

# A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?

Caitlan M. Sussman\*

## Abstract

*Climate disaster events are expected to displace at least 1.2 billion people by 2050. However, “climate refugees,” or individuals displaced in the context of disasters and climate change, lack international legal recognition and protection. In 2020, an international tribunal acknowledged in a landmark decision that deportation to a place where climate change would put an individual’s life at risk may violate certain provisions of international human rights law. Yet, the tribunal failed to formally recognize climate refugees or provide recommendations for their protection, perpetuating a “legal void” in the global migration framework. This Essay examines how existing provisions of refugee law, international human rights law, and international environmental law could be expanded to fill this void that legal scholarship has not directly addressed. Changes to refugee law—including an expansion of the current definition of a refugee under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, modeled on examples from existing regional agreements—are the strongest potential solutions to address the plight of climate refugees. This Essay provides a comprehensive and timely legal response to a humanitarian crisis set to become a defining issue of our time.*

---

\* Caitlan M. Sussman is an attorney at a major international law firm. She earned a J.D. from the University of Chicago Law School in 2022 and a B.A. from Cornell University in 2016. This Essay is dedicated to Claire M. Sussman, David L. Sussman, Michael J. Sussman, and Rona E. Weitz. The author would like to thank these individuals for instilling in her an awareness of the climate crisis, an understanding of the plight of displaced people, and a dedication to making the world a more sustainable and equitable place. The author would also like to extend her gratitude to the members of the *CJIL Online* Board and Professor Tom Ginsburg for their invaluable assistance during the publication process. All opinions expressed in this Essay are the author’s own and do not reflect the views of the author’s employer.

## Table of Contents

I. Introduction .....	43
II. The Climate Crisis.....	44
A. The Scope of the Climate Crisis.....	44
B. The Impact of Climate Change on Migration.....	45
III. Global Legal Refugee Framework: The 1951 Convention and Its 1967 Protocol.....	48
A. Defining Refugees Under International Law .....	48
B. No Legal Framework for Climate Refugees: Forgotten and Unprotected.	50
IV. A Work in Progress: Potential Solutions to Protect Climate Refugees .....	52
A. Domestic Government Solutions: Climate Humanitarian Visas .....	53
B. International Cooperation: Model International Mobility Convention .....	54
C. International Environmental Law.....	55
D. Human Rights Law.....	57
1. Possible Human Rights-Focused Solutions from International Tribunals: Kiribati ( <i>Teitiota v. New Zealand</i> ) and the International Covenant on Civil and Political Rights .....	58
V. Expanding Existing Refugee Law .....	61
A. 1951 Convention and 1967 Protocol.....	61
1. Application to Climate Refugees .....	62
2. Strongest Claim Under the 1951 Convention: Interaction with Conflict and Violence .....	63
B. Regional Agreements: The Organisation of African Unity Convention and the 1984 Cartagena Declaration .....	63
1. “Events Seriously Disturbing Public Order” .....	64
2. “Compelled to Leave and Seek Protection Abroad” .....	65
VI. Conclusion.....	66

## I. INTRODUCTION

*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.*<sup>1</sup>

Sir David Attenborough

Climate change is the “key factor accelerating all other drivers of forced displacement.”<sup>2</sup> However, individuals who are forced to leave their homes because of climate change or natural disasters, colloquially known as “climate refugees,”<sup>3</sup> do not currently qualify for international legal protection. United Nations (U.N.) Secretary-General António Guterres has described this gap as a “legal void.”<sup>4</sup>

This Essay will examine and evaluate existing mechanisms—including international environmental law, international human rights law, and refugee law—that could fill the void and provide a pathway to legal recognition for climate refugees. Part II will describe the climate crisis and its impact on migration patterns. Part III will examine the global legal framework for the protection of refugees and its lack of protection for climate refugees. Part IV will outline possible domestic and international solutions within the existing framework. Part V will discuss the most promising solution under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

The Essay will conclude that, as some international tribunals have suggested, protection of climate refugees may be possible in limited circumstances within existing international law. However, changes to this framework that draw on the example of more expansive regional agreements, combined with domestic solutions, such as climate humanitarian visas with input from climate-vulnerable communities, would better address the plight of billions of individuals predicted to be displaced by climate change. Because it will take decades to address the root of the problem by reversing or slowing climate change, intermediate solutions to combat the climate migration crisis through

---

<sup>1</sup> COP26, *Sir David Attenborough Speech to the U.N. Security Council*, YOUTUBE (Feb. 23, 2021), <https://youtu.be/MaweqwsN62k>; Cameron Jenkins, *David Attenborough to U.N.: Climate Change is Biggest Threat Modern Humans Have Ever Faced*, THE HILL (Feb. 23, 2021), <https://perma.cc/W2FC-LXSK>.

<sup>2</sup> *Climate Refugees*, CLIMATE REFUGEES (2022), <https://perma.cc/5C8U-KNKE> [hereinafter *Climate Refugees*].

<sup>3</sup> This Essay will use the term “climate refugees” to refer to people forcibly displaced, whether internally or across international borders by climate change or disaster, even though they do not yet qualify for the same legal protection as refugees. *Climate Change and Disaster Displacement*, UNHCR (2022), <https://perma.cc/D4YX-EH7E>. For the purposes of this Essay, the term “climate refugees” also includes asylum seekers.

<sup>4</sup> *Climate Refugees*, *supra* note 2.

adaptation and mitigation strategies will help secure a just and sustainable future for our planet and its population.

## II. THE CLIMATE CRISIS

### A. The Scope of the Climate Crisis

The human population's influence on the climate system is undisputed.<sup>5</sup> Over the last century, the Earth has warmed an average of 1.2°C above pre-industrial levels,<sup>6</sup> mainly due to humans burning fossil fuels and releasing greenhouse gases into the atmosphere.<sup>7</sup> A rise in the Earth's global average temperature beyond 1.5°C above pre-industrial levels would trigger many of the adverse effects of climate change.<sup>8</sup> Experts predict that global temperatures will rise by between 2.7°C and 3.1°C by the end of this century if current trends continue.<sup>9</sup> The Earth may already have reached tipping points that could catalyze “irreversible changes in major ecosystems and the planetary climate system.”<sup>10</sup>

The effects are, and will be, disastrous for our planet and its population. Rapidly melting Arctic ice and rising sea levels heighten the risk of disastrous floods; unstable weather patterns that impact food production; increased severe weather events like storms, droughts, heatwaves, floods, and cyclones;<sup>11</sup> and global ecosystem damage.<sup>12</sup> Climate change disproportionately affects the poorest, most vulnerable groups—including Indigenous groups, people of color, women, LGBTQ+ individuals, the elderly, and people with disabilities.<sup>13</sup> Warming levels of 1°C in recent human history are correlated with increased poverty and disadvantage, and warming of the Earth's average global temperature by 1.5°C or more above pre-industrial levels is likely to continue this trend.<sup>14</sup> In addition, as states accumulate valuable resources—primarily oil and gas—they become proportionally more likely to experience “governmental

---

<sup>5</sup> See *Climate Change*, U.N. (2022), <https://perma.cc/HDX8-7AAY> [hereinafter *Climate Change*].

<sup>6</sup> See *Secretary-General Calls Latest IPCC Climate Report ‘Code Red for Humanity’, Stressing ‘Irrefutable’ Evidence of Human Influence*, U.N. (Aug. 9, 2021), <https://perma.cc/Q857-PXKD>.

<sup>7</sup> See *Climate Change*, *supra* note 5.

<sup>8</sup> See generally IPCC, SPECIAL REPORT: GLOBAL WARMING OF 1.5°C 39 (2019), <https://perma.cc/7FP4-DYUY> [hereinafter IPCC 1.5°C REPORT].

<sup>9</sup> See *Temperatures*, CLIMATE ACTION TRACKER, <https://perma.cc/DNE7-ST5F>.

<sup>10</sup> *Climate Change*, *supra* note 5.

<sup>11</sup> *The ‘Inconvenient Truth’ of Future Mixed Migration: Climate Change, Mobility and Legal Voids*, MIXED MIGRATION CTR., DANISH REFUGEE COUNCIL (Jan. 7, 2020), <https://perma.cc/4GPZ-94ER> [hereinafter *Mixed Migration*].

<sup>12</sup> See *Climate Change*, *supra* note 5.

<sup>13</sup> See Salzburg Global Seminar, *How Can We Move from Climate Crisis to Climate Justice?*, YOUTUBE (Nov. 18, 2021), <https://youtu.be/GVl2pIIQibc>.

