



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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ISSN

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# **LEGAL TACTICS FOR SAFEGUARDING CLIMATE CHANGE REFUGEES: A CRITICAL ANALYSIS OF INTERNATIONAL FRAMEWORK AND FUTURE PROSPECTS**

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## **ABSTRACT**

The refugees due to the causes of climate change have not been significantly noted in international forums. It has been a growing issue that poses a danger to the world as a whole. This research undertakes a thorough comparative review of the need for development in legal tactics by nations and international organizations to safeguard climate change refugees legally. The research investigates the efficacy of current legal frameworks in accommodating climate change refugees, with a focus on the complex interactions between national jurisdictions and international cooperation.

The first part of the analysis starts with an introduction to climate change refugees and the significance of the legal analysis in the context of climate change. Followed by a historical overview of environmental legislation and its adaptations and amendments. A key component of this research is a critical analysis of various international legal frameworks and the challenges and ambiguity in protecting refugee rights along with state obligations.

The study also critically assessed the existing legal avenues and the proposals for enhanced legal protections and solutions. It also identifies some of the case studies and assesses the barriers to effective legal protection. The report eventually urges countries to unify their legal measures to create a more potent deterrence against this global danger, and it calls for a comprehensive and united approach to climate change refugee laws. This study adds to the body of knowledge regarding climate change and emphasizes the need for a coordinated international response to protect climate change refugees.

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**KEYWORDS: LEGAL FRAMEWORKS, CLIMATE CHANGE REFUGEES, INTERNATIONAL COOPERATION, INTERNATIONAL CONVENTION.**

## **INTRODUCTION**

In an age where environmental concerns are paramount, migration as a result of climate change has grown to be a significant global issue. Beyond just rising temperatures and extreme weather, the effects of climate change can result in community uprooting, giving rise to a new category of migrants known as climate change refugees. This research paper aims to investigate the pressing issues surrounding climate change refugees, with a focus on the current proportion of those affected, the need for legislative frameworks addressing their situation, and the staggering numbers of people who are displaced annually as a result of climate-related factors.

As the effects of climate change become more apparent, more and more people are being forced to leave their homes due to environmental degradation, sea level rise, and extreme weather events. This study attempts to quantify the extent of this disaster by providing a thorough overview of the current percentage of global population displacement caused by climate change.

Furthermore, our study highlights how urgently comprehensive legal frameworks are needed to meet the unique challenges that refugees from climate change face as they attempt to live precariously with scant legal safeguards. Through an examination of current international and state legislation, we hope to determine how effective current legal procedures are in providing security and rights to those who have been displaced by climate change. With a careful examination of percentages, legal requirements, and annual displacement data, we hope to add to the conversation about refugees from climate change and promote a more humane and efficient response to this expanding global issue.

## **EVOLUTION OF CLIMATE CHANGE REFUGEE**

The development of legal frameworks about refugees from climate change has been a convoluted and continuous process, mirroring the ever-changing nature of environmental issues and human migration trends. Despite the lack of official recognition of the term "climate change refugee" in international law, several advancements have made it possible to address the special legal status and protection requirements of those who have been displaced due to climate-related concerns.

The lack of a distinct legal structure for displacement caused by climate change necessitated the use of pre-existing refugee and human rights agreements, such as the 1951 Refugee Convention. Early attempts to use these frameworks to address migration due to climate change encountered difficulties because they were not adapted to the unique problems presented by environmental considerations. The early attempts to bring environmental migration concerns into international discourse were made in the 1990s, most notably during the *Kyoto Protocol*<sup>3</sup> negotiations. Concrete legislative solutions for climate refugees, however, continued to elude us. When the *United Nations High Commissioner for Refugees (UNHCR)* published a groundbreaking study in 2010 admitting that the legal frameworks in existence were inadequate to meet the protection needs of persons displaced by climate change, it marked a critical turning point in the field. The research recommended a thorough and well-coordinated strategy to close the current legal loopholes.<sup>4</sup>

Since then, the legal environment has changed as a result of several significant cases and international agreements. Initiated in 2012, the *Nansen Initiative* sought to foster agreement over the requirements for cross-border displaced people's protection in the event of disasters, especially those brought on by climate change. Even though it was not legally binding, it set the stage for later developments.

