

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

CLIMATE-INDUCED DISPLACEMENT AND INTERNATIONAL REFUGEE LAW: BRIDGING THE PROTECTION GAP IN THE ERA OF CLIMATE CHANGE

AUTHORED BY - VINOTHINI VINAYAGAM

ABSTRACT:

Due to rising sea levels, extreme weather, protracted droughts, desertification, and other environmental risks, climate change has emerged as one of the main causes of forced human migration, uprooting millions of people. The current international refugee protection regime is still insufficient to address the legal status and protection needs of impacted populations, despite the rising frequency and severity of displacement caused by climate change. A refugee is defined by the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol mainly in terms of persecution on the basis of race, religion, nationality, membership in a specific social group, or political opinion; this definition excludes people who have been displaced only due to climate-related reasons. Climate-displaced people now lack a comprehensive international framework that ensures protection, asylum, or long-term solutions due to this legal gap. This article explores the complementary roles of international human rights law, environmental law, and emerging principles of climate justice in addressing this protection deficit and critically evaluates the effectiveness of international refugee law in addressing displacement caused by climate change. The study evaluates the changing legal discourse on climate-induced migration by analyzing international legal instruments, judicial developments, and specific state practices using a doctrinal and comparative legal research methodology. The historic ruling in *Teitiota v. New Zealand*, which highlights the shortcomings of the current refugee framework while reflecting the growing recognition of climate change as a human rights concern, is given special attention. The article makes the case that the current international legal system is inadequate to address the realities of displacement brought on by climate change and promotes the creation of a cogent and rights-based protection framework through increased international collaboration, reinforced complementary protection mechanisms, and progressive legal reform. In order to effectively protect vulnerable populations in a time of accelerating climate change, it concludes that acknowledging climate-induced displacement as a unique legal and humanitarian challenge is crucial.

Keywords: Climate-Induced Displacement; International Refugee Law; Human Rights; Forced Migration; Non-Refoulement; Climate Justice.

I. INTRODUCTION

Among the major problems affecting the world in the twenty-first century is the problem of climate change that has not only become an environmental issue but has also turned into a matter of great concern in terms of human rights, humanitarian protection, and governance in general. Millions of people have been displaced from their homes and livelihood in order to seek security because of climate factors like sea-level rise, drought, desertification, coastal erosion, floods, and occurrence of climatic extremes. According to the IDMC, every year in the last decade there have been 26 million people who have internally been displaced due to disasters and most of them have been caused due to climate factors.¹ While most of the displacement caused by climate change is occurring inside the borders of one country, future predictions regarding climate change indicate that more cross-border movement will occur due to climate change, especially among low-lying islands and coastal countries.²

The issue of international refugee law is still struggling in providing a proper response to the challenges faced in cases of climate change-induced displacements. This problem has become a growing humanitarian crisis. The international Convention relating to the Status of Refugees of 1951, along with the Protocol relating to the Status of Refugees of 1967, remain the basis for international refugee law; however, according to the Convention, a person can be considered a refugee only in case of persecution due to race, religion, nationality, affiliation with particular social groups, or certain political opinions.³ Thus, people who migrate because of environmental deterioration and climate-related disasters are excluded from the Convention and there remains a considerable gap in terms of legal and humanitarian protection. Hence, thousands of people who have been affected by climate change do not have access to asylum procedures, international protection, and resettlement processes, while having no proper legal status.

The international community's attempt to solve problems of displacement caused by climate change is complicated because of the absence of a legally defined concept of "climate

¹ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2025* 13 (2025).

² Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* 1288–90 (H.-O. Pörtner et al. eds., Cambridge Univ. Press 2022).

³ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

refugee”. Due to legal uncertainties, the lack of state liability, and the problem of distinguishing persecution from the adverse effects of the environment, the concept has not been officially recognized within the realm of international refugee law although it is commonly used in the academic and media circles and policy-making processes. Rather than using the concept, international institutions have increasingly favored alternative formulations, such as “climate-displacement” or “persons displaced in the context of climate change”, which indicate the complexity of factors that lead to environmental migration.⁴ The complexity of the problem should not undermine the pressing need for developing effective legislation to protect people’s basic rights affected by climate-related phenomena.