<sup>14</sup> See IPCC 1.5°C REPORT, *supra* note 8, at 9.

corruption, authoritarianism, and violent conflict.”<sup>15</sup> These effects frequently burden industrializing nations.<sup>16</sup>

A 2018 Intergovernmental Panel on Climate Change (IPCC) report found that limiting global warming to 1.5°C would allow for a more sustainable and equitable society.<sup>17</sup> The Paris Agreement, a key treaty in the U.N.’s legal framework to combat climate change, aims to limit this century’s global temperature rise to 1.5°C, and an absolute maximum of 2°C.<sup>18</sup> However, “[t]he world remains way off target.”<sup>19</sup> To stay under the 1.5°C threshold,<sup>20</sup> a 45% reduction in net human-caused carbon dioxide (CO<sub>2</sub>) emissions from 2010 levels is necessary over the next decade.<sup>21</sup>

## B. The Impact of Climate Change on Migration

Climate change and natural disasters can drive both temporary and permanent migration,<sup>22</sup> either internally or across international borders.<sup>23</sup> The

---

<sup>15</sup> Jeff Turrentine, *It’s Time to Defuse Oil as a Weapon of War*, NAT. RES. DEF. COUNCIL (Mar. 22, 2022), <https://perma.cc/Q4S5-EDGQ>.

<sup>16</sup> *See id.*

<sup>17</sup> IPCC 1.5°C REPORT, *supra* note 8, at 44, 475. Limiting global warming to 1.5°C above pre-industrial levels could lower the risk of food and water insecurity, health risks, and economic loss in regions facing development challenges. This, in turn, could reduce the number of individuals exposed to the adverse impacts of climate change and poverty by anywhere from 62 to 457 million. It would also aid in achieving the U.N.’s 2030 Sustainable Development Goals. In undertaking such a societal transformation to limit global warming, it is essential to avoid exacerbating poverty and vulnerability by addressing the uneven distribution of power in climate-vulnerable regions. *See id.* at 44, 475; *Transforming Our World: The 2030 Agenda for Sustainable Development*, U.N. (2022), <https://perma.cc/5BAN-YNYF>.

<sup>18</sup> Paris Agreement of the United Nations Framework Convention on Climate Change art. 2(1)(a), Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement]; *see also The Paris Agreement*, U.N. (2022), <https://perma.cc/8NKE-23FE>. Notably, however, the Paris Agreement’s emissions target outcomes are not legally binding. *See* Lila MacLellan, *Is the Paris Climate Agreement Legally Binding? Experts Explain*, WORLD ECON. F. (Nov. 22, 2021), <https://perma.cc/7FRP-PHGL>.

<sup>19</sup> *Secretary-General: 2021 a ‘Crucial Year’ for Climate Change*, U.N. (2022), <https://perma.cc/996P-G4HU>.

<sup>20</sup> IPCC 1.5°C REPORT, *supra* note 8, at 32.

<sup>21</sup> To achieve this goal, the world would need to reach “net zero”—“a state in which the greenhouse gases going into the atmosphere are balanced by removal out of the atmosphere”—by 2050. *What is Net Zero?*, UNIV. OF OXFORD (2022), <https://perma.cc/A5N8-DLY7>; *Climate Change*, *supra* note 5. Recent projections suggest that without substantial reductions in greenhouse gas emissions, the planet is on track to warm between 2.1°C and 2.9°C above pre-industrial levels by the year 2100. *See* Max Bearak, *Climate Pledges Are Falling Short, and a Chaotic Future Looks More Like Reality*, N.Y. TIMES (last updated Nov. 11, 2022), <https://www.nytimes.com/2022/10/26/climate/un-climate-pledges-warming.html>.

<sup>22</sup> *See* IPCC 1.5°C REPORT, *supra* note 8, at 39. For the purposes of this Essay, the term “migration” encompasses the forced or voluntary movement of people for any reason, either domestically or across international borders, and either permanently or for a set period of time. *Migration*, COUNCIL OF EUR. (2022), <https://perma.cc/DN3T-A4R5>.

link between climate change and migration is strongest, however, when climate change and natural disasters coincide with other factors, such as conflict and economic turmoil, to influence migration patterns.<sup>24</sup> Although the exact effects of climate change on migration merit further study, there is a positive and significant correlation between global temperature increases and outmigration in agriculture-dependent communities.<sup>25</sup> There is a broad consensus, including from U.N. member states,<sup>26</sup> that “environmental factors are and will continue to be a major contributing factor in internal migration and internal displacement.”<sup>27</sup> Even if emissions of harmful greenhouse gases are halted or reduced, the effects of climate change will remain for centuries and will continue to displace people around the world.<sup>28</sup>

Most individuals considering migrating do not wish to move away from their homes.<sup>29</sup> The high cost of migration can also be prohibitive, particularly when climate change has contributed to the potential migrant or refugee’s inadequate assets or finances.<sup>30</sup> They will therefore make more gradual adjustments, such as moving to a larger town or city.<sup>31</sup> It is only when these urban hubs also become inhospitable that people will choose to cross international borders and take on greater risks—a phenomenon known as “stepwise migration.”<sup>32</sup> In South Asia, sub-Saharan Africa, and Latin America—

---

<sup>23</sup> Mixed Migration, *supra* note 11. A study of migration patterns in 198 origin countries and sixteen destination countries from 1980 to 2014 found that climate change was a more important driver of mobility than income and political freedom combined. See Amelia Aburn & Dennis Wesselbaum, *Gone with the Wind: International Migration*, UNIV. OF OTAGO BUS. SCH. 3 (2017), <https://perma.cc/ACS8-V2UP>.

<sup>24</sup> See *id.*

<sup>25</sup> See IPCC 1.5°C REPORT, *supra* note 8, at 39.

<sup>26</sup> In the New York Declaration for Refugees and Migrants, a commitment by U.N. member states to strengthen the international refugee and migrant regime, the U.N. General Assembly acknowledged that climate change is a driver of migration. See New York Declaration for Refugees and Migrants, G.A. Res. 71/1, ¶¶ 1, 18, 43, 50 (Oct. 3, 2016); see also *New York Declaration for Refugees and Migrants*, UNHCR (2021), <https://perma.cc/R3RP-ZM8V>.

<sup>27</sup> Mixed Migration, *supra* note 11.

<sup>28</sup> See *Climate Change*, *supra* note 5.

<sup>29</sup> Abrahm Lustgarten, *The Great Climate Migration*, N.Y. TIMES (June 23, 2020), <https://perma.cc/BAU9-55X7>.

<sup>30</sup> Mixed Migration, *supra* note 11.

<sup>31</sup> Lustgarten, *supra* note 29.

<sup>32</sup> See *id.* Still, many people who lack the means to move internationally remain “trapped” and vulnerable to environmental change, representing as much of an important policy concern as those who do move. See FORESIGHT & U.K. GOV’T OFF. FOR SCI., MIGRATION AND GLOBAL ENVIRONMENTAL CHANGE: FUTURE CHALLENGES AND OPPORTUNITIES 9 (2011), <https://perma.cc/WU8H-JXIT>; see also *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, UNHCR 3 (Sept. 2011), <https://perma.cc/Z4VZ-YMHQ> [hereinafter *UNHCR Factsheet on 1951 Convention and 1967 Protocol*].

three of the most climate-vulnerable regions—the long-term impacts of climate change could internally displace 143 million people (or 2.8% of regional populations) by 2050.<sup>33</sup>

Mass migration is already in progress. Climate “disaster events”<sup>34</sup> displaced 318.7 million individuals—an average of 24.5 million per year—between 2008 and 2020.<sup>35</sup> In Southeast Asia, where monsoon and drought cycles have become increasingly unpredictable, more than eight million people have migrated to the Middle East, Europe, and North Africa.<sup>36</sup> The year 2020, tied for the hottest year on record,<sup>37</sup> was the most active year for storms in Central America.<sup>38</sup> Two major hurricanes in 2020 affected over four million people in Honduras, Guatemala, and Nicaragua.<sup>39</sup> The storms led to widespread food insecurity, forcing tens of thousands of people to migrate from primarily rural areas toward the southern border of the United States.<sup>40</sup> Slow-onset changes, or “climate impacts that unravel over time, like desert expansion and sea level rise,” also contribute to forced migration but are more difficult to define and measure.<sup>41</sup> The African Sahel has experienced extensive drought and crop failures, driving millions of people from rural areas to coasts and cities to escape famine.<sup>42</sup> Over the last thirty years, the number of people threatened by rising sea levels in coastal areas has risen from 160 million to 260 million.<sup>43</sup> Ninety percent of these

---

<sup>33</sup> See THE WORLD BANK, *GROUNDWELL: PREPARING FOR INTERNAL CLIMATE MIGRATION* 110 (2018), <https://perma.cc/PBR6-6MK7>.

