict, and generalized violence.¹⁰ The UN Declaration of Human Rights mentions refugees as well, stating that “everyone is entitled to the fact that in other countries they seek and enjoy asylum from being persecuted”.¹¹ The UN Declaration of Human Rights or the UN Refugee Convention, in its expanded form, addresses the issue

¹ Ibid.

² Jane McAdam, (2019). Managing Displacement in the era of Climate change. *Georgetown Journal of International Law*.

³ UNHCR, (2010). The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol. Geneva: UNHCR.

⁴ UNHCR, (2009). Protecting refugees & the role of UNCHR. *Media Relations and Public Information Service Geneva*, 4-6.

⁵ Svenska FN-förbundet, (1994). *Fakta om*. Uppsala: FN. p. 174.

⁶ UNHCR, (2003). United Nations High Commissioner for Refugees. *Partnership: An Operations Management Handbook for UNHCR’s Partners. Revised Edition*. Geneva: UNHCR, p. 7-8. Available at: <http://www.unhcr.org/4a39f7706.html> accessed 20/01/2024

⁷ The Swedish government’s website about human rights, (2010). Flyktingars rättigheter, available at: http://www.humanrights.gov.se/extra/pod/?id=12&module_instance=3&action=pod_show. accessed 20/01/2024

⁸ Collectif Argos, Reeves, H., & Jouzel, J., (2010). *Climate refugees*. Massachusetts: MIT Press.

⁹ RIFO, (2009). Available online at: <http://www.rifo.se/menu.do?menuid>, accessed 20/01/2024.

¹⁰ UNHCR, (2003). United Nations High Commissioner for Refugees. *Partnership: An Operations Management Handbook for UNHCR’s Partners. Revised Edition*. Geneva, Switzerland: UNHCR. Available at: <http://www.unhcr.org/4a39f7706.html>, accessed 20/01/2024

¹¹ Franzén C, E., (2001). *Att bryta upp och byta land*. Natur och kultur: Falun. p. 99.

of refugees leaving their homes because of environmental conditions.

Under current international law, the concept of “climate refugees” does not hold legal recognition. Individuals forced to leave their home countries due to environmental factors are not granted any specific legal status. Various terms, such as “climate refugees,” “eco-refugees,” “climate-induced migrants,” and “environmental migrants,” are often used interchangeably to describe those displaced by human-induced environmental changes. The term “environmental refugee” first appeared in a 1984 briefing paper by the International Institute for Environment and Development (IIED), which stated that people from developing countries increasingly migrate to wealthier nations due to environmental degradation. However, the term gained wider recognition through Essam El-Hinnawi’s 1985 publication and Jodi Jacobson’s 1988 report.¹

To identify those who are displaced as a result of climate change “People who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, and other environmental problems, together with associated problems of population pressures and profound poverty,” is how Norman Myers,² defined environmental refugees in 2005. “Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes or chose to do so, either temporarily or permanently, and who move either within their country or abroad,” according to a definition put forth by the International Organization for Migration (IOM) to help with this classification.³ The UNHCR and IOM refer to those who are “environmentally displaced” rather than “environmental refugees” because the majority of refugees who flee environmental degradation do so from within their own countries. “People who are displaced within their own country of habitual residence or who have crossed an international border and for whom environmental degradation or destruction is a major cause of their displacement, although not necessarily the sole one,” is how they define environmentally displaced persons.⁴ The meaning of “climate refugees” and all of its equivalents is still a little hazy.

The first climate refugees are believed to be about 2,500 residents of a small coral atoll in the Carteret Islands, Papua New Guinea. The Papua New Guinean government began the islands’ complete evacuation in November 2005. The rising water level has compelled them to evacuate ten miles to Bougainville.⁵ The people of Shishmaref, Alaska, decided to move the community by 2015 because of increasing sea levels and permafrosted land breaks. The state of Alaska is in charge of and pays for the population transfer, while the administration of the Carteret Islands supports the relocation of its citizens.⁶ Bangladesh and other low-lying South Asian nations are predicted to experience issues with internal migration as a result of climate change. The issues facing Bangladesh are becoming more widespread and include a cycle of flooding and land erosion, which has caused many to relocate.⁷ Various estimates place the number of climate refugees in 2050 anywhere from 50 million to one billion, although a figure of 200 million, primarily in Asia and Africa, seems most likely. These days, political topics like immigration and the environment are prominent and frequently spark contentious discussions.⁸ People are fleeing their homes now because there is a greater risk to their lives owing to conflicts, divergent political ideas, and climate change. However, none of these groups receives the necessary protection and aid; in order to get this protection, you must be granted “refugee status” following an assessment in accordance with the United Nations Refugee Convention. The UN Refugee Convention no longer grants “refugee status” to those who escape their homes because of climate change. As a result, neither the international

¹ Kibreab, G., (1997). *Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate*, Disasters 1997. *Overseas Development Institute*, 21(1), p. 21.

