



Protection of Climate Refugees: Current International Legal Framework and The Way Forward

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Abstract

Climate change has emerged as one of the greatest global challenges of the twenty-first century, causing widespread environmental degradation, rising sea levels, extreme weather events, and displacement of populations across the world. Millions of people are increasingly being forced to leave their homes due to both sudden-onset disasters and slow-onset environmental changes, giving rise to the phenomenon commonly described as “climate refugees.” Despite the growing scale of climate-induced displacement, international law does not currently recognise climate refugees under the 1951 Refugee Convention and its 1967 Protocol, thereby creating a significant legal protection gap.

*This paper examines the concept of climate refugees, the inadequacy of existing refugee law, and the extent to which international human rights law, environmental law, regional agreements, and soft law instruments can provide protection to climate-displaced persons. It analyses landmark cases such as *Teitiota v. New Zealand* and the *Tuvalu case*, which highlight both the possibilities and limitations of current legal frameworks. The paper further explores the role of international organisations, regional mechanisms like the *Kampala Convention* and *Cartagena Declaration*, and emerging approaches such as humanitarian visas and domestic protection frameworks.*

The study argues that the present international refugee regime is structurally ill-equipped to address climate displacement because it is based on persecution rather than environmental harm. It concludes that a flexible, multilayered framework combining international cooperation, regional mechanisms, domestic legal reforms, and evolving human rights principles offers the most practical path toward meaningful protection for climate refugees in the future.

Keywords: Climate refugees, 1951 Convention, Human Rights Law, International Refugee Law, International Environmental Law, Regional agreements, universal agreements.

Introduction

Climate change has transformed from an environmental concern into a profound humanitarian and legal crisis affecting millions of people worldwide.¹ Rising global temperatures, melting glaciers, sea-level rise, desertification, droughts, floods, cyclones, and other extreme weather events have increasingly threatened human habitation and livelihoods.² These environmental disruptions have forced large populations to migrate within and across borders, creating a growing category of displaced persons commonly referred to as “climate refugees.” The issue of climate-induced displacement poses serious challenges to the existing framework of international refugee law. The 1951 Refugee Convention and its 1967 Protocol were designed primarily to protect individuals fleeing persecution on grounds such as race, religion, nationality, political opinion, or membership of a particular social group. As climate change does not fit neatly within the traditional concept of persecution, persons displaced by environmental factors remain largely outside the scope of legal refugee protection. This has created what many scholars and international bodies describe as a “legal void.” In the words of Gonzales, “climate change is an injustice rather than a misfortune”.³

This paper critically examines the legal status of climate refugees and analyses the adequacy of current international mechanisms in addressing climate displacement. It evaluates refugee law, international human rights law, environmental law, regional instruments, and landmark judicial decisions, while also exploring potential reforms and policy solutions.

Scope of Climate Crisis

There has been a great impact of the human population on the climate.⁴ It is noted that the Earth has warmed approximately 1.2°C above preindustrial levels because of the release of greenhouse gases into the air and the burning of fossil fuels.⁵ If the current patterns continue, it is estimated that global temperatures will rise between 2.7°C and 3.1°C by the end of this century. All this has resulted in “irreversible changes in major ecosystems and the planetary climate system.”⁶ Constant melting of the Arctic ice, rise in sea levels, unstable weather patterns affecting agricultural production, storms, droughts, floods, cyclones, etc are reasons for the climate crisis.⁷ Climate change means “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to another natural climate variability that has been observed over comparable time periods”.⁸

According to Walter Kälin, there are five situations in which a connection between climate change and the movement of people can be established.⁹ The first one is “sudden-onset disasters”. Some examples of the same include floods, windstorms and mudslides. The second one is “slow-onset environmental degradation”, which involves long-term negative effects of climate change and in this, the extent of degradation influences movement. “Low-lying small island states” are a special case of slow-onset disasters which become uninhabitable as a consequence of rising sea levels, which results in movement of people out of here. “Areas prohibited for human habitation” is the fourth scenario. Under this, “mitigation and adaptation measures may displace people, in particular where they are not relocated in ways which allow them to continue or even improve their

lives". The fifth scenario, "unrest seriously disturbing public order, violence or even armed conflict", arises from the non-availability of essential resources because of climate change, which, in turn, may result in situations that disturb public order.¹⁰ As per leaders of the Pacific, "climate change remains the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific".¹¹ Pacific Island nations experience a "truly existential threat" because of rising sea levels.¹² It is an accepted fact by the world, including most of the U.N. member states, that "environmental factors are and will continue to be a major contributing factor in internal migration and internal displacement."¹³ People follow the phenomenon of "stepwise migration" which means that they first move to a larger town and choose to cross international borders when these areas also become inhospitable.¹⁴ Moreover, it is estimated that by the year 2050, 17 % of the territory of Bangladesh would submerge because of rising sea levels, resulting in the displacement of around 20 million people.¹⁵