<sup>34</sup> “Disasters” include geophysical events (earthquakes, dry mass movements, and volcanic eruptions) and weather-related events (floods, extreme temperatures, wet mass movements, storms, droughts, wildfires, and severe weather conditions). See *Global Internal Displacement Database: 2021 Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CTR. (2022), <https://perma.cc/K72X-FDBC>.

<sup>35</sup> See *id.*; see also *Mass Climate Migration Is Coming*, WIRED (Jan. 11, 2023), <https://perma.cc/E7YP-692S> (“In 2022, the number of forcibly displaced people exceeded 100 million for the first time, with climate change displacing more people than conflicts.”).

<sup>36</sup> See Lustgarten, *supra* note 29.

<sup>37</sup> Andrea Thompson, *NASA Says 2020 Tied for Hottest Year on Record*, SCI. AM. (Jan. 14, 2021), <https://perma.cc/R6ZT-3DFX>.

<sup>38</sup> See Amali Tower, *Central American Climate Migration is a Human Security Crisis*, THE CTR. FOR CLIMATE & SEC. (July 13, 2021), <https://perma.cc/M9WA-52SY>.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

<sup>41</sup> Tim McDonnell, *The Refugees the World Barely Pays Attention To*, NPR (June 20, 2018), <https://perma.cc/7TTP-BNBX>.

<sup>42</sup> See *id.*

<sup>43</sup> See *Climate Refugees: The World's Forgotten Victims*, WORLD ECON. F. (June 18, 2021), <https://perma.cc/M9K8-LEKE> [hereinafter *Forgotten Victims*].

individuals live in resource-scarce developing countries and small island nations.<sup>44</sup>

Experts predict that climate change and natural disasters could displace at least 1.2 billion people within the next thirty years,<sup>45</sup> but there is no legal precedent governing how displaced people might relocate abroad.<sup>46</sup> By 2050, 17% of the territory of Bangladesh—one of the top ten most climate-vulnerable nations, with 80% of its land a floodplain—is likely to become submerged due to rising sea levels, forcing 20 million people out of their homes.<sup>47</sup> Pacific Island nations face a “truly existential threat” from rising sea levels.<sup>48</sup>

The growing number of refugees and migrants will have significant and wide-ranging impacts on global security and political instability.<sup>49</sup> These effects include climate change-induced violent conflicts over natural resources, such as water, oil, and gas.<sup>50</sup> Ninety-six percent of future urban growth will happen in some of the world’s most vulnerable cities, which are already susceptible to conflict and where governments are ill-equipped to manage the aftermath.<sup>51</sup>

### III. GLOBAL LEGAL REFUGEE FRAMEWORK: THE 1951 CONVENTION AND ITS 1967 PROTOCOL

#### A. Defining Refugees Under International Law

The 1951 Convention relating to the Status of Refugees (1951 Convention)<sup>52</sup> and its 1967 Protocol Relating to the Status of Refugees (1967

---

<sup>44</sup> *See id.*

<sup>45</sup> *See id.*; *Over One Billion People at Threat of Being Displaced by 2050 Due to Environmental Change, Conflict and Civil Unrest*, INST. FOR ECON. & PEACE (Sept. 9, 2020), <https://perma.cc/23R9-SP2B>.

<sup>46</sup> McDonnell, *supra* note 41.

<sup>47</sup> *See id.*; *see also* Rep. of the H.R.C., ¶ 78, U.N. Doc. A/H.R.C./37/CRP.4 (2018); *Statement at the Conclusion of the Country Visit to Bangladesh by the Special Rapporteur on the Promotion and Protection of Human Rights to Human Rights in the Context of Climate Change, Mr. Ian Fry*, UNHRSP (Sept. 15, 2022), <https://perma.cc/SK88-4QDE>.

<sup>48</sup> McDonnell, *supra* note 41.

<sup>49</sup> THE WHITE HOUSE, REPORT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION 7 (Oct. 2021), <https://perma.cc/34LY-PUL7> [hereinafter WHITE HOUSE CLIMATE CHANGE REPORT].

<sup>50</sup> U.N. INTERAGENCY FRAMEWORK TEAM FOR PREVENTIVE ACTION, TOOLKIT AND GUIDANCE FOR PREVENTING AND MANAGING LAND AND NATURAL RESOURCES CONFLICT: RENEWABLE RESOURCES AND CONFLICT 14, 36, 70–71 (2012), <https://perma.cc/56MB-KB4P>; *see also* Lustgarten, *supra* note 29 (describing studies suggesting that climate change could decrease water availability per capita by up to 88% in certain areas of Mexico and that crop yields in the nation’s coastal regions could fall by a third).

<sup>51</sup> *See War in Cities: What is at Stake?*, INT’L COMM. OF THE RED CROSS (Apr. 4, 2017), <https://perma.cc/6YJM-CTUM>.

<sup>52</sup> *See generally* Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Convention].



Protocol)<sup>53</sup> are the only binding global treaties that address the rights and legal status of refugees.<sup>54</sup> They do not, however, cover climate refugees. These treaties outline refugees' rights and emphasize the responsibility of nation states to protect refugees.<sup>55</sup> They also define a “refugee” as an individual who is outside their country of origin and who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, . . . is unable or . . . is unwilling to return to [their country of origin].”<sup>56</sup> States are primarily responsible for determining who qualifies as a refugee and for protecting people who qualify.<sup>57</sup> The 1951 Convention does not prescribe a particular method for these determinations.<sup>58</sup> A refugee is recognized as a refugee while outside their host country and before entering another country.<sup>59</sup> A person is considered a refugee as soon as they meet the applicable criteria, prior to receiving formal recognition.<sup>60</sup>

There are key differences between refugees and asylum seekers,<sup>61</sup> on one hand, and migrants, on the other. The term “migrants” encompasses asylum

---

<sup>53</sup> See generally Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter 1967 Protocol]. The 1967 Protocol broadened the scope of the 1951 Convention, removing previous limits restricting protection under the Convention to people who became refugees due to events in Europe prior to 1951. See UNHCR *Factsheet on 1951 Convention and 1967 Protocol*, *supra* note 32, at 4. In this Essay, references to the 1951 Convention also include the provisions of its 1967 Protocol.

<sup>54</sup> UNHCR *Factsheet on 1951 Convention and 1967 Protocol*, *supra* note 32, at 2, 5. Other regional instruments and a substantial body of human rights law complement the rights enumerated in the 1951 Convention. See *id.* at 5.

<sup>55</sup> See generally 1951 Convention, *supra* note 52.

<sup>56</sup> 1951 Convention, *supra* note 52, Introductory Note, art. 1A(2).

<sup>57</sup> See UNHCR *Factsheet on 1951 Convention and 1967 Protocol*, *supra* note 32, at 5.

<sup>58</sup> The Office of the U.N. High Commissioner for Refugees (UNHCR) is tasked with assisting states in establishing such procedures. See *id.*

<sup>59</sup> See UNHCR *Factsheet on 1951 Convention and 1967 Protocol*, *supra* note 32, at 3. See generally 1951 Convention, *supra* note 52, pmbl.; 1967 Protocol, *supra* note 53, art. 1.

<sup>60</sup> See Rep. of the H.R.C., *supra* note 47, ¶ 69.