With the first cases of displacement brought on by environmental conditions in the late 20th century, the idea of climate change refugees began to take hold. However, the legal profession didn't start addressing this problem in depth until the twenty-first century. The *Tuvalu case (2004)* is one notable instance in which the island nation of Tuvalu requested status for its residents as refugees because of the increasing sea levels.<sup>5</sup>

Cases that followed, such as the transfer of the *Carteret Islands in 2007* and the lawsuit filed by the *Alaskan hamlet of Kivalina (2008)* against large carbon-emitting corporations, brought to light the intricate relationship between corporate accountability, human rights, and climate change. These cases urged countries and businesses to be held accountable for their contributions to environmental degradation, highlighting the necessity for legal frameworks to address the

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<sup>3</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997  
37 I.L.M. 22 (1998); 2303 U.N.T.S. 162; U.N.

<sup>4</sup> UN High Commissioner for Refugees (UNHCR), Report of the United Nations High Commissioner for refugees, (covering the period from 1 January 2009 to mid-2010).

<sup>5</sup> AC (Tuvalu), [2014] NZIPT 800517-520, New Zealand: Immigration and Protection Tribunal, 4 June 2014.

particular issues created by refugees fleeing climate change.<sup>6</sup>

Kiribati, a republic of the Pacific Islands, has been leading the way in cases of migration caused by climate change. On humanitarian grounds, the Kiribatian national Ioane Teitiota was sued by the New Zealand Immigration and Protection Tribunal in the case of *Teitiota v. Newzealand (2014)* contended that he and his family were forced to flee Kiribati due to environmental degradation and rising sea levels. This case demonstrated the urgent need for legal clarification, but it also demonstrated how difficult it is to accommodate migration brought on by climate change within the current refugee system.<sup>7</sup>

## **RIGHTS OF CLIMATE CHANGE REFUGEES AND STATE OBLIGATION IN THE FACE OF CLIMATE-INDUCED DISPLACEMENT**

The right to protection for climate refugees is a complex and evolving issue within international law. While there isn't a specific treaty addressing climate refugees, several legal principles and case laws contribute to understanding their rights. *The 1951 Refugee Convention and its 1967 Protocol* are key instruments in international refugee law. They define a refugee under Article 1A(2) as someone with a well-founded fear of persecution due to reasons of race, religion, nationality, membership in a particular social group, or political opinion. However, these criteria do not explicitly cover those displaced by environmental factors like climate change.<sup>8</sup>

Despite this gap, certain legal arguments and precedents suggest that climate refugees may qualify for protection under existing frameworks. The concept of “*refugee sur place*” has been acknowledged in case law, allowing for the recognition of changed circumstances after leaving one's home country. Courts may interpret persecution broadly to encompass threats arising from climate-related issues, such as rising sea levels or extreme weather events. Moreover, the *UN Guiding Principles on Internal Displacement*, while not legally binding, emphasize the rights of internally displaced persons (IDPs), including those forced to move due to environmental factors. These principles highlight the need for protection and assistance, urging states to prevent

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<sup>6</sup> *Comer v. Murphy Oil Usa, Inc.*, 839 F. Supp. 2d 849 (S.D. Miss. 2012)

<sup>7</sup> *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, [2015] NZSC 107.

<sup>8</sup> *Convention relating to the Status of Refugees*, 1951, § 1A (2), 189 UNTS 137.

displacement and assist those affected.

Climate refugees, by definition, are individuals forced to flee their homes due to the adverse effects of climate change, including rising sea levels, extreme weather events, and environmental degradation. Forcibly returning them to their places of origin, where these climate-related threats persist, places their lives and well-being in imminent danger.