² Myers, N., (2005). *Environmental Refugees: An Emergent Security Issue*. 13th Economic Forum, Prague. available at: <http://www.osce.org/eea/14851>, accessed on 20/01/2024.

³ Brown, O., (2001). *Migration and Climate Change*, IOM Migration Research Series, No. 31. *International Organization for Migration*, Geneva.

⁴ UNHCR, (October 1996). *United Nations High Commissioner for Refugees. Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migrations*, available at: <http://www.unhcr.org/refworld/docid/4a54bbd6d.html>, accessed 20/01/2024.

⁵ Miljöaktuellt. *Barnbarnens dom blir hård*, (2006). Available at: <http://www.idg.se/2.1085/1.87359>, accessed 20/01/2024.

⁶ Collectif Argos, Reeves, H., & Jouzel, J., (2010). *Climate refugees*. Massachusetts: MIT Press. pp. 21-22.

⁷ Munna, T.I., (2008). *Bangladesh’s climate refugees search for higher ground*, *The Daily Star*, available at: <http://www.thedailystar.net/story.php?nid=66828>, accessed 20/01/2024.

⁸ The UN, (2006). *International migration and development Report of the Secretary General of the United Nations*.

community nor these individuals are eligible for refugee status under international law.¹

3. Insufficiency of the Current Legal Protection Regime to the Plight of Climate Refugees

The current international legal system is ill-equipped to address the specific needs of individuals displaced by climate change.² Climate refugees are those people or communities forced to flee due to environmental events such as droughts, floods, and rising sea levels remain outside the purview of key international protection frameworks.³ The absence of explicit recognition for these displaced persons leaves them vulnerable and without guaranteed rights under international law. While international human rights law provides some protection, it falls short in offering comprehensive solutions. Similarly, the core refugee law instruments, such as the 1951 Refugee Convention, exclude environmental displacement from their scope. These legal deficiencies hinder the ability of climate refugees to access assistance and protection⁴.

3.1 The Insufficiency of the Current Refugee Regime

The current refugee law at the international stage does not cater for climate refugees as well. The 1951 Refugee Convention and its 1967 Protocol define a refugee as someone with a “well-founded fear of persecution” based on race, religion, nationality, political opinion, or membership in a particular social group.⁵ This definition excludes displacement caused by environmental events, even when these events render areas uninhabitable. As a result, people displaced by natural disasters or climate change are not entitled to the same legal protections and benefits as those fleeing persecution. This exclusion reflects the convention’s narrow focus, which was designed to address the political realities of the post-World War II era rather than contemporary environmental challenges⁶.

The Convention Relating to the Status of Refugees that is the 1951 Refugee Convention which codifies the customary international law principle of non-refoulement by placing an obligation on state parties to not return refugees to a territory where there is a risk of persecution, demonstrated its limits in the context of climate change displacement. Indeed, while the causes of displacement have varied significantly over the years, governments still rely on the definition outlined in article 1A(2) of the 1951 Refugee’s Convention which defines a refugee as a person who: owing to 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, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, unwilling to return to it.⁷

Under the UN Convention, States committed themselves to the obligation of non-refoulement, or non-returning of persons with well-founded fear of persecution on the grounds of their race, religion, nationality, membership of a particular social group, or political opinion.⁸

The principle of non-refoulement, under article 33 entails that no state “shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion”.⁹ However, Persons or groups fleeing their habitual country of residence on the grounds of climate-related events such as famine, drought, or flooding may not meet the requirements stipulated in the 1951 Convention’s definition of a refugee under Article 1 since it is impossible for such a person or group to articulate a well-founded fear of persecution. For example, during the famous case *Ioane Teitiota v. New Zealand*, the court demonstrated the difficulties of applying the current refugee definitions to climate migrants. Indeed, and during this affair, the New Zealand

¹ Flyktingars rättigheter, (2010). Available at: http://www.humanrights.gov.se/extra/pod/?id=12&module_instance=3&action=pod_show, accessed 20/01/2024.

² McAdam, Jane, (2012). *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

³ UNHCR, (2020). *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*. Geneva: UNHCR.