<sup>61</sup> Asylum seekers have left their home countries due to persecution or human rights violations. Unlike refugees, they have already entered another country and are awaiting decisions on their claims for legal recognition in the host nation. See *Refugees, Asylum-Seekers, and Migrants*, AMNESTY INT'L (2022), <https://perma.cc/QRB4-EUTS>. Seeking asylum, like refugee status, is a human right. See generally 1951 Convention, *supra* note 52, pmbl.; 1967 Protocol, *supra* note 53, art. 1. The right to seek asylum is also enshrined in the Universal Declaration of Human Rights. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 14 (Dec. 10, 1948). The right to seek asylum is not customary international law. However, “returning a person to a country where [they] would be tortured or persecuted” would violate the customary international law principle of forcible return, or *non-refoulement*. Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 346 (1996); see also *The 1951 Refugee Convention*, UNHCR (2022), <https://perma.cc/2WRS-T4LP> (confirming that *non-refoulement* has attained the status of customary international law).

seekers, refugees, and people who may choose to leave their homes for reasons unrelated to persecution.<sup>62</sup> Both refugees and asylum seekers lack protection by their origin countries, and in many instances are targeted by their own governments.<sup>63</sup> In contrast, a migrant may benefit from their own government's protection from violence, exploitation, and forced labor.<sup>64</sup> However, a migrant may still be in danger of harm if they return to their country of origin, even if they do not meet the high standards for refugee status or asylum protection.<sup>65</sup>

## B. No Legal Framework for Climate Refugees: Forgotten and Unprotected

“Persons displaced in the context of disasters and climate change,” informally known as “climate refugees,”<sup>66</sup> are often overlooked in global migration discussions.<sup>67</sup> Despite the significant threats they face, climate refugees are not formally defined, protected, or recognized under the 1951 Convention or other provisions of international law.<sup>68</sup> Furthermore, there is limited data on the migration patterns of these “forgotten victims of climate change.”<sup>69</sup> There is no

---

<sup>62</sup> There is, however, no widely accepted legal definition of a migrant. See UNHCR *Factsheet on 1951 Convention and 1967 Protocol*, *supra* note 32, at 3; *About Migration*, INT'L ORG. FOR MIGRATION (2022), <https://perma.cc/6KZH-EAG4>.

<sup>63</sup> See *Refugees' and Migrants': Frequently Asked Questions (FAQs)*, UNHCR (Mar. 16, 2016), <https://perma.cc/8G9J-A23T>; see also *Protection*, UNHCR (2022), <https://perma.cc/H9VR-RD3R>.

<sup>64</sup> See UNHCR *Factsheet on 1951 Convention and 1967 Protocol*, *supra* note 32, at 3.

<sup>65</sup> *About Migration*, INT'L ORG. FOR MIGRATION (2022), <https://perma.cc/6KZH-EAG4>.

<sup>66</sup> For the purposes of this Essay, the term “climate refugees” also encompasses asylum seekers and internally displaced people. See *Refugees, Asylum-Seekers, and Migrants*, AMNESTY INT'L (2022), <https://perma.cc/QRB4-EUTS>. The UNHCR has not endorsed the term “climate refugees.” See *Climate Change and Disaster Displacement*, *supra* note 3; see also Erol Yayboke et al., *A New Framework for U.S. Leadership on Climate Migration*, CSIS 1, 6–7 (Oct. 2020), <https://perma.cc/LYT7-37MA>. It is this author's hope that one day the term will receive widespread endorsement and that these individuals will be afforded independent legal status.

<sup>67</sup> *Climate Change and Disaster Displacement*, *supra* note 3. Climate migrants, “people for whom climate change was an important factor in leaving home,” are also at risk of climate-driven displacement and deserving of international protection. However, because there can be an element of choice in their migration, this Essay focuses primarily on individuals who experience forced displacement due to climate change and/or natural disasters. See Yayboke et al., *supra* note 66, at 1–2; see also *Climate Refugees*, *supra* note 2. In addition, stateless people, who are “not considered . . . national[s] by any State under the operation of its law,” for various reasons, including intentional targeting by governments, gaps in nationality laws, the emergence of new states, or the transfer of territory between states, face displacement due to climate change and natural disasters. *Ending Statelessness*, UNHCR (2022), <https://perma.cc/F5S6-VYXX>; see *Climate Change and Statelessness: An Overview*, UNHCR (May 15, 2009), <https://perma.cc/89WG-Z5ZZ>. The issue of statelessness, while pressing in its own right, is outside the scope of this Essay.

<sup>68</sup> See McDonnell, *supra* note 41.

<sup>69</sup> *Id.*

international consensus on who qualifies as a climate refugee, nor is there any plan for their protection.<sup>70</sup>

Two key factors separate climate refugees from refugees who are defined under global legal instruments. First, although some climate refugees are displaced by specific disasters, others are affected by “slow-onset” climate change effects such as sea-level rise, making it difficult to connect climate change to their refugee status.<sup>71</sup> Second, most climate refugees are displaced internally within their own country before migrating abroad. For this reason, they do not benefit from protection under the 1951 Convention—which only covers people who migrate across international borders—until they cross a national border through stepwise migration.<sup>72</sup>

Although the U.N. has recently adopted some non-binding international agreements that pertain to climate change and migration, these agreements have yet to offer specific, enforceable pathways to legal protection for climate refugees.<sup>73</sup> For example, the 2018 Global Compact on Refugees (Refugee

---

<sup>70</sup> *See id.*

<sup>71</sup> *See id.*

<sup>72</sup> *See id.* Gaps in legal coverage for internally displaced people pose particular challenges for climate refugees. Internally displaced people, unlike refugees defined under the 1951 Convention, are not specifically protected by any binding legal instrument. *See* Julie Grignon, *Law Applicable to Persons Fleeing Armed Conflicts*, LIEBER INST. WEST POINT (Mar. 15, 2022), <https://perma.cc/HWB8-4U5Y> (citing the nonbinding document, Rep. of the Econ. and Social Council, Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998)); *see also* *International Standards: Special Rapporteur on the Human Rights of Internally Displaced Persons*, UNHCR, <https://perma.cc/ZGR4-77BL>. Although internally displaced people may be protected under international human rights law, domestic law, and, in cases of armed conflict, international humanitarian law, some state governments may not be parties to such treaties or may have reserved the right not to implement certain provisions. *See Refugees and Displaced Persons Protected Under International Humanitarian Law*, INT’L COMM. OF THE RED CROSS (Oct. 29, 2010), <https://perma.cc/V39A-MJRP>; *see also, e.g.*, International Covenant on Civil and Political Rights ch. 4, Dec. 16, 1966, 999 U.N.T.S. 171 (noting the reservations of various nations to aspects of the human rights chapter of this seminal treaty); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 85, 1125 U.N.T.S. 3 (allowing states to make reservations to the Geneva Conventions of 1949, four key treaties of international humanitarian law governing treatment of civilians and combatants during armed conflicts). In addition, internally displaced people are more likely than traditionally defined refugees to remain close to conflict and disaster zones, increasing their exposure to human rights abuses. *About Internally Displaced Persons*, OHCHR (2022), <https://perma.cc/VPC8-5U2W>. In certain instances, an internally displaced person’s own government may lack the resources or political will to protect them. In other cases, the government or guerrilla groups in conflict with the government may intentionally target these vulnerable individuals in the wake of climate events and natural disasters. *See* ANTHONY JAMES JOES, *Guerrilla Warfare*, in 2 ENCYCLOPEDIA OF VIOLENCE, PEACE, & CONFLICT 172, 178–83 (Lester R. Kurtz ed., 3rd ed. 2008). Therefore, in many cases, internally displaced individuals are left unprotected. *See* Martin Walker, *Guerrilla Warfare’s Epic History*, THE WILSON Q. (2013), <https://perma.cc/3UT8-C3YS>.

<sup>73</sup> McDonnell, *supra* note 41; *New York Declaration for Refugees and Migrants*, *supra* note 26.

Compact) addresses the climate issue in a cursory manner, noting that climate change and natural disasters “increasingly interact with the drivers of refugee movements.”<sup>74</sup> It does not, however, examine this interaction further.

The 2018 Global Compact for Safe, Orderly, and Regular Migration (Migration Compact) provides more comprehensive suggestions for protection of climate-displaced individuals, but still falls short.<sup>75</sup> For example, its signatory representatives agreed to “develop and strengthen solutions for migrants compelled to leave their countries of origin due to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation.”<sup>76</sup> These solutions include “devising planned relocation and visa options” for climate-displaced people “in cases where adaptation in or return to their country of origin is not possible.”<sup>77</sup> Unlike the Refugee Compact, the Migration Compact outlines concrete solutions. However, the compacts do not bind signatories to the enumerated commitments, so there are no real consequences for noncompliance. Furthermore, neither of these agreements addresses internal migration.<sup>78</sup> Therefore, to fill the legal void it is essential to examine other avenues for legal protection for climate refugees.

#### IV. A WORK IN PROGRESS: POTENTIAL SOLUTIONS TO PROTECT CLIMATE REFUGEES

There are opportunities to improve the global refugee framework through new national policies, even in the face of reluctance by some national governments to explicitly recognize their responsibility toward climate refugees.<sup>79</sup> Domestic solutions could initially be a more realistic route than new international agreements. For example, the U.S. under the Biden administration

---

<sup>74</sup> Global Compact on Refugees, G.A. Res. 73/151, ¶ 8 (Dec. 17, 2018).

<sup>75</sup> See Global Compact for Safe, Orderly, and Regular Migration, G.A. Res. 73/195 (Jan. 11, 2019); see also *General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants*, U.N. (Dec. 19, 2018), <https://perma.cc/ET4K-5CQW>.