The acknowledgement of displacement resulting from climate change has undergone gradual development through the process of judicial interpretation. It is worth mentioning that the judgement of the United Nations Human Rights Committee in *Teitiota v. New Zealand*, according to which environmental degradation and climate change may, in some cases, subject individuals to violations of the right to life provided for by international human rights law, became an important landmark in this respect.⁵ At the same time, the UN Human Rights Committee emphasized the growing interactions between refugee law, human rights law, and climate governance, even though its refusal to recognize the applicant as a refugee did not establish any legally binding commitments concerning the protection of climate migrants within the framework of international law. Despite the absence of any obligation to cooperate internationally on climate-related migration issues, international efforts such as the United Nations Framework Convention on Climate Change, the Global Compact on Refugees, and the Global Compact for Safe, Orderly and Regular Migration have raised awareness of this need.

Given the above, this paper examines the protection afforded to people displaced by climate change by the existing international law regime. It argues that the definition of the refugee regime in place currently is one based on persecution and does not take into account contemporary dynamics of forced migration and therefore fails to deal with climate change-induced displacement. It evaluates the shortcomings of the existing legal instruments and examines the supplementary value of international human rights law in filling existing

⁴ United Nations High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* ¶¶ 2–5, U.N. Doc. PPLA/2023/01 (Oct. 1, 2023).

⁵ *Ioane Teitiota v. New Zealand*, Human Rights Comm., Commc’n No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 7, 2020).

protection gaps in a doctrinal and comparative legal analysis of international conventions, court decisions and evolving state practice. In an effort to tackle one of the most pressing humanitarian problems of the twenty-first century, this paper argues that effective protection requires an international rights-based approach that strengthens supplementary protection regimes and promotes equitable international burden sharing and gradual development of international law.

II. CLIMATE CHANGE AND CLIMATE-INDUCED DISPLACEMENT: CONCEPT AND CAUSES

The way in which humans move has been radically changed due to climate change. The phenomenon of climate-induced displacement presents a challenge to the legal and policy framework that exists because climate-induced displacement takes place when people or groups of people have to migrate from their homes due to environmental conditions that are unsustainable or unsafe, while traditional migration is caused by economic prospects. Climate-induced migration is one of the most serious humanitarian problems in the twenty-first century due to the effects of climate change such as sea-level rise, severe weather, long-term droughts, desertification, ice-cap melting, and water shortage.⁶

Climate change has been acknowledged by the Intergovernmental Panel on Climate Change (IPCC) to be a "threat multiplier" that worsens existing socio-economic and political weaknesses rather than a single cause of migration.⁷ It is difficult to establish displacement due to climatic influences since environmental degradation is often accompanied by poverty, malnutrition, violence, poor governance, and lack of infrastructure.⁸ For instance, a prolonged drought could eliminate a community's means of earning a living from farming, compelling people to move in search of a livelihood. In the same way, flooding and erosion caused by climatic conditions could render an area completely uninhabitable, leading to relocation of the residents. Displacement caused by climate change is, therefore, usually a result of more than one element.

There are two main types of displacement resulting from changes in climate: sudden

⁶ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* 1288–90 (H.-O. Pörtner et al. eds., Cambridge Univ. Press 2022).

⁷ Id. at 1289.

⁸ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2025* 18–22 (2025).

onset and gradual onset displacement. Examples of disasters that lead to sudden onset displacement include cyclones, hurricanes, floods, wildfires, and storm surges. This type of displacement is temporary, and in the long run, people are forced to relocate permanently. On the other hand, examples of gradual environmental degradation that lead to gradual onset displacement include sea level rise, desertification, salinity of arable land, melting of glaciers, loss of biodiversity, and prolonged water shortage. In this case, food security, housing, and livelihoods are gradually undermined, leading to displacement in the end. Given that the effects of gradual onset displacement are not obvious compared to those of sudden disasters, it is difficult to establish the exact point when displacement becomes inevitable.