⁴ McAdam, Jane, (2012). *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

⁵ UNHCR, (2010). *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*. Geneva: UNHCR.

⁶ Zetter, Roger, (2017). Protecting People Displaced by Climate Change: Some Conceptual Challenges. *Journal of International Development*, 29(2), 210-22.

⁷ Refugee Convention 1951 article 1A (2).

⁸ E Lauterpacht and D Bethlehem, (2003). ‘The scope and content of the principle of nonrefoulement opinion’ in E Feller, V Turk and F Nicholson (eds) *Refugee protection in international law: UNHCR’s Global Consultation On international protection*, 87, 142.

⁹ Article 33 of the 1951 Refugee Convention.

court specifically rejected the claim that through emitting climate change-causing greenhouse gases, the international community was a persecutor, holding that the international community did not do so with any motivation to harm climate-vulnerable states. Additionally, the alleged persecution of climate migrants would not fit into one of the five protected grounds.¹

Flooding, tropical storms, earthquakes, volcanic eruptions, drought, landslides, coastal erosion and other environmental sudden- or slow-onset events often cause life-threatening or otherwise serious harm to affected persons. However, these natural hazards, as such, do not constitute persecution. The legal concept of ‘being persecuted’ rests on human agency, meaning that persecution must “emanate from the conduct of either state or non-state actors”. Thus, in the absence of human agency, the mere occurrence of a natural hazard alone does not amount to persecution “for reasons of race, religion, nationality, membership of a particular social group or political opinion as required by the 1951 Refugee Convention”.² Relatedly, while the adverse effects of climate change may be attributed to human agency, greenhouse gas emitters cannot be imputed to have acted for a reason under the Convention. It is thus widely acknowledged that the relevance of refugee law for people displaced across borders in the context of disasters and climate change is limited.

3.2 *The Insufficiency of Regional Instruments*

Several regional mechanisms and frameworks provide broader definitions of refugees and migrants who have the right to seek protection compared to the 1951 Refugee Convention and its 1967 Protocol. As a result, they provide a higher chance of recognition for individuals displaced by climate change but they also come with their own subset of challenges.³ One of the oldest regional refugee protection instruments is the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. It has been ratified by 46 African countries, making its provisions legally binding domestically.⁴ This convention broadens the United Nations definition of a refugee to include every person who has to seek refuge in a different country due to “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.”⁵

According to Article I (1), of the Convention, the term “refugee” shall mean every person who, owing to 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. Article 1(2) states that the term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁶

The OAU Convention does not guarantee safeguard for individuals fleeing due to climate change, as climate change and environmental disasters are not listed as qualifying conditions to obtain refugee status. This means refugee claims from these individuals are assessed on a case-by-case basis.⁷

Another regional instrument is the Cartagena Declaration, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama in 1984. Its definition of refugees is similar to that of the OAU Convention, considering refugees those who “have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive

¹ Teitiota v. Chief Exec. of the Ministry of Bus. Innovation and Emp’t [2013] NZHC 3125 at [¶ 63], per J. Priestley (N.Z.).

² Refugee Review Tribunal of Australia: 0907346 [2009] RRTA 1168 (10 DEC 2009).

³ Frances Nicholson and Judith Kumin, (2017). “A guide to international refugee protection and building state asylum systems,” Inter-Parliamentary Union and the United Nations High Commissioner for Refugees, *Handbook for Parliamentarians no. 27*, <https://www.refworld.org/pdfid/5a9d57554.pdf>.

⁴ African Union, (May 16, 2019). List of Countries Which Have Signed, Ratified/Acceded to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. <https://bit.ly/3yyn4x7>.

⁵ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, (10 September 1969). Adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session, Addis-Ababa, <https://www.unhcr.org/en-us/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>.

⁶ The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa.

⁷ Ibid.

violation of human rights or other circumstances which have seriously disturbed public order.”¹ Once again, the definition does not explicitly mention fleeing due to climate change or environmental disasters as a valid claim to obtain refugee status, but it could be framed within the “other circumstances” category. Although the Cartagena Declaration is not legally binding, 15 Latin American countries have incorporated its broader refugee definition into their national law or practice, making it one of the most relevant instruments in regard to climate-related displacement in the region.² The Cartagena definition is used prominently; for example, as of 2020 Mexico and Brazil have granted refugee status to more than 12,000 and 46,000 Venezuelan refugees, respectively, using the Cartagena Declaration’s broad definition. If this definition can be used to provide protection to those who normally would not qualify for refugee status under the Refugee Convention, it is reasonable to believe that individuals displaced by climate change cannot be included under this category.³ Although the provision of the Cartagena Declaration could be invoked to protect climate refugees, it has limited scope as it could not be used on a global perspective.