<sup>76</sup> Global Compact for Safe, Orderly, and Regular Migration, *supra* note 75, ¶¶ 18(b), 18(l), 21(b), 21(h).

<sup>77</sup> *Id.* ¶ 21(h).

<sup>78</sup> See McDonnell, *supra* note 41.

<sup>79</sup> In recent years, a nationalist and anti-immigrant wave sweeping across the U.S. and Europe has made it difficult for the U.N. and nongovernmental organizations to encourage governments to follow global refugee protocols, let alone expand them. The U.S. under the Trump Administration pulled out of negotiations relating to the Migration Compact and the Refugee Compact, in 2017 and 2018 respectively. See McDonnell, *supra* note 41. A more recent example of anti-immigrant sentiment is the U.K.’s Nationality and Borders Act. See Nationality and Borders Act 2021-2, HC Bill [152]. The bill “criminalise[s] entering the U.K. without a visa” and allows the government to strip individuals of their British citizenship with no advance notice in some circumstances. Helen Lock, *The U.K.’s ‘Anti-Refugee Bill’: What Everyone Should Know*, GLOB. CITIZEN (May 3, 2022), <https://perma.cc/UV6S-UMRE>.

has suggested adapting existing national asylum and refugee laws, such as Temporary Protected Status, to protect climate-displaced people.<sup>80</sup> 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.<sup>81</sup>

Longer-term solutions to protect climate refugees are available within existing international environmental law, refugee law, and international human rights law. These bodies of law, however, would have to be modified to provide adequate protection for climate refugees.

### A. Domestic Government Solutions: Climate Humanitarian Visas

One initiative that could provide climate refugees with the legal recognition and protection that they currently lack is the introduction of climate humanitarian visas. This solution would work best with input from the marginalized communities most affected by climate change. Under humanitarian visa programs, host nations would designate climate-vulnerable countries whose citizens are eligible for protection within the hosts' borders. Eligible citizens would then demonstrate that they are among the most vulnerable in that region—for example, through membership in a historically marginalized group or income below the poverty line.<sup>82</sup>

In 2017, New Zealand created a climate humanitarian visa program for Pacific Islanders living in at-risk island nations like Kiribati and Fiji.<sup>83</sup> However, only six months after the initial announcement, the government abandoned the program.<sup>84</sup> This initiative failed to achieve support from some Pacific Islanders who viewed refugee status as a last resort and a disruption of their cultural livelihoods and heritage.<sup>85</sup> Those opposed to the visas advocated for preventing,

---

<sup>80</sup> WHITE HOUSE CLIMATE CHANGE REPORT, *supra* note 49, at 18. Temporary Protected Status is a program offering temporary protection from removal to people from designated countries affected by political unrest or disasters who are already in the U.S. *See id.*

<sup>81</sup> *Id.* at 17. The report explains that creating a new humanitarian pathway for climate-displaced individuals would contribute to “safe, orderly, and humane migration management, regional stability, and sustainable economic growth and development.” *Id.* at 5; *see id.* at 18–19, 32.

<sup>82</sup> *See, e.g., Strategist Calls for ‘Climate Humanitarian Visa,’ as Answer to Biden Refugee Report*, NPR (Oct. 24, 2021), <https://perma.cc/DKZ9-K8GZ>; Helen Dempster & Kayly Ober, *New Zealand’s ‘Climate Refugee’ Visas: Lessons for the Rest of the World*, DEV. POLY CTR. (Jan. 31, 2020), <https://perma.cc/N7FE-GCXL>.

<sup>83</sup> *See* Jonathan Pearlman, *New Zealand Creates Special Refugee Visa for Pacific Islanders Affected by Climate Change*, THE STRAITS TIMES (Dec. 9, 2017), <https://perma.cc/8P44-CCLB>.

<sup>84</sup> *See* Dempster & Ober, *supra* note 82.

<sup>85</sup> *See id.*

rather than mitigating, the effects of climate change by reducing emissions, developing more flood- or drought-resistant crops, and expanding opportunities for non-agricultural livelihoods.<sup>86</sup>

New Zealand's failed climate visa attempt demonstrates that effective solutions to the climate migration crisis must involve the input of the most climate-vulnerable groups. Nations should solicit input from these communities and implement climate visas as a contingency plan along with other prevention, adaptation, and mitigation measures. Community input is essential to develop just, equitable, and sustainable solutions to the climate migration crisis.

## B. International Cooperation: Model International Mobility Convention

Even if domestic solutions were successfully implemented, international cooperation is still necessary to adequately protect people displaced in the context of climate change and natural disasters. Academics and policy experts have already paved the way by drafting a Model International Mobility Convention (MIMC), which could become binding if adopted by member states of an international organization like the U.N.<sup>87</sup> A binding international agreement drawing on the MIMC's provisions could help fill part of the legal void in which climate refugees and migrants exist. It would do so in a way no domestic law could alone—by emphasizing the importance of international cooperation to address the climate migration crisis.

For example, the MIMC sets forth a legal framework for international mobility that is broader than the circumstances for refugee protection outlined in the 1951 Convention and that could cover climate refugees.<sup>88</sup> It also enumerates a new right to reunification of extended family for refugees and forced migrants,<sup>89</sup> which could assist people separated from their families due to migration in the wake of climate change or a natural disaster. Additionally, the MIMC establishes: a “responsibility-sharing” mechanism through which each state party annually pledges a set amount of resettlement visas and funding for refugees and forced migrants according to a pre-determined formula; a “Mobility Visa Clearing House” web platform to facilitate the “safe, orderly, and regular migration of individuals,” through which parties may share information

---

<sup>86</sup> *See id.*

<sup>87</sup> *See* COLUM. UNIV. GLOB. POL'Y INITIATIVE, MODEL INTERNATIONAL MOBILITY CONVENTION (2017), <https://perma.cc/5HRN-SKSC>.

<sup>88</sup> *See id.* at 4, 9. The drafters of the MIMC define “international mobility” as “the movement of individuals across borders for any length of time as visitors, students, tourists, labor migrants, entrepreneurs, long-term residents, asylum seekers, or refugees.” *Id.* at 4.

<sup>89</sup> *Id.* at 8, 97.

pertaining to visa applications; and a Global Refugee Fund to assist states with resettlement and integration for refugees and other displaced people.<sup>90</sup>

These notions of shared responsibility and collective funding could provide a catalyst for international protection of climate refugees. However, there are significant obstacles to treaty ratification and implementation, particularly in developing countries. These include politics and the influence of interest groups, fears of infringement on national sovereignty, corruption, and traditional national beliefs.<sup>91</sup> Therefore, the strongest solutions for climate refugee protection will come from expanding other provisions of existing international environmental law, international human rights law, and refugee law.

### C. International Environmental Law

International environmental law, including climate change law, could provide limited protection for climate refugees, but only when combined with other existing bodies of law. This is because environmental law has not yet produced binding agreements with adequate enforcement mechanisms that address all relevant aspects of the climate migration crisis.<sup>92</sup>

The U.N. has taken a leading role in combatting climate change through environmental law. The 1992 U.N. Framework Convention on Climate Change (UNFCCC) was the U.N.'s first step to address climate change.<sup>93</sup> Its goal is to “prevent ‘dangerous’ human interference with the climate system.”<sup>94</sup> Today, the binding treaty has almost universal membership, with 197 ratifying countries.<sup>95</sup>

The UNFCCC echoes the idea of shared responsibility for climate change articulated in the MIMC. In its preamble, the UNFCCC states that climate change and its adverse effects are a “common concern of humankind.”<sup>96</sup> The U.N. has recognized that environmental rights are human rights.<sup>97</sup> Therefore, the common concern principle of environmental law could help shift the focus of human rights law from individual harm and responsibility to collective

---

<sup>90</sup> *Id.*

<sup>91</sup> See Anya Wahal, *On International Treaties, the United States Refuses to Play Ball*, COUNCIL ON FOREIGN RELATIONS (Jan. 7, 2022), <https://perma.cc/MZX3-5GAZ>. See generally VICTOR YISA, OBSTACLES TO TREATY RATIFICATION AND IMPLEMENTATION IN DEVELOPING COUNTRIES (2021).

<sup>92</sup> See Vincent Bellinkx et al., *Addressing Climate Change Through International Human Rights Law: From (Extra) Territoriality to Common Concern of Humankind*, 11 TRANSNAT'L ENV'T L. 69, 70 (2022).

<sup>93</sup> See generally U.N. Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107.