The issue of climate change poses serious threats to small island developing states (SIDS), such as Kiribati, Tuvalu, and Maldives. Apart from posing serious dangers to the habitability of the regions, the rise in sea levels poses a new set of legal problems regarding statehood, nationality, sovereignty, and the future position of the displaced persons.⁹ In a similar way, low lying coastal areas in South Asia and heavily populated deltaic regions in countries such as Bangladesh face the possibility of being rendered permanently inhabitable due to flooding and coastal erosion. The World Bank predicts that if no immediate measures are put in place to counter the effects of climate change, more than 216 million people will be forced to relocate in six different regions globally by the year 2050.¹⁰

Another important point to consider is making an essential conceptual distinction between relocation by force and voluntary migration. While some people are forced to leave their homelands and migrate due to climate conditions, many have no alternative options at all since the environment conditions have made their houses, means of subsistence, or other necessary resources impossible for habitation and utilization. Climate-induced migration is closer to forced migration than to voluntary economic migration due to the absence of alternatives. The majority of climate refugees are not included into international refugee assistance because of the absence of persecution committed by some people as defined by the 1951 Refugee Convention.¹¹

Indeed, the nature of the challenge is also evident from the vocabulary used to define

⁹ Jane McAdam, *Climate Change, Forced Migration, and International Law* 15–39 (Oxford Univ. Press 2012).

¹⁰ Kanta Kumari Rigaud et al., World Bank, *Groundswell Part 2: Acting on Internal Climate Migration* xxiii–xxv (2021).

¹¹ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

climate-driven mobility. While such terms as “climate migrants,” “climate refugees,” “environmental refugees,” and “persons displaced in the context of climate change” tend to be used interchangeably in common parlance, there are distinct legal connotations attached to each of them. Notably, the use of the word “climate refugee” tends to be discouraged by most international bodies, particularly the UNHCR and IOM, due to the fact that it is not legally defined in international refugee law and may lead one to think that people displaced as a result of climate change enjoy refugee protection under the 1951 Convention.¹² Instead of amending the existing legal definition of a refugee, this terminology emphasizes climate change-induced displacement. Thus, a conservative language raises awareness about the growing discrepancy between the limitations of the existing international legal system and the emerging trends in forced migration.

With the ongoing climate change continuously impacting the movement of people, the distinction between environmental protection and human rights protection is becoming blurrier. Climate change-induced displacement is no longer just an environmental challenge; it is now also a question of human dignity and equality and international protection. It is necessary to conduct a comprehensive study of the international refugee law framework and its effectiveness in protecting victims of climate change-induced displacement.

III. INTERNATIONAL LEGAL FRAMEWORK GOVERNING CLIMATE-INDUCED DISPLACEMENT

The international legal system that regulates the issue of displacement in connection with persecution and armed conflicts was adopted after World War II in order to guarantee protection to people fleeing such situations. The international legal framework has evolved because of various conventions, judicial decisions, and customary international law, however, it does not seem to have adapted to the growing number of displacements that arise from climate change. People displaced because of climate change have to resort to refugee law, international human rights law, environmental law, and soft law instruments because of the divided nature of protection resulting from the absence of a specific international legal regime. Neither of these legal systems provides an exhaustive and legally binding answer to the displacement problem related to the adverse impacts of climate change.

¹² U.N. High Comm'r for Refugees, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* ¶¶ 2–6, U.N. Doc. PPLA/2023/01 (Oct. 1, 2023).

The 1951 Refugee Convention and its 1967 Protocol serve as the basis for the international protection regime for refugees. A person who is outside their country of nationality because of well-founded fear of persecution owing to race, religion, nationality, membership of a particular social group, or political opinion, and is unable or unwilling to avail themselves of the protection of that country, constitutes a refugee under Article 1(A)(2) of the Convention.¹³ This definition has not been significantly altered for over 70 years and remains the main defining criteria in international law.

The Convention was developed at a time when displacement was associated more with persecution and conflicts than environmental degradation even though it remains highly significant today. Since climate change, which differs from persecution because it does not have an identifiable persecutor based on the grounds in the Convention, the issue of displacement resulting from climate change falls outside the ambit of the Convention. While it is true that a person's life could be endangered if he or she is compelled to leave her home owing to rising sea levels, desertification or floods, the situation does not necessarily amount to the kind of conditions recognized as those of a refugee according to the Convention. Many people who have been forced out of their homes as a result of climate change are currently denied the opportunity to prove their refugee status.¹⁴

Some scholars have suggested that the Refugee Convention ought to be interpreted in a dynamic way such that it includes some categories of displacements resulting from the effects of climate change especially where the environmental destruction is coupled with discrimination, conflict or negligence of the State. For example, the effects of climate change can be added to persecution so as to satisfy the criteria of the Convention in cases where the government deliberately denies relief and adaptation to certain specific ethnic or political groups.¹⁵ Nevertheless, these scenarios remain exceptional rather than normal for cases of migration caused by climate change. Certainty in law may be undermined and States which are still reluctant to increase their international responsibilities might resist if the definition of the Convention is broadened only by judicial interpretation.