Another regional framework is the Arab Convention on Regulating Status of Refugees in the Arab Countries, adopted by the League of Arab States in 1994. Although this convention was never ratified by the League of Arab States, and therefore is not legally binding, it includes natural disasters as a qualifying reason to apply for refugee status. It defines a refugee as “any person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part thereof.”⁴ Article 3 also compels Contracting States of the Convention to undertake and to exert every possible effort, within the limits of their respective national legislation, to accept refugees defined in Article 1 of the said convention. The Convention is not legally binding and even if it was, the coverage would be very limited in scope as its narrow scope leaves climate refugees ineligible for protection under its provisions, contributing to the broader inadequacy of existing regional legal frameworks to address the realities of climate-related displacement.

Although the protection offered in the regional systems could complement that provided in the Geneva Refugee Convention, the reality is that regional conventions like the Arab Convention and the Cartagena Convention are not legally binding and may only provide limited coverage.

3.3 *Inadequacies of International Human Rights Law*

International human rights is the only mechanism that could cater for climate refugees but appears inadequate to cater for their needs based on their unique circumstance. Human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), guarantee fundamental rights, including the right to life, health, and adequate living conditions of persons under international law. The right to seek asylum is another critical component of international human rights law, enshrined in Article 14 of the Universal Declaration of Human Rights⁵, which states that everyone has the right to seek and enjoy asylum from persecution in other countries. However, this provision has limitations when it comes to climate refugees. The 1967 Protocol Relating to the Status of Refugees, which expanded upon the 1951 Refugee Convention, defines a refugee as someone who has fled their country due to a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group, or political opinion. This definition explicitly excludes individuals displaced by environmental or climate-related factors, even when those factors pose severe risks to their lives and livelihoods. As a result, while the right to seek asylum is legally recognized, it is only applicable to cases that fall under the conventional definitions of persecution outlined in the 1951 Convention and its 1967 Protocol. Climate refugees, therefore, are left outside the scope of protection provided by these instruments, creating a significant gap in international law. However,

¹ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, (November 22, 1984), 36, <https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>.

² Valentina Canepa and Daniela Gutierrez Escobedo, (February 16, 2021). Can Regional Refugee Definitions Help Protect People Displaced by Climate Change in Latin America? Refugees International, <https://www.refugeesinternational.org/reports/2021/2/16/can-regional-refugee-definitions-help-protect-people-displaced-by-climate-change-in-latin-america>

³ Ibid.

⁴ League of Arab States, Arab Convention on Regulating Status of Refugees in the Arab Countries, (1994). <https://www.refworld.org/docid/4dd5123f2.html>.

⁵ Article 14 of the Universal Declaration of Human Rights 1948.

they provide limited recourse to individuals displaced by environmental factors. These frameworks are largely reactive, offering protection only after rights violations occur, and do not impose proactive obligations on states to prevent or mitigate climate-related displacement¹. Furthermore, human rights law operates within national borders, leaving individuals who cross international borders due to environmental crises without adequate legal protection. Although the UN Human Rights Committee acknowledged that climate change could pose serious risks to life, the Committee ultimately ruled against granting asylum to climate displaced persons, reinforcing the lack of legal mechanisms for individuals displaced solely by environmental degradation².

The insufficiency of the current human rights regime to protecting climate refugees is revealed in the case of *Teitiota v Chief Executive Ministry of Business, Innovation and Employment*³ which presents an essential milestone in the discussion on the legal protection of this group. This HRC decision is by many considered a breakthrough on climate refugees. The summary of the step forward taken with this decision can be understood according to the words of the UN High Commissioner for Refugees;

“If you have an immediate threat to your life due to climate change, due to the climate emergency, and if you cross the border and go to another country, you should not be sent back because you would be at risk of your life, just like in a war or in a situation of persecution.”

Nevertheless, this decision does not represent something entirely positive when it is noted that the request for protection in question was not acceded to.⁴

For part of the 2000s, Ioane Teitiota and his wife struggled to make ends meet in Tarawa, on the island State of Kiribati, due to uncultivable land caused by high tides and flooding. For this reason, in 2007, they decided to move to New Zealand, where they found employment. Several years and three children later, with their lives already settled in their new country, the problems returned: their work visas expired, and so the Teitiota family lost their legal status in New Zealand, being deported to Kiribati.