<sup>94</sup> *Climate Change*, *supra* note 5.

<sup>95</sup> *See id.*

<sup>96</sup> U.N. Framework Convention on Climate Change, *supra* note 93.

<sup>97</sup> See generally H.R.C. Res. 48/13, U.N. Doc. A/HRC/RES/48/13 (Oct. 8, 2021).

responsibility.<sup>98</sup> The principle may provide justification to extend states' human rights obligations to climate refugees extraterritorially.<sup>99</sup>

Although the UNFCCC did not originally consider climate-displaced individuals, more recent agreements have kept the door open to this application.<sup>100</sup> For example, the Paris Agreement recognizes 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.<sup>101</sup> Yet, there are no binding penalties to ensure achievement of the Paris Agreement’s goals,<sup>102</sup> making it insufficient on its own to protect climate refugees.

Additionally, the U.N. Convention to Combat Desertification (1994)<sup>103</sup> could serve as a model to strengthen global recognition and efforts regarding the link between climate change and cross-border migration in the context of slow-onset climate events.<sup>104</sup> This binding agreement recognizes that slow-onset desertification and drought are drivers of migration and directs party states to share information in order to better address displacement due to such factors.<sup>105</sup> Nevertheless, because this agreement only recognizes one type of climate-related contributor to migration, it cannot on its own provide a legal framework for climate refugee protection.

---

<sup>98</sup> See Bellinkx et al., *supra* note 92, at 82–83, 87, 89.

<sup>99</sup> Extraterritorial application of a principle in international law means that the principle extends beyond a state’s own territory to individuals in other states. See Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, UNHCR ¶¶ 24–28 (2007), <https://perma.cc/Y98U-WYGZ> [hereinafter Extraterritoriality Advisory Opinion].

<sup>100</sup> See Rep. of the H.R.C., *supra* note 47, ¶ 76.

<sup>101</sup> Paris Agreement, *supra* note 18, pmb1.

<sup>102</sup> See MacLellan, *supra* note 18.

<sup>103</sup> See generally 1994 U.N. Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1954 U.N.T.S. 3, 33 I.L.M. 1328 [hereinafter Convention to Combat Desertification].

<sup>104</sup> See Rep. of the H.R.C., *supra* note 47, ¶¶ 75, 100. The Convention to Combat Desertification seeks to “enhance international cooperation that aims to promote the positive role sustainable land management can play to address desertification/land degradation and drought as one of the drivers that causes migration.” Conference of the Parties (COP), Convention to Combat Desertification, ¶ 1(b), U.N. Doc. ICCD/COP(13)/L.25 (Sept. 15, 2017).

<sup>105</sup> Convention to Combat Desertification pmb1., arts. 2(d), 3(e), 11(f), 12, 17.1(e), Annex III art. 2(c). See also *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, U.N. ECON. COMM. FOR LATIN AM. AND THE CARIBBEAN (2022), <https://perma.cc/2CFU-EHJU>.



## D. Human Rights Law

Human rights law, through its *non-refoulement* principle, could mitigate some harm to climate refugees. However, inaction of international tribunals and opposition from some national governments makes human rights law independently insufficient to protect climate refugees. The *non-refoulement* principle<sup>106</sup>—which is embodied in human rights treaties<sup>107</sup> and considered customary international law<sup>108</sup>—“guarantees that no one should be returned to a country where they would face . . . cruel, inhuman or degrading treatment or punishment and other irreparable harm.”<sup>109</sup> In addition, a refugee seeking international protection must not be prevented from entering another country because that would violate the *non-refoulement* principle.<sup>110</sup> In March 2018, the U.N. Human Rights Council (HRC)<sup>111</sup> acknowledged the legal void in which people displaced by climate change and disasters exist.<sup>112</sup> It suggested that human rights law may provide a basis for future *non-refoulement* claims based on the harm a migrant (or refugee) might suffer due to the adverse impacts of climate change, if forcibly returned to their country of origin.<sup>113</sup>

Nevertheless, human rights law, alone, does not fully bridge the legal gap for climate refugees. One obstacle is that some national governments have expressed opposition to the application of human rights law to climate refugees. For example, 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.”<sup>114</sup> Another challenge is that international tribunals have yet to hold that human rights treaties can apply extraterritorially, as they have for certain civil and political rights in exceptional circumstances.<sup>115</sup>

<sup>106</sup> See 1951 Convention, *supra* note 52, arts. 1, 33(2); see also UNHCR Factsheet on 1951 Convention and 1967 Protocol, *supra* note 32, at 3.

<sup>107</sup> These treaties include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. See *The Principle of Non-Refoulement Under International Human Rights Law*, UNHCR (Jan. 1, 2018), <https://perma.cc/9LZG-LDF6>.

<sup>108</sup> See *The 1951 Refugee Convention*, *supra* note 61.

<sup>109</sup> *Id.* See generally Cathryn Costello & Michelle Foster, *Non-Refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test*, 46 NETH. Y.B. INT'L.L. 273, 273–327 (2016).

<sup>110</sup> See UNHCR Factsheet on 1951 Convention and 1967 Protocol, *supra* note 32, at 5.

<sup>111</sup> The H.R.C. is an “intergovernmental body . . . of 47 states responsible for the promotion and protection of human rights around the world.” *United Nations Human Rights Council*, U.N. (2022), <https://perma.cc/GD4L-2KPK>.

<sup>112</sup> See Rep. of the H.R.C., *supra* note 47, ¶¶ 4, 15, 66.

<sup>113</sup> *Id.* ¶ 67.

<sup>114</sup> WHITE HOUSE CLIMATE CHANGE REPORT, *supra* note 49, at 19.

<sup>115</sup> See Bellinkx et al., *supra* note 92, at 77 (citing *Al Skeini and Others v. United Kingdom*, App. No. 55721/07, ¶¶ 130–42, (July 7, 2011)).

These identified circumstances arise when a state exercises effective control over another territory, or when there is a causal link between acts or omissions by a state and human rights violations outside its borders.<sup>116</sup> Climate change, on the other hand, is a global, non-localized phenomenon, making it difficult to identify any direct causation between a particular state's acts or omissions and the effects of climate change.<sup>117</sup> Therefore, at best, human rights law could break the climate migration crisis into discrete cross-border harms to address on a state-by-state basis, rather than providing a comprehensive international solution.

### 1. Possible Human Rights-Focused Solutions from International Tribunals: Kiribati (*Teitiota v. New Zealand*) and the International Covenant on Civil and Political Rights

Judicial solutions to the climate migration crisis are possible but face considerable limitations. Historically, international tribunals tended to shy away from developing and interpreting human rights law to address new climate-related threats.<sup>118</sup> However, although tribunals have not yet held that the impacts of climate change meet the threshold required for *non-refoulement* protection,<sup>119</sup> they have not precluded that possibility.<sup>120</sup> Tribunals are increasingly recognizing that climate change endangers human rights,<sup>121</sup> specifically under the International Covenant on Civil and Political Rights (ICCPR).<sup>122</sup> This binding human rights treaty could provide the basis for some climate refugee claims.<sup>123</sup> However, given the current limitations of such claims under international tribunals' interpretations of the ICCPR, judges hearing these cases should develop a deeper understanding of the interaction between climate change and migration in order for climate refugees to receive more than purely symbolic recognition. An illustration from a recent landmark climate refugee case demonstrates the potential for solutions from international courts, as well as their limitations.

---

<sup>116</sup> See *id.* at 70, 78.

<sup>117</sup> *Id.* at 70.

<sup>118</sup> See Simon Behrman & Avidan Kent, *The Teitiota Case and the Limitations of the Human Rights Framework*, 75 QUESTIONS OF INT'L L. 25, 38 (2020).

<sup>119</sup> See, e.g., *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 3125, ¶¶ 31–32 (N.Z.).

<sup>120</sup> In such cases, people frequently move before the effects of climate events meet the imminence threshold. See Rep. of the H.R.C., *supra* note 47, ¶ 67.

<sup>121</sup> Rep. of the H.R.C., *supra* note 47, ¶ 68.

<sup>122</sup> International Covenant on Civil and Political Rights, *supra* note 72, arts. 6–7.