*The principle of non-refoulement* is a norm of international law institutionalized in multilateral international conventions, namely in Article 33 of the 1951 Convention, which states that no contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political opinion. It is a customary international law that has also been the non-refoulement principle, followed by countries long before the principle was established in international mechanisms. Countries that practice the non-refoulement principle are not restricted to countries that are parties to the 1951 Convention and the 1967 Protocol. In fact, other countries that are not parties to the 1951 convention also adhere to the principle of non-refoulement.<sup>9</sup>

Article 14 of the Universal Declaration of Human Rights reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman, or degrading treatment or punishment, and to liberty and security of person.<sup>10</sup>

The principle of non-refoulement is *JUS COGNEZ*, with reference to the provision existing in Article 53 of the *Vienna Convention of 1969*. Based on the formulation of Articles 53, essential conditions must be met to be referred to as *JUS COGNEZ*. The following essential conditions are as follows:

- (i) The non-refoulement principle is accepted and recognized by the international community.
- (ii) The non-refoulement principle is a norm that cannot be deviated from.<sup>11</sup>

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<sup>9</sup> Convention relating to the Status of Refugees, 1951, § 33(1), 189 UNTS 137.

<sup>10</sup> Art 14(1); Universal Declaration of Human Rights UNGA Res 217A (III) ('UDHR').

<sup>11</sup> United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.

In the case of *Canada (Attorney General) v. Ward*, it was held that they reflect a conception of people fearing exposure to disaster-related harm as being victims of the storms, droughts, and floods whose indiscriminate impact causes adversity, which is the unfortunate consequence of the forces of nature, rather than emerging within the context of existing patterns of discrimination and marginalization generating unsafe conditions where individuals are exposed and vulnerable to natural hazard events, 'Natural' disasters, according to this view, engender adversity. The role of human activity is required for the applicability of international refugee law. These environmental disasters are caused majorly by human activities.<sup>12</sup>

The *European Court of Human Rights (ECHR)* established that deportation to a country where there is a real risk of torture or inhuman or degrading treatment violates Article 3 of the *European Convention on Human Rights (ECHR)*, and Article 33(1) of the 1951 Refugee Convention illustrates the nature of the principle of non-refoulement. The principle of non-refoulement is absolute, meaning that states are prohibited from returning individuals to a situation where they may face torture, ill-treatment, or other serious human rights violations, regardless of their immigration status.<sup>13</sup>

Also, the *Sale v. Haitian Centers Council* case established that non-refoulement is an absolute obligation, and states must refrain from forcibly returning individuals to situations where they face an immediate risk to their lives.<sup>14</sup>

## **LEGAL MECHANISMS AND REMEDIES**

Prior to examining such ideas, it is vital to investigate the legal context under which these proposals have been made. An overview of some of the national and international legislation addressing refugee migration as a result of unfavourable climate change.

- (i) First, refugees do not have the right to reside in another country owing to climate change. Climate change migrants do not have "refugee status" under current law if they cross an international boundary. However, the only way for climate change migrants to permanently live in a foreign country will be to fit themselves into current national laws, which lack particular provisions for environmentally-induced immigration.

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<sup>12</sup> Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) (1989).

<sup>13</sup> Convention relating to the Status of Refugees, 1951, § 33(1), 189 UNTS 137.

<sup>14</sup> Sale v. Haitian Centers Council, 509 U.S. 155 (1993).

- (ii) Second, climate change migrants have no right to funding from the international community or nation-states. Despite international help for increased development and climate change mitigation, there is no special monetary support for climate change immigration.

*The 1951 Refugee Convention and its 1967 Protocol* in the International Forum define refugees as "a person who, because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country".<sup>15</sup>

However, in both language and practice, this definition exclusively applies to political refugees, not climate change refugees.

Internal displacement is defined broadly in the *UN Guiding Principles* and the *African Union's Kampala Convention 2009*, and includes those fleeing situations of generalized violence and natural or man-made disasters, but there is currently no legal framework that specifically defines and governs any "climate refugees."