According to the IDMC, out of 26.4 million displaced persons because of natural disasters, a significant number of them are climate refugees.¹⁶ When the impacts of climate change result in migration, it is called climate displacement and such migrants are called "climate refugees".¹⁷ The exact causality of migration because of climate change cannot be determined with certainty because migration decisions are not monocausal and may be influenced by other reasons such as cultural crisis and regional vulnerabilities.¹⁸

Who is a Climate Refugee

The term "environmental refugee" was first introduced by Lester Brown in 1976, though it took several decades before it gained widespread use. The definition that became

most influential came from UNEP researcher Essam El-Hinnawi in 1985, who described environmental refugees as "those people who have been forced to leave their tradition 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."¹⁹ Norman Myers offered a similar description, referring to people "who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems, together with associated problems of population pressures and profound poverty. In their desperation, these people feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt."²⁰ The terms "environmental refugee" and "climate refugee" are broadly used as interchangeable concepts, and have been described as "a useful advocacy tool to generate attention and mobilise civil society around the dangers of global warming."²¹

International organisations including the UNHCR and the IOM have expressed reservations about using the word "refugee" for climate-displaced people at all. Their concern is that climate displacement is not among the recognised grounds for refugee status under the 1951 Convention, so using the term is legally invalid. These organisations instead prefer the term "environmentally displaced persons," defined as "persons who are displaced within their own country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one."²² They claim that this term has no basis in international refugee law.²³ The IOM has adopted an even broader concept of "environmental migrants" —

defined as “persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment that adversely affects 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.”²⁴ This framing deliberately positions environmentally displaced persons as a subcategory of migrants rather than refugees. However, this definition has attracted criticism from scholars such as Kälin, who argues that it fails to distinguish meaningfully between people moving within their own country and those crossing international borders.²⁵

The Nansen Conference noted that “Climate change acts as an impact multiplier and accelerator to other drivers of human mobility.”²⁶ The Conference also recommended that both the terms “environmental refugee” and “climate refugee” be avoided entirely on the grounds that they are “legally inaccurate and misleading,” proposing to use the term “environmentally displaced person”. The 1951 Refugee Convention defines a refugee as a “Person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution.”²⁷ The 1967 Protocol failed to address the situation of climate-displaced people.²⁸

Legal Protection for Climate Refugees

In the words of Sir David Attenborough, “Climate change is the biggest threat to security that modern humans have ever faced [It] can only be dealt with by unparalleled levels of global cooperation”.²⁹ Climate change

is defined as the “key factor accelerating all other drivers of forced displacement.”³⁰ However, persons forced to leave their homes as a result of climate change do not qualify for protection as of now.³¹ Secretary-General of the U.N., António Guterres, describes such a paradox as a “legal void”.³² This research paper shall examine several mechanisms such as refugee law, international human rights law and international environmental law, along with regional and universal agreements for the protection of climate refugees. Climate refugees are in urgent need of protection, and their need outweighs state sovereignty and the interests of the transit or destination states.

International Refugee Law

It is the responsibility of the states to determine the qualifications of a refugee and to protect them.³³ There is no prescribed method mentioned in the 1951 Convention.³⁴ A person is identified as a refugee as soon as they meet the criteria.³⁵ Despite the seriousness of climate change, “Persons displaced in the context of disasters and climate change” or “climate refugees are overlooked in migration and refugee protection discussions.”³⁶ They do not have any formal definition, protection or recognition under the 1951 Convention and other instruments of international law.³⁷ Hence, they are popularly called “forgotten victims of climate change”.³⁸ The protection under the 1951 Convention is available only to persons who cross international borders; since most climate refugees are internally displaced by virtue of “stepwise migration”, they are not protected under the Convention.³⁹ U.N. has recently adopted some non-binding international agreements pertaining to climate change, such as the Global Compact on Refugees (Refugee Compact) of 2018, which notes that climate change interacts with the drivers of refugee movements.⁴⁰ However,

it has not examined or analysed this further. The Global Compact for Safe, Orderly, and Regular Migration (Migration Compact) gives a more expansive framework, including suggestions for the protection of climate refugees, but it still falls short. The above two compacts do not bind signatories to follow the commitments and therefore, there has been non-compliance of these suggestions.