<sup>123</sup> See *id.*

On January 7, 2020, in *Teitiota v. New Zealand*<sup>124</sup> the U.N. Human Rights Committee<sup>125</sup> adopted a “landmark” ruling for people displaced by climate change.<sup>126</sup> Ioane Teitiota was a resident of Kiribati, a central Pacific Island nation at risk of losing its land in the next ten to fifteen years due to rising sea levels. In 2013, he applied for refugee status in New Zealand on the grounds that climate change had put his life in jeopardy, forcing him to leave Kiribati.<sup>127</sup> After exhausting his domestic remedies, Teitiota was repatriated to Kiribati.<sup>128</sup> In 2016, he filed a communication with the HRC under the ICCPR’s Optional Protocol, alleging that New Zealand had violated his right to life by forcing him to return to Kiribati.<sup>129</sup> The HRC affirmed the New Zealand Supreme Court’s decision, holding that Teitiota did not face an “imminent threat” to his life.<sup>130</sup>

Despite the unfavorable result for Teitiota himself, the decision has been hailed as a victory for the protection of climate refugees.<sup>131</sup> It recognized, for the first time, that nations have a *non-refoulement* obligation prohibiting them from forcibly returning an individual to a country where climate change could arbitrarily deprive them of the “right to life” enumerated in ICCPR Article 6.<sup>132</sup> The HRC also acknowledged, for the first time, that governments and tribunals must take into account both the immediate and slow-onset effects of climate change when evaluating refugee and asylum claims.<sup>133</sup>

The opinion’s reasoning provides insight into potential future claims by climate refugees. In this case, the HRC accepted expert evidence that rising sea levels and rapid population growth in Kiribati have damaged the island’s potable water supply, forcing 60% of the population to obtain fresh water from rationed

<sup>124</sup> Ioane Teitiota v. New Zealand, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 7, 2020).

<sup>125</sup> The U.N. Human Rights Committee is a body of independent experts responsible for monitoring implementation of the ICCPR by state parties. See *Human Rights Committee*, U.N. (2022), <https://perma.cc/RA97-7SH3>.

<sup>126</sup> U.N. *Landmark Case for People Displaced by Climate Change*, AMNESTY INT’L (Jan. 20, 2020), <https://perma.cc/NHU8-3CZS>.

<sup>127</sup> See *Teitiota*, *supra* note 124, ¶ 9.10; see also *Forgotten Victims*, *supra* note 44.

<sup>128</sup> See *Forgotten Victims*, *supra* note 44.

<sup>129</sup> See Adaena Sinclair-Blakemore, *Teitiota v. New Zealand: A Step Forward in the Protection of Climate Refugees Under International Human Rights Law?*, OXFORD HUMAN RTS. HUB (Jan. 8, 2020), <https://perma.cc/UC4G-XH9C>.

<sup>130</sup> *Teitiota*, *supra* note 124, ¶¶ 2.9, 8.4. “Imminent” means that “the risk to life must be, at least, likely to occur.” *Id.*

<sup>131</sup> See *Forgotten Victims*, *supra* note 44; see also U.N. *Landmark Case for People Displaced by Climate Change*, AMNESTY INT’L (Jan. 20, 2020), <https://perma.cc/B9W4-YBY2>.

<sup>132</sup> Sinclair-Blakemore, *supra* note 129. Notably, the Biden White House has rejected the notion that ICCPR Article 6 contains the principle of *non-refoulement* and has declined to interpret the Article 6 “right to life” as a “positive duty to protect life in the face of all possible external threats.” WHITE HOUSE CLIMATE CHANGE REPORT, *supra* note 49, at 19.

<sup>133</sup> See *Teitiota* *supra* note 124, ¶ 9.11; *Forgotten Victims*, *supra* note 44.

sources.<sup>134</sup> It recognized that, absent national and international efforts to combat climate change, both sudden-onset and slow-onset climate events create an “extreme risk” that island nations like Kiribati may become completely submerged, eventually making them incompatible with the right to life.<sup>135</sup>

Although the HRC’s opinion acknowledged the extreme impacts of climate change on climate refugees like Teitiota, its holdings greatly limited the ability of future claimants to bring cases under ICCPR Article 6. First, the holding demonstrates that the Article 6 threshold for imminent harm is extremely high, almost to the point of impracticality. The HRC reasoned that because it was only difficult, and not impossible, for Kiribati residents to access potable water and engage in subsistence agriculture, Teitiota’s repatriation to Kiribati did not violate Article 6.<sup>136</sup> However, as the dissent astutely noted, it is difficult to imagine a situation that would meet the threshold if the conditions in Kiribati, a nation almost certain to disappear under water in the next ten to fifteen years, do not rise to that level.<sup>137</sup>

Second, the HRC’s reliance on the mere existence of Kiribati’s efforts to combat climate change—and not the effectiveness of those efforts—as evidence that the risk to Teitiota’s life was not as dire as he claimed could also set up perverse incentives for such island nations. The HRC stopped short of saying the risk to island nations from sudden-onset and slow-onset climate events was “imminent,” as required for an Article 6 violation.<sup>138</sup> The opinion explained that Kiribati’s government is already working to address climate change and that there is still time remaining for Kiribati and the international community to combat and mitigate its effects.<sup>139</sup> This creates a potential moral hazard, whereby nations may decide not to take action to prevent climate change in exchange for favorable protection for their endangered citizens.

Lastly, requiring Teitiota’s situation to be worse than other Kiribati citizens in order to receive ICCPR protection is problematic in the climate change context.<sup>140</sup> The HRC acknowledged that, in certain cases, general conditions may pose such an extreme risk to life as to meet the imminence threshold.<sup>141</sup> But the tribunal rejected Teitiota’s claim that overcrowding driven by rising sea levels, and the resulting increased violence in Kiribati, violated his right to life.<sup>142</sup> The

---

<sup>134</sup> *Teitiota*, *supra* note 124, ¶¶ 2.4–2.5, 4.6.

<sup>135</sup> *Id.* ¶¶ 9.9–9.12.

<sup>136</sup> *Id.* ¶¶ 2.4–2.5, 4.6.

<sup>137</sup> *See id.* Annex I.3 (Duncan Laki Muhumuza, dissenting).

<sup>138</sup> *Id.* ¶¶ 8.4, 9.9–9.12.

<sup>139</sup> *See id.* ¶¶ 2.3, 9.12.

<sup>140</sup> *See* Behrman & Kent, *supra* note 118, at 35.

<sup>141</sup> *Teitiota*, *supra* note 124, ¶ 9.3.

<sup>142</sup> *Id.* ¶ 4.6.

opinion explained that risk to life under Article 6 must be “personal” and “cannot derive merely from the general conditions in the receiving state,” except in the most extreme circumstances.<sup>143</sup> Teitiota could not meet this threshold because he had never been personally involved in, or threatened by, violence in Kiribati, and his situation was not “materially different” (worse)<sup>144</sup> than anyone else in the country.<sup>145</sup> Whereas international human rights and refugee law focus on individualized harms,<sup>146</sup> climate change usually affects whole communities.<sup>147</sup> In such cases, the requirement to demonstrate a greater risk of harm than the general population creates an almost insurmountable obstacle to residents of low-lying island nations.<sup>148</sup>

These limitations demonstrate why judges should approach future climate refugee cases with an understanding of both the short- and long-term effects of climate change and natural disasters on migration. Lowering the imminent harm threshold, expanding the criteria for such claims to include slow-onset events, and eliminating the requirement for the claimant’s situation to be significantly different than others in the country would make future climate refugee claims more viable.<sup>149</sup>

## V. EXPANDING EXISTING REFUGEE LAW

### A. 1951 Convention and 1967 Protocol

The core of the 1951 Convention (and its 1967 Protocol) is the customary principle of *non-refoulement*, established in Article 33(1) of the 1951 Convention.<sup>150</sup> An advisory opinion from the Office of the U.N. High Commissioner for Refugees (UNHCR) suggested that the *non-refoulement* provisions of the 1951 Convention and its 1967 Protocol apply extraterritorially.<sup>151</sup> In 2020, the UNHCR also issued legal considerations for refugee claims in the context of

---

<sup>143</sup> *Id.* ¶ 9.3.

<sup>144</sup> *Id.* ¶¶ 9.3, 9.6–9.7.

<sup>145</sup> *Id.* ¶¶ 4.5, 9.6. Notably, the UNHCR’s Legal Considerations dispelled this notion nine months later. UNHCR, LEGAL CONSIDERATIONS REGARDING CLAIMS FOR INTERNATIONAL PROTECTION MADE IN THE CONTEXT OF THE ADVERSE EFFECTS OF CLIMATE CHANGE AND DISASTERS ¶ 8 (Oct. 1, 2020), <https://perma.cc/QKG9-GTKN> [hereinafter UNHCR LEGAL CONSIDERATIONS].

<sup>146</sup> See UNHCR Factsheet on 1951 Convention and 1967 Protocol, *supra* note 32, at 3.