The family, therefore, applied for asylum, seeking to remain on New Zealand territory either as refugees under the 1951 Convention or through complementary protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ICCPR due to the effects of climate change on their region of origin. The New Zealand Immigration Court, and also the Human Rights Commission itself, found the evidence presented by the Teitiota representation to be precedent, namely about issues such as loss of land, coastal erosion, increased number and intensity of storms and floods, water contamination, and the related spread of diseases among the population especially children. These bodies accepted that these circumstances made living conditions on the island unworkable. However, they both ruled against Teitiota⁵.

States are not legally obligated to grant asylum to those fleeing climate change impacts under the international human rights regime. This leaves many of these individuals in legal limbo, unable to obtain the protections traditionally granted to refugees⁶. Additionally, most states do not have specific domestic frameworks to manage cross-border environmental displacement, further compounding the vulnerability of these populations. Protection accorded to climate refugees under international human rights law is notably weaker than the comprehensive safeguards provided by the 1951 Refugee Convention and its 1967 Protocol. While human rights instruments ensure fundamental protections like the right to life, freedom from discrimination, and emergency aid, they do not grant the broader rights afforded under the Refugee Convention.⁷ Refugees recognized under the Convention have access to social security assistance, the right to work, public education, and a legal pathway to acquiring new nationality and permanent residence. These elements are essential for long-term integration and stability; which human rights protections alone cannot guarantee. Climate refugees under general human rights frameworks may find themselves without these critical rights and pathways, making their situation more precarious and temporary.⁸

¹ McAdam, Jane, (2012). *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

² Ibid.

³ United Nations Human Rights Committee (HRC), (2020).

⁴ UNHCR, (2013). International Conference: Millions of people without protection: climate change induced displacement in developing countries. Challenges relating to climate induced displacement, Adaptation, and Vulnerability.

⁵ AFP, (November 2013). Kiribati climate change refugee rejected by New Zealand, In: *The Telegraph*.

⁶ Ibid.

⁷ United Nations High Commissioner for Refugees (UNHCR), (1951). *Convention and Protocol Relating to the Status of Refugees*. Geneva: UNHCR.

⁸ McAdam, Jane, (2012). *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

This limited and reactive nature of human rights protections means that climate refugees often lack assurance of long-term support and may remain vulnerable indefinitely. Unlike Convention refugees, who are safeguarded from non-refoulement and can pursue full integration, climate-displaced individuals might not access permanent residence or citizenship in their host countries.¹

3.4 *The Insufficiency of International Humanitarian Law and Other Branches of Law*

International Humanitarian Law (IHL), also known as the law of armed conflict, is designed to protect individuals who are not or are no longer participating in hostilities, such as civilians, and to regulate the conduct of warfare. While it plays a critical role during armed conflicts, its scope is narrowly confined to situations of war and does not extend to peacetime. The principal instruments under international humanitarian law are the 1946 Geneva conventions and its Additional protocols 1977. Article 34 of the Fourth Geneva Convention emphasizes on the humane treatment of civilians, including refugees, during armed conflict. It states that the taking of hostages is prohibited. This straightforward and unequivocal statement signifies the Convention's firm stance against the unlawful and inhumane practice of taking individuals captive as a means of coercion, intimidation, or leverage in times of war. Article 34 further reinforces the fundamental principle that refugees, as civilians, are entitled to be treated with respect for their inherent dignity and protected from arbitrary and unjust treatment, including being taken as hostages.

Furthermore, Protocol 1 Additional to the Geneva Convention Relating to the Protection of Victims of International Armed Conflict, 1977, contains provisions that are relevant for convention refugee protection only. The protocol addresses the humanitarian concerns arising from international armed conflicts and extends protections to those who may become refugees as a result of such conflicts. Article 73, stipulates that individuals who find themselves in the territory of a party to the conflict as a result of circumstances arising out of the conflict shall be given the opportunity to seek asylum in a foreign country. This provision further recognizes the potential for individuals to become refugees in the context of international armed conflict and emphasizes the importance of allowing them to seek and enjoy asylum in another country.² Additionally, Article 74 of the protocol requires parties to the conflict to allow the free passage of consignments of essential foodstuffs, clothing, and medical supplies intended for children under 15, expectant mothers, and maternity cases.