Moreover, States would not want to commit to the protection of climate refugees because accepting them in their countries would result in a high socio-economic burden.⁴¹ As per Gonzalez, despite making an attempt to expand the scope of the convention, climate refugees will face similar challenges as other refugees, such as “increasingly militarised borders, confinement in detention centres and denial of legal representation”.⁴²

Expanding Existing Refugee Law

The 1951 Convention and its 1967 Protocol are customary principles of non-refoulement under Article 33 (1) of the Convention.

⁴³An advisory opinion from the Office of the UNHCR made it clear that the principle of non-refoulement applies extraterritorially.

⁴⁴Several legal considerations for claims of refugee protection were issued by the UNHCR in the context of climate change, stating that the Convention and other regional agreements should be interpreted in a way that gives meaningful recognition and protection to climate refugees.⁴⁵ As has been stated earlier, climate-induced displacement is not monocausal; therefore, the strongest claims of refugee protection come when the climate refugee is a victim of violence and persecution in addition to the impacts of climate change.⁴⁶

As per the 1951 Convention, a person must have a “well-founded fear” of persecution in order to qualify as a refugee.⁴⁷ Persecution

requires “human agency” or conduct by a state or non-state actor that contributes to the harm, not merely the threat of climate change itself.¹⁵⁷⁴⁸ This requirement is satisfied when a state “discriminates in its provision of assistance or protection or uses climate change impacts and events as a pretext to persecute certain persons.”⁴⁹ As per the submission of the UNHCR on “Forced Displacement in the Context of Climate Change”, it is possible to apply the current definition of refugees to victims of climate change if their governments have withheld assistance to marginalise them on one of the five mentioned grounds of the definition.⁵⁰

The Refugee Convention of 1951 is based on the concept of persecution and is therefore not suitable for climate change.⁵¹ An extension of the current refugee definition would defeat the purpose of the convention. A viable solution in this regard can be the enactment of a separate international convention that focuses solely on refugees of climate change and natural disasters. Another solution can be the adoption of soft law instruments with guiding principles. However, the main disadvantage of non-binding instruments is limited compliance or no compliance at all. Therefore, the success of such soft law instruments is actually contingent upon the willingness of the states to implement them in their domestic jurisdictions.

As per Matthew Scott, “the deeply social nature of disasters, within which existing patterns of discrimination and marginalisation are exacerbated” should be appreciated because a disaster is not always natural.⁵² It is always dependent on some underlying social, economic, political or environmental reasons. Therefore, another line of thought says that there is no need to create new principles or instruments; the existing refugee law

principles can be applied to climate refugees. Additionally, several judicial decisions from the 1990s established that it is a misconception that disasters are wholly natural and cannot invoke the Refugee Convention.⁵³ Solutions for protection of climate refugees are discussed in detail further in the research paper.

International Human Rights Law

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provides that states cannot forcibly remove people from their territory in cases of “real risk of being arbitrarily deprived of life, or subjected to torture or other cruel, inhuman, or degrading treatment or punishment”.⁵⁴ Additionally, the principle of non-refoulement,⁵⁵ in human rights treaties,⁵⁶ is considered as a principle of customary international law,⁵⁷ states that no person should be returned or sent back to a country where they would encounter “cruel, inhuman or degrading treatment or punishment or other irreparable harm”.⁵⁸ Such a person should not be prevented from entering other country.⁵⁹ The U.N. Human Rights Council (HRC), in March 2018, identified the legal void in which persons affected by climate change exist.⁶⁰ There are several challenges to the idea of applying human rights to climate refugees. First is opposition or express unwillingness by some national governments. For instance, in 2021, the Biden White House explicitly rejected the notion that its international human rights obligations include protection of “individuals fleeing the impacts of climate change.”⁶¹ Second, as of now, human rights treaties do not apply extraterritorially, unlike certain civil and political rights.⁶² This happens when a state exercises actual and effective control over another territory, and there is a connection between the acts of the state and violations of human rights across borders.⁶³ However,

climate change is a global phenomenon without any direct cause between the acts or omissions of the state and impacts of climate change.⁶⁴ Therefore, Human rights law can only provide state-by-state solutions rather than providing an international solution for climate refugees.