¹³ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

¹⁴ Jane McAdam, *Climate Change, Forced Migration, and International Law* 29–47 (Oxford Univ. Press 2012).

¹⁵ Walter Kälin & Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, U.N. High Comm'r for Refugees, Legal & Prot. Pol'y Rsch. Series, PPLA/2012/01, at 9–14 (2012).

Human rights law at the international level has assumed a supplementary function regarding issues of displacement because of climate change where the persons are not protected through refugee law. Unlike the refugee law, the international human rights treaties cover all individuals irrespective of their status of immigration. The ICCPR has the provision of ensuring the right to life, right to privacy, right to maintain family relations, right to move freely, and the right not to be subjected to arbitrary interference. Similarly, UDHR recognizes the dignity and equal rights of all human beings.¹⁶ Likewise, ICESCR protects the rights of having food, water, proper shelter, health care, and decent living conditions, all of which are threatened due to climate change.¹⁷

Non-refoulement, the principle that prohibits governments from returning people to places where their life and liberty are endangered, is considered one of the most significant principles in relation to displacement resulting from climate change. Due to the interpretation of treaty-monitoring bodies and regional human rights courts, this principle, which has traditionally been associated with refugee law through Article 33 of the Refugee Convention, has also evolved in the context of international human rights law.¹⁸ Where return would expose an individual to serious injury, this more expansive approach has allowed non-refoulement to be extended beyond Convention refugees.

A good illustration of this shift in strategy can be seen from the landmark decision of the UN Human Rights Committee in *Ioane Teitiota v. New Zealand*.¹⁹ Ioane Teitiota, an indigenous person from Kiribati, argued that being sent back to Kiribati would violate his right to life under Article 6 of the ICCPR because of environmental damage, lack of fresh water, rising sea levels and overcrowding. While the Committee recognized that in the future the detrimental impacts of climate change could potentially lead to situations whereby States would be bound by their non-refoulement obligation if they create conditions of life which threaten individuals' life, the Committee found that the evidence provided failed to establish such a situation for him. It recognizes climate change as an emerging issue of human rights and indicates that refugee law is still not adequate to deal with climate displacement.

¹⁶ Universal Declaration of Human Rights arts. 3, 13 & 25, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights arts. 6 & 12, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁷ International Covenant on Economic, Social and Cultural Rights arts. 11 & 12, Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁸ Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137.

¹⁹ *Ioane Teitiota v. New Zealand*, Human Rights Comm., Comm'n No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 7, 2020).

Indirectly, international environmental law may also contribute to the protection of people displaced due to climate change. International framework on climate mitigation, adaptation, and cooperation is provided in the Paris Agreement and UNFCCC.²⁰ Both agreements acknowledge the serious impacts of climate change on humans, though none of them grants any legally binding rights to the people displaced due to climate change. Indeed, the Paris Agreement specifically highlights the importance of protecting human rights while dealing with climate change; creation of the Task Force on Displacement under the Warsaw International Mechanism for Loss and Damage has resulted in growing interest towards migration caused by climate change.²¹ Nonetheless, both agreements regulate State obligations in the field of climate change governance and not migration per se.

Issues related to the increasing challenges in mobility as a result of climate change have been tackled through the use of soft law. According to the Global Compact on Refugees (2018), natural disasters and environmental deterioration can be factors contributing to the causes of refugee displacement but do not confer refugee status on individuals who have been displaced due to climate change.²² Similarly, the Global Compact for Safe, Orderly and Regular Migration (2018) calls upon the States to develop pathways for safe migration and international cooperation while recognizing climate change as one of the drivers of migration.²³ However, since the Global Compacts are non-binding agreements, States are not bound to any legal obligations, and rather implementation is voluntary.

Climate displacement is caught in an ambiguous realm of law involving refugee law, human rights law, environmental law, and migration policy, as shown by the disjointed state of the existing international legal regime. Each legal regime operates independently of the other and often in an inconsistent manner, creating a huge loophole for lack of accountability, lack of burden sharing, and access to solutions in the long term, despite offering certain protections within themselves. Disjointed legal protections cannot constitute adequate or sustainable means for addressing issues of climate displacement, which will only get worse with continued climate change. This is why an integrated international regime is required, recognizing the special nature of climate displacement while preserving the existing system of refugee protection.