Climate refugees often face permanent displacement as the effects of climate change such as submerging of territories and loss of arable land are irreversible. IHL however, is reactive and situational, offering protections only during periods of armed conflict. Moreover, it does not impose obligations on states to mitigate or adapt to climate-related causes of displacement or to offer long-term solutions to affected populations. This crack in protection means that people displaced by climate events are left without access to asylum rights, humanitarian assistance, or pathways to resettlement, which are crucial for rebuilding their lives.

International environmental law, including climate change law, could provide limited protection for climate refugees, but only when combined with other existing bodies of law. This is because environmental law has not yet produced binding agreements with adequate enforcement mechanisms that address all relevant aspects of the climate migration crisis.³ The U.N. has taken a leading role in combatting climate change through environmental law. The 1992 U.N. Framework Convention on Climate Change (UNFCCC) was the U.N.'s first step to address climate change. Its goal is to prevent 'dangerous' human interference with the climate system.⁴

The UNFCCC echoes the idea of shared responsibility for climate change. In its preamble, the UNFCCC states that climate change and its adverse effects are a "common concern of humankind." The U.N. has recognized that environmental rights are human rights. Therefore, the common concern principle of environmental law could help shift the focus of human rights law from individual harm and responsibility to collective responsibility.⁵ The principle may provide justification to extend states' human rights obligations to climate refugees extraterritorially. Although the UNFCCC did not originally consider climate-displaced individuals, more recent agreements have kept the door open to this application. For example, the Paris Agreement recognizes that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including the rights of migrants. Yet, there are no binding penalties to ensure achievement of

¹ Ibid.

² Protocol 1 Additional to the Geneva Convention Relating to the protection of victims of International Armed Conflict, (1977).

³ Vincent Bellinkx et al., (2022). Addressing Climate Change Through International Human Rights Law: From Extra- Territoriality to Common Concern of Humankind. *Transnat'l Env't L.* 11, 69, 70.

⁴ U.N. Framework Convention on Climate Change, (May 9, 1992). p. 107.

⁵ U.N. Framework Convention on Climate Change, (May 9, 1992). 1771 U.N.T.S. 107.

the Paris Agreement's goals, making it insufficient on its own to protect climate refugees.¹

4. The Benefits of Expanding the Scope of Protection to Incorporate Climate Refugees

Expanding the scope of protection of refugees in the 1951 Refugee Convention to incorporate climate refugees offers enormous benefits to these class of people. Some of which include;

4.1 Enhancing of Their Human Rights Protection

Expanding the scope of protection of refugees in the 1951 refugee convention to include climate refugees is essential for enhancing human rights protection to a greater extent. Climate change-induced displacement often leads to individuals losing their homes and basic rights to life, security, and dignity. The current international legal framework does not recognize the plight of climate refugees, leaving them without formal protection or status. Mc Adam argues that while the 1951 Refugee Convention is comprehensive, it does not address the specific circumstances of those displaced by environmental factors.² By including climate refugees within this framework, we affirm their right to seek refuge and secure their basic human rights, ensuring they are not marginalized or vulnerable to exploitation and abuse.³

Moreover, incorporating climate refugees into international protection regimes aligns with the principles of international human rights law as the Universal Declaration of Human Rights and subsequent treaties emphasize the obligation to protect individuals from harm and uphold their dignity. Climate-induced displacement can result in a myriad of human rights violations, such as loss of access to food, water, shelter, and healthcare.⁴ Incorporating climate refugees ensures that these individuals receive protections that address their unique vulnerabilities, preventing further harm.

4.2 Pathway for Legal Clarity and Consistency

The current lack of a clear legal definition for climate refugees creates substantial ambiguity and inconsistency in their treatment across different jurisdictions. This gap results in varied and often inadequate responses from national governments and international bodies, as there is no unified framework guiding their actions. Experts emphasized that while the 1951 Refugee Convention provides robust protection for those fleeing persecution, it does not address the unique challenges posed by climate-induced displacement.⁵ This absence leads to a situation where climate refugees are not recognized under international law, leaving them in a precarious position without access to formal protections or assistance. Expanding the definition of refugees to include those displaced by environmental factors, will solidly establish a clear legal basis for their recognition and protection, ensuring that they receive consistent and equitable treatment regardless of where they seek asylum.

Furthermore, the inclusion of climate refugees within the international legal framework would facilitate the development of standardized policies and practices for their protection. This legal clarity would empower governments and international organizations to implement cohesive strategies for addressing climate-induced displacement. A broader definition of refugees would not only provide much-needed legal recognition to climate refugees but also promote greater international cooperation and burden-sharing. This would ensure that the responsibility for protecting climate refugees is distributed more evenly among states, reducing the likelihood of some countries bearing a disproportionate share of the burden.⁶ Ultimately, a clear and consistent legal definition is essential for developing effective and humane responses to the growing challenge of climate-induced displacement.