International Environmental Law

The United Nations Framework Convention on Climate Change (UNFCCC) was among the first international bodies to formally acknowledge that climate change can force people to move. This recognition came through the Cancun Adaptation Framework in 2010, where Article 14(f) urged member states to work toward “measures to enhance understanding, coordination and cooperation with regards to climate change-induced displacement, migration and planned relocation, where appropriate at the national, regional and international levels”.⁶⁵ The Paris Agreement of 2015 went a step further by acknowledging the “need to address climate-induced harms that cannot be avoided through mitigation and adaptation (such as displacement).”⁶⁶ This idea is now widely referred to as ‘loss and damage,’ and it resulted in a dedicated task force being established under paragraph 50 of the Paris Agreement.⁶⁷ This task force operates within the Warsaw International Mechanism for Loss and Damage (WIM), and its job is to come up with practical approaches aimed at “averting, minimising and addressing” the displacement of people caused by climate change.⁶⁸

There is a fundamental challenge in this entire structure — COP decisions are not legally binding on member states. This means that if a country fails to properly implement what was agreed upon, there is no international tribunal that can hold it accountable.⁶⁹ The mechanism itself has been criticised for lacking

“actionable support, finance mechanisms and funding”.⁷⁰ It does not ‘involve or provide a basis for any liability for compensation,’ which means that no responsibility has been allocated.⁷¹ The United Nations also adopted the Global Compact for Safe, Orderly and Regular Migration through the New York Declaration.⁷² This agreement was designed to improve how the international community responds to the refugee crisis. Though non-binding in nature, its purpose is to fundamentally change how migration is handled — making it a more humane process through tools like humanitarian visas and temporary work permits.⁷³ It directly recognises climate change as a factor that can lead to migration. Despite these developments, international environmental law has not yet produced binding agreements with adequate enforcement mechanisms that address all relevant aspects of the climate migration crisis.⁷⁴ The U.N. has played a central role in shaping the global response to climate change. Its very first step in this direction was the 1992 U.N. Framework Convention on Climate Change (UNFCCC),⁷⁵ whose core aim is to “prevent ‘dangerous’ human interference with the climate system.”⁷⁶ Today, this treaty has near-universal membership, with 197 countries having ratified it.⁷⁷

The UNFCCC also reflects the principle of shared responsibility — something it expresses clearly in its preamble, where climate change and its negative consequences are described as a “common concern of humankind.”⁷⁸ The U.N. has recognised that environmental rights are human rights.⁷⁹ This implies the extension of human rights obligations to climate refugees extraterritorially.⁸⁰

While the UNFCCC did not originally account for climate-displaced people, more recent agreements have left room for this

application.⁸¹ The Paris Agreement, for instance, states that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights,” including the rights of migrants.⁸² However, since the Paris Agreement has no binding penalties for failing to meet its goals, it does not offer sufficient protection to climate refugees.⁸³

Another relevant instrument is the U.N. Convention to Combat Desertification (1994), which could serve as a useful model for strengthening global recognition of the link between climate change and cross-border migration — particularly in the context of slow-onset climate events.⁸⁴ This binding agreement acknowledges that desertification and drought are drivers of migration, and it calls on states to share information in order to better manage displacement caused by these factors.⁸⁵ However, since it only addresses one specific type of climate-related migration trigger, it falls short of providing a comprehensive legal framework for climate refugee protection on its own.

The Case of Teitiota v. New Zealand

The principle that ‘everyone, everywhere has a human right to a safe, clean, healthy, and sustainable environment’ was first acknowledged under the Stockholm Declaration 1972 in International Environmental Law.⁸⁶ However, its formal recognition under international human rights treaties came much later. This distinction matters greatly when examining cases like that of Mr. Teitiota, whose claim ultimately failed because he could not establish a concrete risk or threat to his right to life. For a long time, international tribunals were reluctant to expand the interpretation of human rights law to cover emerging climate-related threats.⁸⁷ While no tribunal has yet ruled that climate

change impacts meet the threshold required for non-refoulement protection, none have entirely closed the door to that possibility either.⁸⁸ There is a growing judicial recognition that climate change poses a genuine threat to human rights, particularly under the International Covenant on Civil and Political Rights (ICCPR).⁸⁹