²⁰ United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107; Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104.

²¹ Paris Agreement pmbl., Dec. 12, 2015, T.I.A.S. No. 16-1104.

²² Global Compact on Refugees, U.N. Doc. A/73/12 (Part II) (2018).

²³ Global Compact for Safe, Orderly and Regular Migration, U.N. Doc. A/RES/73/195 (Dec. 19, 2018).

IV. Judicial Responses and Comparative Approaches

Judicial bodies and states have been recognizing the link between climate change and human rights, although international refugee law has never officially acknowledged climate change displacement as a cause for becoming refugees. A number of places have introduced additional protective laws for persons who have been displaced because of disaster and climatic events, while courts have also begun to inquire whether environmental damage may lead to human rights obligations under international law. Although there is no comprehensive international instrument, these developments represent a gradual evolution in legal thinking.

Another important case here is the decision of the United Nations Human Rights Committee in the case of *Ioane Teitiota v. New Zealand*.²⁴ Ioane Teitiota, a citizen of Kiribati, sought asylum in New Zealand on grounds that he would be at risk of violation of his right to life under Article 6 of the ICCPR due to global warming leading to rising sea levels, contamination of freshwater sources, overcrowding, and degradation of the environment. While emphasizing that the consequences of climate change could, depending on the situation, lead to a state's non-refoulement obligations under international human rights law, the committee found that there was no imminent threat based on available information.²⁵ In addition, the committee emphasized that states should carefully consider such claims before deporting the claimants as the degradation of the environment and rise in sea level could make the claimant vulnerable to situations violating right to live with dignity. In this context, Teitiota set an important precedent of recognizing that climate change might entail legal obligations for human rights irrespective of refugee status although it did not expand the definition of refugees.

Teitiota's decision has attracted much interest from academia due to its focus on the pros and cons of applying international human rights laws in protecting climate change refugees. To begin with, it broadens the scope of application of the right to life since it recognizes the fact that environmental factors can be just as threatening as any human rights abuse in endangering lives. At the same time, it imposes very high standards of proof by demanding that claimants must establish a clear and predictable danger to their life. It means that although they face great threats, people who are displaced as a result of environmental changes such as desertification or rising sea levels will have trouble meeting these

²⁴ *Ioane Teitiota v. New Zealand*, Human Rights Comm., Commc'n No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 7, 2020).

²⁵ *Id.* ¶¶ 9.11–9.15.

requirements. Thus, it is a crucial theological milestone, but it doesn't fully protect climate change refugees.

The international legal discourse on climate-induced displacement has largely been influenced by the experience of New Zealand. Based on the domestic case law, environmental harm alone fails to satisfy the persecution criteria under the 1951 Refugee Convention. Nevertheless, judicial decisions have recognized the possible role of such factors as social instability, shortages of resources, and government failures to combine with climate change in creating conditions which could lead to a breach of international human rights obligations.²⁶ In addition to judicial developments, the country demonstrated its political vision by negotiating migration pathways for the citizens of the Pacific Island States under threat due to rising sea levels. Suggestions of issuing a particular climate visa reflect increased efforts to deal with climate displacement issues through migration legislation and not refugee law.

Such similar developments have taken place within the European legal system as the interpretation of human rights has been broadened. Degradation of the environment could be in violation of some of the rights provided for under the European Convention on Human Rights such as the right to respect for private and family life as provided for in Article 8 of the Convention and in some cases the right to life as provided for in Article 2 of the Convention, according to the European Court of Human Rights (ECtHR).²⁷ The notion of climate change being primarily an issue of human rights was further cemented by the ruling of the Court in the case *Verein Klima Seniorinnen Schweiz v. Switzerland* in which the court held that inadequate measures by the Government to tackle climate change amounted to a breach of its obligations under the Convention.²⁸ The case demonstrates how international courts can impose positive obligations on States to safeguard individuals from the adverse consequences of climate change even though it had nothing to do with refugee law.

The Temporary Protection Directive and the Qualification Directive provide forms of complementary protection within the EU for individuals who may not meet the requirements of the refugee definition but face serious harm if forced to return to their home nations.²⁹ Such

²⁶ *AF (Kiribati) v. Minister of Immigration*, [2013] NZIPT 800413 (N.Z. Immigration & Protection Tribunal).

²⁷ See *López Ostra v. Spain*, 303-C Eur. Ct. H.R. (ser. A) (1994); *Öneryıldız v. Turkey*, 2004-XII Eur. Ct. H.R. 79.