4.3 Strengthened Resilience and Adaptation

Climate refugees often originate from regions severely affected by climate change, such as rising sea levels, droughts, and extreme weather events. Providing them with formal recognition and protection, will therefore facilitate better planning and resource allocation for their resettlement, ensuring they have access to essential services like housing, healthcare, and education. This approach not only benefits the refugees themselves but also promotes sustainable development and climate adaptation strategies in host communities.⁷

Moreover, recognizing climate refugees as a legitimate category of displaced persons fosters global solidarity

¹ Paris Agreement.

² McAdam, Jane, (2012). *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

³ Ibid.

⁴ Ibid.

⁵ McAdam, Jane, (2012). *Climate Change, Forced Migration, and International Law*. Oxford: Oxford University Press.

⁶ Mayer, Benoit, (2013). *The International Law on Climate Change*. Cambridge: Cambridge University Press.

⁷ Sciacaluga, Giovanni, (2020). *International Law and the Protection of "Climate Refugees"*. Springer.

and cooperation. It encourages countries to work together to address the root causes of climate-induced displacement and share the responsibility of providing protection and support. This collective effort can lead to more effective and humane responses to the growing challenge of climate migration. Extending protection to climate refugees is a clear acknowledgement of the interconnectedness of global challenges and commit to addressing them with compassion and justice.¹ This step not only enhances the resilience of climate refugees but also strengthens the global community's ability to respond to climate change and its impacts.

4.4 Fostering Global Solidarity and Cooperation

Incorporating climate refugees as a legitimate category of displaced persons in the 1951 refugee convention will foster global solidarity and cooperation. It will encourage countries to work together to address the root causes of climate-induced displacement and share the responsibility of providing protection and support. This collective effort can lead to more effective and humane responses to the growing challenge of climate migration. This will not only enhance the resilience of climate refugees but also strengthens the global community's ability to respond to climate change and its impacts.²

4.5 Moral and Ethical Responsibility

Expanding protection for climate refugees aligns with the moral and ethical responsibility of the international community to support individuals displaced by climate change. Climate change disproportionately affects vulnerable populations, often those who have contributed the least to its causes. These communities face severe impacts such as loss of livelihoods, food insecurity, and increased risks of natural disasters. Incorporating climate refugees under international protection frameworks is not only a matter of legal necessity but also an ethical imperative.³ It ensures that those most in need of assistance receive the protection they deserve. This approach emphasizes on the principle of global justice and fairness, acknowledging the interconnectedness of environmental degradation and human displacement.

Incorporating climate refugees into international protection regimes also highlights the moral duty of the global community to address the humanitarian consequences of climate change. Mayer opines that extending protection to climate refugees reflects the commitment to upholding human rights and dignity for all individuals, regardless of the reasons behind their displacement.⁴ She emphasizes the need for a compassionate and inclusive response to global challenges, promoting a more equitable distribution of responsibilities among nations.

5. Conclusion

To conclude, this work has explored alternative regimes of protection that may be of solace to 'climate refugees.' It began with an apparently straightforward solution that is the expansion of the 1951 Geneva Refugee Convention to accommodate victims of natural disasters. The regime of refugee law could be adopted with necessary modifications to contain 'climate refugees'. Such a proposal consisted of broadening the definition of a refugee in the Geneva Convention to encompass an additional limb to include victims of both man-made and natural environmental degradation. It is clear that human rights provisions would justify such an expansion of the Convention.

6. Recommendations

An in-depth review of the international refugee laws has revealed that they are an old-fashioned mode of protection since they do not contemplate the possibility of 'climate refugees'. As a result, climate refugees continue to face the threat of statelessness as some islands such as Tuvalu, Vanuatu and Kiribati are slowly disappearing due to the rates in sea level rise. Thus, they are constant victims of human rights violations as they suffer a threat to their right to life, health, housing and adequate food among others. Climate refugees therefore continue to rely on the goodwill of states which is not always constant since no treaty directly protects them. Some of the key recommendations include; Addressing the Root Causes of Environmental Degradation, International Cooperation among Stake Holders, Policy Makers and Relevant Institutions, Expansion of the 1951 Geneva Refugee Convention through another Protocol to incorporate Climate Refugees and Engaging Scholars and the Academia as a whole. These recommendations will be discussed in turn.