The case of *Teitiota v. New Zealand*, decided on January 7, 2020, is widely regarded as a landmark ruling in the context of climate displacement. Ioane Teitiota was a citizen of Kiribati — a low-lying Pacific island nation facing the very real prospect of being submerged by rising sea levels within ten to fifteen years.⁹⁰ Scientific projections also pointed to rising temperatures, increasing ocean acidification, and the likelihood that Kiribati could become uninhabitable even before it disappears underwater, largely due to water scarcity. Teitiota and his wife had emigrated to New Zealand in 2007, prompted by widespread reporting about the deteriorating conditions in Tarawa. In 2011, he was arrested for being in the country unlawfully, and his lawyer, Michael Kidd, took up his case and applied for refugee status on his behalf. In 2013, the Immigration and Protection Tribunal of New Zealand rejected his appeal, having already been turned down by a Refugee and Protection Officer.⁹¹ After exhausting all domestic legal options, he was sent back to Kiribati. In 2016, he took his case to the UN Human Rights Committee (HRC), arguing under the ICCPR's Optional Protocol that New Zealand had violated his right to life by returning him. As journalist Kenneth Weiss explained, all Mr Teitiota wanted was a visa extension, but what he got 'was an attorney who decided to present Teitiota as a casualty of climate change — and to set out to change international law.'

The HRC upheld the New Zealand Supreme

Court's finding that Teitiota did not face an "imminent threat" to his life. Yet, despite this unfavourable outcome for Teitiota personally, the decision has been widely praised as a step forward for climate refugee protection. For the first time, it formally recognised that states carry a non-refoulement obligation — meaning they cannot forcibly return someone to a country where climate change might arbitrarily strip them of their right to life under ICCPR Article 6.⁹² The Committee also acknowledged, for the first time, that both immediate and slow-onset effects of climate change must be factored into refugee and asylum decisions. It emphasised that the right to life includes 'the right of individuals to enjoy a life with dignity,' and crucially noted that 'the conditions of life may become incompatible with the right to life with dignity before the risk is realised' — signalling that protection should be available before a situation reaches an imminently life-threatening stage. The HRC also accepted that 'without robust national and international efforts', 'the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states.'⁹³

The bar set for imminence under Article 6 is extraordinarily high — arguably impractical. The HRC reasoned that because Kiribati residents found it merely difficult, rather than impossible, to access drinking water and sustain subsistence farming, the threshold had not been crossed. As the dissenting opinion pointedly observed, if conditions in a country virtually guaranteed to sink beneath the ocean in the next decade or two are not enough to meet this standard, it becomes nearly impossible to imagine what would be. The HRC placed weight on the fact that Kiribati's government was making efforts to address climate change,

without actually assessing how effective those efforts were. The Kiribati government had, for instance, purchased land in Fiji to potentially relocate its population, and had developed skills programmes to help citizens find employment abroad. Using effort rather than outcome as a measure of protection creates a troubling precedent — it could give other nations an incentive to take minimal action while still being shielded from accountability for their citizens' displacement.⁹⁴

The tribunal also required that the threat to life be “personal” and not derived merely from the general conditions in the receiving country, except in the most extreme circumstances.⁹⁵ Teitiota's claim failed partly because he had never been personally targeted by violence and his situation was not meaningfully worse than that of other Kiribati citizens. This is deeply problematic in the climate change context, where entire communities face the same existential threat. Requiring an individual to prove their suffering is distinctly worse than everyone around them creates what amounts to an insurmountable obstacle for residents of small island states. Therefore, although the fact that climate refugees require protection was acknowledged by the tribunal, the threshold was so high that it has been difficult to cover climate refugees.

The Tuvalu Case

In 2014, a married couple from Tuvalu, both born on different islands within the country, appealed against a decision by a refugee and protection officer who had denied them refugee status while they were living in New Zealand. The husband had worked as a teacher, and the wife had briefly worked as a teacher's aide before the school she worked at closed due to funding shortages. After marrying, they had lived in accommodation rented from the Ministry of Education. Their personal

circumstances were particularly difficult. The wife had suffered two late-stage pregnancy losses while still in Tuvalu, and after moving to New Zealand, the couple had children.⁹⁶ These traumatic experiences led her to genuinely fear for her children's lives should they be forced to return — a fear grounded in the fact that Tuvalu lacked adequate medical facilities and faced persistent medicine shortages. Beyond the medical concerns, their broader situation in Tuvalu was deeply precarious. They had no house, no land, and no meaningful support network to rely on. The husband had no relatives remaining in Tuvalu, and while the wife had some family there, none of them were employed and thus could not offer any practical assistance. On top of this, the effects of climate change compounded their concerns — frequent flooding made agriculture increasingly difficult, and the deteriorating quality of water posed yet another threat to daily life.⁹⁷

Following the position established in the Kiribati case, the tribunal reaffirmed that the Refugee Convention did not apply in situations arising from natural disasters or environmental degradation. The appellants themselves acknowledged during the hearing that there was no proper legal basis for a refugee claim, as none of the five recognised grounds for persecution — race, religion, nationality, political opinion, or membership of a particular social group — were present in their situation.⁹⁸ The couple's legal counsel then shifted focus to the complementary protection framework, arguing that the appellants faced the possibility of arbitrary deprivation of life or cruel, inhuman, or degrading treatment in Tuvalu — rights protected under the ICCPR.⁹⁹ The tribunal accepted in principle that states carry a positive obligation to protect the right to life from risks arising out of environmental hazards, whether human-made or natural. A failure to provide such protection could,

in theory, amount to a violation of the prohibition on the arbitrary deprivation of life.