²⁸ *Verein KlimaSeniorinnen Schweiz v. Switzerland*, App. No. 53600/20, Eur. Ct. H.R. (Apr. 9, 2024).

²⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for

measures illustrate the ability of complementary protection systems to react flexibly to new humanitarian concerns, despite not having been designed specifically for climate refugees. Complementary protection approaches could be adapted to address climate-displaced persons without any amendments to the Refugee Convention, as argued by some European scholars.

There is another interesting view on displacement caused by environmental problems that has been developed on the continent of Africa. The Convention Governing the Specific Aspects of Refugee Problems in Africa, signed in 1969 by the Organization of African Unity, uses an expanded definition of a refugee as a person who leaves his home country due to conditions of disruption of public order.³⁰ Although there is no explicit mention of climate change in the Convention, some experts argue that environmental disasters leading to a threat to human security and disruption of public order can be classified according to the more general definition. Likewise, the Kampala Convention explicitly recognizes natural and man-made disasters as reasons for displacement and becomes the first regionally-binding document concerning protection of internally displaced persons.³¹ Despite its restricted applicability to internal displacement in Africa, the Convention demonstrates the need for region-specific legislation on new forms of forced migration.

The comparative practice of states suggests that there is a trend away from refugee status to humanitarian visas, protection programs, disaster relief activities, and resettlement programs. Where Pacific Island States have concentrated on regional cooperation and managed migration as their adaptation strategies, countries such as Argentina and Brazil have developed humanitarian policies of entry for individuals affected by environmental disasters.³² This indicates that there is an increased realization of the inadequacy of refugee laws to deal with climate refugees even though such practices remain scattered and voluntary.

As a whole, these judicial and comparative trends suggest that there is increasing international consensus that the basic human rights of individuals are under threat from the

the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, 2011 O.J. (L 337) 9.

³⁰ Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa art. I(2), Sept. 10, 1969, 1001 U.N.T.S. 45.

³¹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009, 52 I.L.M. 400 (2013).

³² Jane McAdam & Ben Saul, An Insecure Climate for Human Security? Climate-Induced Displacement and International Law, in *Research Handbook on Climate Change, Migration and the Law* 35, 52–55 (Benoît Mayer & François Crépeau eds., Edward Elgar Publ'g 2017).

effects of climate change. In addition, the inadequacies of relying upon national-level measures and judicial interpretation on an ad hoc basis to deal with climate-induced displacement have been brought into sharp relief. While states have created complementary mechanisms for protecting such individuals that vary widely in terms of scope and effectiveness, the courts have, on the other hand, expanded the scope of human rights considerations without redefining the legal concept of a refugee. The mismatch that ensues points to the crucial importance of having an internationally agreed-upon legal framework.

V. BRIDGING THE PROTECTION GAP: TOWARDS A COMPREHENSIVE INTERNATIONAL LEGAL FRAMEWORK

Climate-induced displacement is an issue that reveals the inadequacy of existing international legal regimes in handling modern migratory patterns. The increasing numbers of climate-displaced persons do not have legal status and rights guaranteed for them because of the fragmented nature of the application of international refugee law, human rights law, and environmental law even though this combined body of law provides some protection for displaced people. This problem requires a comprehensive international approach that will preserve the current refugee regime but at the same time create other legal structures that will be able to accommodate climate change issues.

Another potential fix for this issue is amending the Refugee Convention of 1951 to consider the situation of those displaced because of climate change into the category of refugees. Even though this suggestion sounds plausible, there are several political and legal barriers that need to be addressed. The definition of the Refugee Convention that was established back in time with specific reasons in mind and has not been amended within almost 70 years of its existence. Some countries will certainly refuse the re-negotiation of the treaty because they are not ready to increase their obligations regarding international protection. At the same time, re-negotiating of the treaty may result in decreasing the current refugee protections.³³

It would be better to draft an international legal instrument dedicated to climate change-induced displacement. Without altering the persecution-driven definition of a refugee within the Convention, such an instrument can complement the existing refugee protection

³³ Jane McAdam, *Climate Change, Forced Migration, and International Law* 236–48 (Oxford Univ. Press 2012).

framework. Drafting universally accepted definitions of climate displacement, determining when international protection will be necessary and what actions will be expected from receiving countries and states of origin is something that can be done through an additional protocol or even a convention. Moreover, such an instrument can help define procedures for humanitarian admission, planned relocation, temporary protection, provision of necessary assistance and integration of people who cannot be returned to their states of origin.