6.1 Addressing the Root Causes of Environmental Degradation

The root causes that lead to environmental degradation must be addressed so as to curb displacement at the onset. Adaptation and mitigation strategies to help reduce hazards that cause environmental degradation and

¹ UNHCR, (2022). "Climate Change, Displacement and Human Rights." UNHCR.

² Sciacaluga, Giovanni, (2020). *International Law and the Protection of "Climate Refugees"*. Springer.

³ Betts, Alexander, (2011). *Refugees and International Relations*. Oxford: Oxford University Press.

⁴ Mayer, Benoit, (2016). *The Concept of Climate Migration: Advocacy and its Prospects*. Cheltenham: Edward Elgar Publishing.

displacement should be at the forefront so as to achieve environmental justice. States should utilize natural resources in a manner that is equitable, efficient, productive and sustainable so as to prevent future environmental degradation which might trigger calamities such as drought, and high in sea level rise. The enactment of policies that reduce greenhouse emissions will be more or less a game changer as this will go a long way in curtailing the effects of global warming. The melting of arctic ice leading to sea level rise as a result of climate change will cause island nations to disappear and displace their inhabitants, to this end, existing mechanisms such as the United Nations Framework Convention on Climate Change and the Kyoto Protocol should be further reinforced. This recommendation would have a potential impact in the protection of climate refugees in that these measure would help reduce the scale and frequency of displacement events. This not only lessens the burden on host countries but also ensures that affected communities can continue to live and thrive in their original environments. In cases where displacement is unavoidable, robust mitigation efforts can provide better opportunities for organized and humane relocation, minimizing the disruption to lives and livelihoods, thereby achieving environmental justice for them.

6.2 International Cooperation Among Stake Holders, Policy Makers and Relevant Institutions

International and regional deliberations, involving all stakeholders such as countries that suffer the negative effects of climate change, countries causing most pollution, Offices of the United Nations High Commissioner for Refugees (UNHCR), United Nations Environmental Program (UNEP), Intergovernmental Panel on Climate Change (IPCC) and International Organization for Migration (IOM)) must be held. To this end, processes like the African Peer Review Mechanism under the African Union (AU) and the Universal Periodic Review (UPR) mechanism under the UN can be sufficiently utilized. Civil society organizations should also be on the forefront of championing the rights of individuals displaced as a result of climate change related hazards and in other words, 'Climate refugees'. It is only through such international cooperation, that man-made triggers to environmental migration will be reduced. Currently, international cooperation on climate-induced displacement remains fragmented, with no binding global framework specifically addressing the protection of climate refugees. Existing agreements like the Paris Agreement focus on climate mitigation and adaptation but lack concrete provisions for displaced populations. While institutions such as the UNHCR and IOM provide support for displacement crises, they operate within limited mandates that exclude climate refugees from formal refugee protections under the Geneva Convention. This lack of coordination leads to gaps in legal recognition, resource allocation, and comprehensive strategies to address the needs of displaced populations. Increased cooperation among nations, international organizations, and civil society could close these gaps by fostering shared responsibility, enhancing resource mobilization, and harmonizing policies to protect climate refugees. Greater collaboration could lead to the development of binding international protocols, equitable financial mechanisms, and integrated responses that guarantee displaced individuals access to legal protections, healthcare, housing, and sustainable livelihoods, thereby advancing environmental justice and ensuring their dignity and making sure their rights are upheld.

6.3 Expansion of the 1951 Geneva Refugee Convention Through Another Protocol to Incorporate Climate Refugees

Additionally, there is need for a treaty at the international level that directly protects 'climate refugees'. The 'climate refugee' problem demands that the law reacts. Since climate change is an international phenomenon, such a treaty would be better placed to address the massive displacement of people across international borders rather than regional or sub-regional treaties. To this end, the treaty should be infused with the principles of international human rights law, non-refoulement and complementary protection and international environmental law. Such a treaty should clearly define the criteria of meeting the 'climate refugee' definition so as to prevent floodgates of people seeking admission into host countries, thereby defeating the purpose. To this end, the treaty ought to have guidelines on what quotas of 'climate refugees' countries should accept so as to not overburden host nations. International environmental law principles such as 'polluter pays' can be used as a framework to oblige countries which cause pollution leading to climate change refugees, bearing the burden of such pollution, by admitting a greater number 'climate refugees'.

For the rights of climate refugees to be effectively implemented and recognised, the 1951 Geneva Refugee convention should come up with a clearer and authoritative definition of the notion of refugee protection which will also incorporate climate refugees.

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