Even the *United Nations High Commissioner for Refugees (UNHCR)*, the UN agency in charge of refugees, refused to recognize climate refugees as a distinct category in need of protection, and former High Commissioner for Refugees Sadako Ogata has gone so far as to call the term "environmental refugee" a misnomer. In light of statistics indicating a large number of displaced refugees as a result of climate change, this legal void is very concerning for the community.

As a result, calls for new international conventions and protocols directed primarily at climate-induced displacement should fill this void. Aside from the international platform, governments must take the lead in developing solid internal policies or legislation to address climate-related displacement, such as the *Bangladesh Climate Change Strategy and Action Plan (BCCSAP)*. National and international non-governmental organizations (NGOs) should also begin raising awareness about the predicament of climate change victims and advocating for legal recognition and protection for these persons.

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<sup>15</sup> Article 1(A)(2) of the 1951 Refugee Convention and its 1967 Protocol

Climate change displacement is a complicated and multifaceted issue that involves legal, ethical, humanitarian, and environmental factors. To fully protect and assist persons affected by climate change, addressing the needs of climate change refugees frequently necessitates a multi-level approach requiring international cooperation, legislative changes, and legal advances.

## CASE STUDIES

1. **Pacific Island Nations:** The Pacific region is experiencing mass climate change impacts due to droughts, Incremental Sea level rise, and saltwater intrusion. The main regions are Kiribati, Nauru, and Tuvalu, which have been impacted by up to 94%, 74%, and 97%, respectively, in the past 10 years. The survey also implies that 23% of migrants in Kiribati and 8% in Tuvalu named climate change as reason for migration decisions.<sup>16</sup>
2. **Central America:** The Northern Triangle Countries of Central America Guatemala, El Salvador, and Honduras are among the regions most exposed to global warming impacts such as droughts, storms, heatwaves, and floods. Since the 1960s, extreme weather events, including longer droughts and more violent storms, have been increasing in frequency and intensity, putting the Northern Triangle countries among the top 15 most climate-impacted countries in the world. Even in 2020, Central America experienced two dreadful storms, Hurricanes Eta and Iota, within two weeks of each other. This hurricane not only displaced 100,000 people but also took the lives of hundreds. Over 2 million people are estimated to have fled the Northern Triangle region since 2014 due to the adverse effects of climate change.<sup>17</sup>
3. **Kenya:** The displacement of the citizens of Somalia marks up to 3 million internally displaced people, and 642,000 people have sought refuge as refugees in neighbouring countries. It is a long-lasting conflict in this region due to poverty and the failure of governance to handle natural disasters. Since 1990, there have been 30+ climate-related hazards, including frequent extreme droughts, floods, and severe locust outbreaks. In 2020

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<sup>16</sup> Climate change and migration in the Pacific: links, attitudes, and future scenarios in Nauru, Tuvalu and Kiribati by UN ESCAP.

<sup>17</sup> World Meteorological Organization (2021) State of the Climate in Latin America and the Caribbean, 2020.

alone, 919,000 people have been displaced as refugees during flooding. Somalia is a very prone zone to climate change due to its climatic extremes.<sup>1819</sup>

4. **Europe:** The alarming climate change crisis on the advanced continent was seen in 2021. The floods ripped through towns in Germany, Belgium, the Netherlands, and Luxembourg, killing more than 200 people and damaging nearly 72,000 buildings, displacing thousands of inhabitants as entire towns were washed away.<sup>20</sup>
5. **California:** The case of California's drought is an especially alarming one. The drought from 2010 to 2016 was the worst in US recorded history. Higher temperatures and drought are greatly increasing wildfires across the western USA. It is estimated that the area burned by wildfires across the region between 1984 and 2015 was double the area that would have burned without global warming. In 2020, 600,000 Californians, and more than a million across the country, were displaced temporarily or permanently by wildfires. The impact of wildfire refugees in California is so adverse that studies have predicted that as many as 13 million Americans could become climate refugees by 2100.<sup>21</sup>
6. **Bangladesh:** The unique geographical conditions of the country have led to suffering from natural hazards like floods, tropical cyclones, storm surges, and droughts. These natural hazards forced the displacement of individuals from affected communities. The Association of Climate Refugees in Bangladesh conducted a survey, which shows us that about 6 million people have been displaced due to the climatic hazards, of which half have come due to tidal floods and river bank erosion.<sup>22</sup>