However, the tribunal drew a careful and important distinction. It acknowledged that the Tuvalu government simply did not have the capacity to address the underlying environmental drivers causing these hazards, and that holding it accountable for this would be deeply unfair. As the tribunal put it, “it is simply not within the power of the Government of Tuvalu to mitigate the underlying environmental drivers of these hazards. To equate such inability with failure of state protection goes too far. It places an impossible burden on a state.” In fact, the Tuvalu government had been actively trying to respond to the crisis. In 2017, it launched a coastal adaptation project to strengthen protection in its most populated islands, alongside several other initiatives aimed at improving the resilience of its population. The tribunal reviewed these efforts and concluded that there was no evidence the appellants would be subjected to cruel or degrading treatment. On these grounds, their protected person claims were dismissed.

After the rejection of their refugee and protected person claims, the couple filed a humanitarian appeal — and this time, the outcome was different. They largely relied on the same arguments, but added several compelling personal factors: all of the husband’s relatives, including his mother, were living in New Zealand; the family would face both the effects of climate change and severe socio-economic deprivation upon return; and most significantly, their children had been born in New Zealand and had never set foot in Tuvalu.¹⁰⁰ The tribunal found that, when all of these circumstances were considered together, an exceptional humanitarian case had been made out. It granted the family residency

visas on the basis that deporting them would be unjust and unduly harsh. The tribunal was clear, however, that simply pointing to broad environmental concerns was not enough on its own — what mattered was whether the specific facts of the case constituted truly exceptional humanitarian circumstances.¹⁰¹ As the tribunal stated, “The Tribunal is satisfied that, when the above matters are taken into account on a cumulative basis, there are exceptional circumstances of a humanitarian nature, which would make it unjust or unduly harsh for the appellants to be removed from New Zealand.”

International Institutions

The IOM is widely regarded as the lead UN agency on migration matters.¹⁰² However, it depends heavily on the commitment of its member states rather than operating with independent authority. The World Migration Report has shown that supportive policies and clear legal pathways make a positive difference for migrants.¹⁰³ The IOM’s reports and projects are short of recognising the obligations of states, which could, in turn, be enforced in a court of law.

There are fundamentally two schools of thought on the significance of international organisations in the protection of climate refugees. On one side, institutionalists argue that “States find that autonomous self-interested behaviour can be problematic and they prefer to construct international institutions to deal with a host of concerns.”

¹⁰⁴On the other, realists take a far more sceptical view, contending that “international organisations are of little help in directing this perpetual power struggle since they cannot change the anarchical structure of international relations. Rather, international organisations are simply used by powerful states to implement their power politics

more effectively and to pursue their self-interest.”¹⁰⁵ The current international refugee regime is broad. It encompasses a wide range of organisations — including the UNHCR, Refugee International, and Human Rights Watch — as well as legal instruments such as the Universal Declaration of Human Rights, the UN Charter, the OAU Convention, and the Cartagena Declaration. However, at its core, the entire regime rests on the principles, norms, and procedures established by the 1951 Refugee Convention, which remain its cornerstone.¹⁰⁶ They are not capable of directly changing the landscape of the refugee regime but definitely contribute to the recognition and protection of refugees.

Regional Mechanisms

Kampala Convention

Africa has developed some of the most progressive regional frameworks for recognising the right to move in response to climate change. While the African Convention already extends refugee protection to those affected by natural events such as famines, disease outbreaks, and natural disasters, the African Union Kampala Convention goes even further.¹⁰⁷ The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the Kampala Convention represents a significant step forward in addressing internal displacement on the continent. Under Article 5(4), state parties are obligated to protect those displaced by disasters, including climate change — a direct acknowledgement that climate-driven displacement is a legitimate protection concern.¹⁰⁸ The Convention also goes beyond mere declarations of principle by establishing concrete obligations around financial assistance and aid, binding not just member states but international institutions as well.¹⁰⁹ Where a state is unable to respond adequately, it is required to seek help from other state parties or relevant institutions. In

truly exceptional circumstances, the African Union itself is empowered to intervene directly.¹¹⁰