Those affected by climate displacement need to remain under the protection of international human rights law. In the case of *Teitiota v. New Zealand*, it was found out that the basic rights under the International Covenant on Civil and Political Rights can potentially be at risk due to the issue of climate change.³⁴ With the aid of this body of precedent, states need to incorporate climate human rights assessments in their processes of immigration and asylum in order to avoid sending individuals to locations where there is severe risk to their access to potable water, adequate nutrition, health, or even to their very lives, due to the environment.

Since states which share similar environmental circumstances and migration dynamics are regularly affected by displacement due to climatic change, regional collaboration is also important. Regionally-based legal instruments, adjusted to the peculiarities of the region, could be established. Such instruments could include provisions related to planned resettlement, labor mobility, disaster response, and temporary protection. One such example is provided by the Kampala Convention, which successfully regulates internal displacement caused by environmental problems and natural disasters.³⁵ In the same way, regional programs could be developed in Latin America, Asia-Pacific, and other vulnerable to climatic changes regions, where cross-border displacement is expected to grow significantly in the coming decades.

Greater sharing of responsibility in an international context is also required for adequate protection. The burden of the climate change-induced displacement falls upon the shoulders of developing countries who contribute least to the increase of greenhouse gases on the planet. Developed countries, on the contrary, have greater resources both material and financial to contribute towards humanitarian protection, disaster resilience, and adaptation. Therefore, any

³⁴ *Ioane Teitiota v. New Zealand*, Human Rights Comm., Commc'n No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016, ¶¶ 9.11–9.15 (Jan. 7, 2020).

³⁵ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009, 52 I.L.M. 400 (2013).

cooperation in dealing with the problem of displacement from the effects of climate change must be based upon the principle of common but differentiated responsibilities, which is recognized in international environmental law.³⁶

Coordination between legal and humanitarian actions is another important role played by international organizations. For better cooperation between institutions, the UN Framework Convention on Climate Change (UNFCCC), IOM, and the UNHCR should develop unified policies on identification, protection, and assistance to climate displaced individuals. This would be made possible through improved information gathering, early warning systems, preparedness for disasters, and coordination across borders. Future international cooperation could rely on the experience gained through the Task Force on Displacement of the Warsaw International Mechanism.³⁷

Finally, it needs to be mentioned that protection of the people who have been displaced due to climate change is an issue of international justice and human dignity and not simply a matter of migration policy. It is a fact that those individuals who have contributed the least to the generation of greenhouse gases on a global scale suffer most from climate change. This means that issues of responsibility, justice and international solidarity emerge. Thus, the protection of vulnerable populations must receive the highest priority in such a rights-based international framework, where state sovereignty and humanitarian obligations will be balanced.

VI. CONCLUSION

One of the greatest legal and humanitarian challenges facing the international community in the 21st century is that of displacement caused by climate change. Increased levels of sea water, weather catastrophes, prolonged droughts, and environmental destruction cause people to leave their places of residence; however, the international refugee law currently existing only serves the purpose of protecting individuals from persecution. Therefore, refugees, international human rights law, environmental law, and other international instruments remain insufficient in providing protection for climate change-induced displacements.

³⁶ United Nations Framework Convention on Climate Change art. 3(1), May 9, 1992, 1771 U.N.T.S. 107.

³⁷ U.N. Framework Convention on Climate Change, Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts, U.N. Doc. FCCC/SB/2023/INF.2 (2023).

Indeed, this article has demonstrated that although it is a necessary instrument of international refugee protection, the 1951 Refugee Convention cannot provide an answer to the reality of displacement due to climate change without betraying its very purpose. Through recognizing the potential of climate change to threaten the right to life and, at times, create the duty not to refoule, case law developments—primarily *Teitiota v. New Zealand*—have expanded the horizons of international human rights law. Yet, these have not been enough for comprehensive protection.

An international response which takes into account human rights, international cooperation, and climate justice is required to combat the problem of forced displacement due to climate change. What is needed is the creation of complementary legal regimes that will be able to recognize and protect climate refugees without undermining the existing refugee system in any way, unlike the modification of the Refugee Convention. The international law must evolve such that those who are being uprooted from their homes due to environment-related reasons have legal status.