## CHALLENGES IN IMPLEMENTATION

Climate change is becoming more than just an environmental issue; it is quickly turning into a humanitarian emergency, which is causing an increase in the number of climate refugees. The need to create strong legal safeguards is increasing as these displaced people look for safety. Yet, putting these protections into practice will not be easy, particularly when it comes to figuring out

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<sup>18</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (2021a) The Humanitarian Programme Cycle (HPC) - Humanitarian Response Plan Somalia 2021.

<sup>19</sup> OCHA (2021b) Humanitarian needs overview Somalia, January 2021.

<sup>20</sup> Climate Change News, Jacobsen, M., 20.08.2021, 'The lesson from German floods: prepare for the unimaginable'.

<sup>21</sup> Environmental Justice Foundation Climate Refugee Report 2021.

<sup>22</sup> Climate Displacement in Bangladesh; The Need for Urgent Housing, Land and Property (HLP) Rights Solutions by Displacement Solutions 2012.

what stands in the way of legal protection and dealing with problems with enforcement and compliance. Determining and agreeing upon the definition of climate change refugees is one of the main obstacles. In contrast to typical migrants, climate-induced migration frequently happens gradually, making it challenging to attribute the entire phenomenon to a single event. In order to create legal frameworks that can take into account the particular conditions of these displaced communities, it is imperative to first establish a clear description. Attempts to develop a coherent set of protections are hampered by the lack of a clear international consensus on the legal status of refugees from climate change. Those who are seeking shelter are put in a vulnerable position due to legal uncertainty caused by differences in national laws and practices. Coordination of national efforts and a financial commitment are necessary for the implementation of legal protections. But a major obstacle is the uneven allocation of accountability and resources. For effective protection, measures for fair burden-sharing must be determined. Since displacement brought on by climate change frequently crosses national borders, maintaining legal safeguards might present jurisdictional issues. Cooperation between states is essential to guaranteeing that people travelling across borders have sufficient protection.

**Building Capacity and Providing Training:** A lot of countries do not have the knowledge or experience necessary to put legal protections for refugees from climate change into existence and keep them in place. It is imperative to allocate resources towards training programmes and capacity-building activities to guarantee that authorities possess the necessary tools to tackle the distinct difficulties linked to this type of relocation.

## **FUTURE PROSPECTS**

A phrase that is becoming popular, "climate change refugees," refers to people who have been uprooted because of environmental shifts that are directly related to variations in the climate. In the upcoming decades, it is anticipated that the number of refugees from climate change would rise due to the aggravation of these causes. This calls for a proactive strategy to deal with the difficulties that will surely arise from such large-scale relocations. The prospects for refugees from climate change demand that legal developments be anticipated in advance. By following through on these suggestions, countries may work together to tackle the problems caused by displacement brought on by climate change, ensuring a safer and more just future for those who are compelled to migrate as a result of environmental changes.

## CONCLUSION

The negative consequences of climate change are causing a sharp increase in immigration to the world from a variety of countries. It is imperative that a thorough legal response be given. UN Refugee Convention 1951, for example, touched on these concerns in a vague and subtle way. "Climate change refugees" are not specifically mentioned as an organized category in even further international and national accords. Therefore, in order to address the concerns of climate change refugees, governments and international organizations must recognize the importance of a coordinated approach that transcends legal boundaries. This all-encompassing strategy upholds global cooperation, equity, and responsibility, guaranteeing the safety of immigrants affected by climate change and the ongoing significance of the required legislative framework.