The Convention has attracted praise from the UN Special Rapporteur on Human Rights for its approach to what it calls “sovereignty as a responsibility.”¹¹¹ Rather than treating sovereignty in the conventional Eurocentric sense — as a state’s exclusive jurisdiction over its territory and population — the Kampala Convention redefines it as a state’s willingness and ability to protect its own nationals.¹¹² This is a meaningful conceptual shift, one that places the welfare of people at the centre of what it means to be a sovereign state. The Convention has its own limitations. States have been notably reluctant to ratify it, which is perhaps unsurprising given how directly and concretely it defines their obligations — including financial ones.¹¹³ The Convention also lacks a robust oversight mechanism, which raises genuine concerns about whether it is being properly implemented and complied with in practice.¹¹⁴

The OAU Convention and the Cartagena Declaration

For the existing international refugee framework to adequately address climate displacement, the criteria for refugee status under the 1951 Convention would need to be broadened — both to recognise internal displacement as a legitimate basis for protection, and to bring climate change and natural disasters within the definition of events that seriously disturb public order. Two regional instruments have already moved in this direction.¹¹⁵

The 1969 Organisation of African Unity (OAU) Convention extends protection to anyone who, owing to “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.”

¹¹⁶ The 1984 Cartagena Declaration, though not legally binding, similarly protects “persons who have fled their country because their lives, security or freedom have been threatened by other circumstances which have seriously disturbed public order.” Under this broader definition, individuals fleeing the gradual effects of famine — particularly where conflict has worsened that famine — could qualify for refugee protection. These two instruments therefore offer at least some region-specific protection for climate refugees displaced by certain slow-onset events, even where the 1951 Convention falls short.

Neither regional agreement defines what constitutes an event that “seriously disturbs public order,” but a broad interpretation of this phrase could meaningfully strengthen the claims of climate refugees. The United Nations defines a disaster as a serious disruption to the functioning of a community or society, caused by hazardous events interacting with vulnerability and capacity, resulting in human, material, economic, and environmental losses.¹¹⁷ This definition captures not only sudden and acute events but also those that are widespread, slow in onset, and long-lasting — precisely the kind of damage that climate change typically produces. International law does not offer a fixed definition of “public order,” but in the context of the OAU Convention and Cartagena Declaration, it refers to the overall administrative, social, political, and moral functioning of a state, grounded in the rule of law and respect for human dignity.¹¹⁸ Any significant disruption to this functioning — whatever its cause — can constitute a disturbance.¹¹⁹ The UNHCR has clarified that the seriousness of any such disturbance should be assessed on a case-by-case basis, taking into account the nature and

duration of the disruption and its consequences for the security and stability of the state and society.¹²⁰ Given the scale, duration, and far-reaching consequences of climate change, there is a strong argument that it qualifies as exactly this kind of serious disturbance — and aligning the 1951 Convention with this broader public order standard would be a meaningful step toward protecting climate refugees.

To qualify for protection under either the OAU Convention or the Cartagena Declaration, it is not enough that climate change is occurring — its effects must be severe enough to have directly impacted a person’s home and placed them at real risk of serious harm, effectively forcing them to flee.¹²¹ Whether this threshold is met depends on several factors: the scale and aftermath of the climate event; how close it was to the person’s place of residence; its effect on their life, liberty, health, and other fundamental rights; and how effectively the state has responded. Even where a disaster does seriously disrupt public order, refugee claims will only be viable when the state in question is genuinely unable or unwilling to address the disaster’s impact — even with the support of international assistance.¹²² This is important, as it means the protection framework is not triggered simply by the existence of climate change, but by the combination of environmental devastation and state failure to respond.

Protection Through Universal Agreements

Beyond the formal refugee framework, climate refugees receive a degree of protection through soft law instruments. ¹²³The Global Compact on Migration and the Global Compact on Refugees¹²⁴ both offer relevant protections. However, these instruments record climate-displaced people as migrants rather than refugees in the strict legal sense.¹²⁵

International cooperation is agreed upon in the area of migration.¹²⁶

Migration is recognised as a legitimate adaptation strategy.¹²⁷ The Global Compact on Migration also incorporates the principle of non-refoulement, extending it to migrants in situations where return could expose them to irreparable harm.¹²⁸ Several additional international frameworks have been developed to address displacement in the context of disasters, including the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, the Draft Articles on the Protection of People in the Event of Disasters, and the Sendai Framework. However, these agreements only cover people who move in the context of disruptive environmental changes and not those who leave their countries due to creeping environmental changes.¹²⁹

Potential Solutions

In the absence of a comprehensive international framework, domestic solutions may present a realistic route. The United States under the Biden administration, for instance, acknowledged the need to adapt existing national asylum and refugee laws such as Temporary Protected Status to extend protection to climate-displaced people.¹³⁰ The Biden White House has also acknowledged a national interest in creating a new legal pathway for humanitarian protection in the U.S. for climate refugees who can prove they are fleeing serious, credible threats to their life or health due to the direct or indirect impacts of climate change.¹³¹

Climate Humanitarian Visas

Host nations would identify climate-vulnerable countries whose citizens could be eligible for protection, and individuals from those countries would then need to show

that they belong to the most at-risk groups — for example, by being part of a historically marginalised community or living below the poverty line.¹³²

New Zealand used this kind of approach in 2017, creating a climate humanitarian visa programme for Pacific Islanders from at-risk nations such as Kiribati and Fiji.¹³³ However, the programme was abandoned just six months after it was announced. The reason for its failure was resistance from some Pacific Islander communities themselves, who saw refugee status as a last resort and felt the programme threatened their cultural identity and way of life.¹³⁴

International Cooperation: The Model International Mobility Convention

Even where domestic solutions succeed, international cooperation remains essential for comprehensive protection. Academics and policy specialists have already drafted a Model International Mobility Convention (MIMC), which could become legally binding if adopted by member states of an international body such as the United Nations. A binding agreement built on the MIMC's provisions could fill the legal void in which climate refugees currently find themselves.¹³⁵

The MIMC offers a broader framework for international mobility than the narrow refugee definition in the 1951 Convention, and it could realistically cover climate refugees.¹³⁶ Its additional mechanisms include a responsibility-sharing system under which each state party annually commits to a set number of resettlement visas and a corresponding level of funding; a Mobility Visa Clearing House, an online platform designed to facilitate safe and orderly migration by allowing states to share visa-related information; and a Global Refugee Fund to help states manage the costs

of resettling and integrating refugees and other displaced people.¹³⁷

In addition to this, integrating climate change considerations into existing domestic asylum systems. National governments, working alongside NGOs and the UNHCR, should develop clear guidelines for how climate displacement can be assessed within current asylum frameworks. The United States has relevant precedent here: it has previously issued specific guidance for asylum claims brought by women and by children, demonstrating that targeted guidelines can be developed within existing legal structures without requiring entirely new legislation. The same approach could feasibly be applied to climate-displaced individuals.¹³⁸

Conclusion

The growing phenomenon of climate-induced displacement represents one of the most pressing humanitarian and legal challenges of the modern era. Climate change has already displaced millions of people through rising sea levels, environmental degradation, extreme weather events, and resource scarcity, and these numbers are expected to increase significantly in the coming decades. Despite the severity of the crisis, existing international refugee law remains inadequate for protecting climate refugees because the 1951 Refugee Convention is fundamentally rooted in the concept of persecution rather than environmental harm.

The analysis of international refugee law, human rights law, environmental law, and regional instruments demonstrates that although certain legal mechanisms provide limited protection, no comprehensive and binding framework currently exists for

climate refugees. Landmark decisions such as *Teitiota v. New Zealand* and the *Tuvalu case* illustrate both the progress and limitations of current legal approaches. While these cases recognised that climate change can threaten fundamental human rights, they also imposed high thresholds for protection and failed to establish climate refugees as a recognised legal category under international law.

Regional frameworks such as the Kampala Convention, the OAU Convention, and the Cartagena Declaration offer broader and more flexible approaches that may serve as useful models for future reform. Similarly, soft law instruments, humanitarian visas, domestic protection mechanisms, and evolving interpretations of non-refoulement principles indicate that international law is gradually adapting to the realities of climate displacement. However, the absence of binding obligations and strong enforcement mechanisms continues to undermine meaningful protection. Protecting climate refugees requires a coordinated international response. Rather than relying solely on a single new treaty, the most effective solution lies in strengthening existing legal frameworks, expanding regional cooperation, integrating climate considerations into domestic asylum systems, and developing flexible humanitarian pathways. Climate displacement is not merely an environmental issue but a question of human dignity, survival, and global justice. The international community must therefore move beyond political hesitation and develop effective legal protections for those who are forced to leave their homes because of the climate crisis.

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