<sup>147</sup> See Behrman & Kent, *supra* note 118, at 35.

<sup>148</sup> See *id.*

<sup>149</sup> *Teitiota*, *supra* note 124, ¶ 9.3.

<sup>150</sup> See 1951 Convention, *supra* note 52, art. 33(1); see also *The 1951 Refugee Convention*, *supra* note 61.

<sup>151</sup> See Extraterritoriality Advisory Opinion, *supra* note 99, ¶¶ 24, 28. UNHCR advisory opinions, unlike judicial opinions, are not legally binding. *Id.* ¶ 6 n.9.

climate change and disasters,<sup>152</sup> recommending ways in which the 1951 Convention and regional agreements *could* be interpreted to afford recognition and protection to climate refugees. As the following Parts outline, the strongest claims for climate refugee protection arise when the climate refugee is a victim of violence and persecution in addition to the effects of climate change.<sup>153</sup>

### 1. Application to Climate Refugees

Persecution of climate refugees in climate-vulnerable regions or in the aftermath of natural disasters for reasons of race, religion, nationality, political opinion, or membership in a particular social group, could amount to persecution under the 1951 Convention.<sup>154</sup> Climate change and natural disasters, both in the short- and long-term, may potentially create a “well-founded fear” of persecution, as required by the 1951 Convention.<sup>155</sup> For example, natural disasters “limit access to and control over land, natural resources, livelihoods, individual rights, freedoms and lives,” “which may threaten . . . the enjoyment of the right to life; physical integrity; an adequate standard of living; health, water and sanitation; and self-determination and development.”<sup>156</sup>

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.<sup>157</sup> 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.”<sup>158</sup> Prior to, or in the wake of, a natural disaster, marginalized individuals may be disproportionately affected by unintentional or deliberate exclusion from government aid or benefits.<sup>159</sup> As resources become scarcer, governments could also withhold resources, deny aid, or fail to establish appropriate measures to protect particular groups.<sup>160</sup> In

---

<sup>152</sup> See generally UNHCR LEGAL CONSIDERATIONS, *supra* note 145.

<sup>153</sup> 1951 Convention, *supra* note 52, art. 1A(2).

<sup>154</sup> See UNHCR LEGAL CONSIDERATIONS, *supra* note 145, ¶ 10.

<sup>155</sup> *Id.* ¶ 7.

<sup>156</sup> *Id.* A person claiming refugee status need not show a risk of persecution greater than others similarly situated—only that the fear is well founded. UNHCR advocates a “forward-looking assessment” of the unique circumstances of each case to determine whether a fear is “well founded.” *Id.* ¶¶ 7–9.

<sup>157</sup> Rep. of the H.R.C., *supra* note 47, ¶ 70.

<sup>158</sup> *Id.*

<sup>159</sup> Women, children, the elderly, people with disabilities, LGBTQ+ individuals, people of color, Indigenous groups, and people living in rural areas may be especially at risk. See UNHCR LEGAL CONSIDERATIONS, *supra* note 145, ¶ 10.

<sup>160</sup> For example, in the wake of Hurricane Katrina, executives of two nonprofit organizations, supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR), published a report claiming that U.S. governmental actions had perpetuated race-based discrimination and ethnic cleansing in the distribution of aid and arbitrary incarceration of a

addition, journalists and environmental activists may be targeted for reporting on and advocating against climate change.<sup>161</sup>

## 2. Strongest Claim Under the 1951 Convention: Interaction with Conflict and Violence

The strongest claim for climate refugee protection under existing law arises under the 1951 Convention, specifically when the adverse effects of climate change interact with conflict and violence.<sup>162</sup> These effects may aggravate violence and render the state unable to protect victims of violence, qualifying the victims for refugee protection due to a well-founded fear of persecution by reason of their nationality, race, religion, political opinion, or membership in a particular social group.<sup>163</sup> Weakened governments and institutions can also trigger food insecurity and famine.<sup>164</sup> In addition, where governments are unable or unwilling to ensure equitable access to affordable food and agriculture, vulnerable individuals and groups may have claims under the 1951 Convention—especially when they rely on agriculture for their livelihoods.<sup>165</sup>

## B. Regional Agreements: The Organisation of African Unity Convention and the 1984 Cartagena Declaration

Existing refugee law could apply to people displaced by climate change and natural disasters. However, the criteria for refugee status in the 1951 Convention would need to be expanded to recognize internal displacement as legitimate grounds for protection, and to incorporate climate change and natural disasters

---

predominantly African American population. *See* MONIQUE HARDEN ET AL., RACIAL DISCRIMINATION AND ETHNIC CLEANSING IN THE UNITED STATES IN THE AFTERMATH OF HURRICANE KATRINA: A REPORT TO THE UNITED NATIONS' COMMITTEE FOR THE ELIMINATION OF RACIAL DISCRIMINATION 1 (Nov. 30, 2007). In addition, the OHCHR sponsored a report summarizing experiences from various South Asian natural disasters in countries such as India, Nepal, and Pakistan. The report found that Dalit people, belonging to the lowest caste in India and formerly known as “untouchables,” are “often systematically excluded from relief and recovery efforts due to their inherent socio-economic vulnerability.” OHCHR, EQUALITY IN AID: ADDRESSING CASTE DISCRIMINATION IN HUMANITARIAN RESPONSE, INTERNATIONAL DALIT SOLIDARITY NETWORK 3–5 (Sept. 2013), <https://perma.cc/D2VJ-V4C2>.

<sup>161</sup> *See* UNHCR LEGAL CONSIDERATIONS, *supra* note 145, ¶ 10.

<sup>162</sup> *See id.* ¶ 11.

<sup>163</sup> *See id.* The 2021 Biden White House report discussed the limited potential for climate-displaced individuals to bring claims under the 1951 Convention, particularly in instances where conflict, violence, or persecution interact with the effects of climate change and natural disasters. WHITE HOUSE CLIMATE CHANGE REPORT, *supra* note 49, at 17–19. It emphasized that the U.S. interprets its *non-refoulement* obligations in line with the 1951 Convention and its 1967 Protocol. *Id.*

<sup>164</sup> *See id.*

<sup>165</sup> *See id.*

into the definition of events seriously disturbing the public order.<sup>166</sup> This approach can be found in two regional refugee agreements: the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, also known as the Organisation of African Unity Convention (OAU Convention),<sup>167</sup> and the 1984 Cartagena Declaration on Refugees (Cartagena Declaration).<sup>168</sup> The OAU Convention provides refugee protection to “every person 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.”<sup>169</sup> The Cartagena Declaration, although not a binding treaty,<sup>170</sup> 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.”<sup>171</sup>

Both agreements broaden the definition of a refugee to cover persons fleeing their country of origin due to “generalized violence,” other “events seriously disturbing public order,” or “massive violation[s] of human rights.”<sup>172</sup> Under this definition, for example, individuals fleeing the slow-onset effect of famine,<sup>173</sup> especially where conflict contributes to such famine, would meet the refugee criteria.<sup>174</sup> Therefore, these agreements may provide region-specific protection for climate refugees displaced by certain slow-onset climate events.<sup>175</sup>

### 1. “Events Seriously Disturbing Public Order”

Although the regional agreements do not define “events seriously disturbing public order,” interpreting this phrase broadly to cover climate change and natural disasters could bolster climate refugees’ claims. The U.N.

---

<sup>166</sup> See Rep. of the H.R.C., *supra* note 47, ¶ 72.

<sup>167</sup> See generally Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45 [hereinafter 1969 OAU Convention].

<sup>168</sup> See generally Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Nov. 22, 1984), <https://perma.cc/J2FY-J8JR> [hereinafter 1984 Cartagena Declaration].

<sup>169</sup> 1969 OAU Convention, *supra* note 167, art. I(2). The UNHCR’s Legal Considerations are directed at interpretations of the 1969 OAU Convention, but also apply to the 1984 Cartagena Declaration. See UNHCR LEGAL CONSIDERATIONS, *supra* note 145, ¶ 14.

<sup>170</sup> See Vienna Convention on the Law of Treaties art. 1(a), May 23, 1969, 1155 U.N.T.S. 331.

<sup>171</sup> 1984 Cartagena Declaration, *supra* note 168, Conclusion III(3).

<sup>172</sup> 1969 OAU Convention, *supra* note 167, art. I(2); see also 1984 Cartagena Declaration, *supra* note 168, art. III.3.

<sup>173</sup> *Slow Onset: The “Other” Disaster*, CTR. FOR DISASTER PHILANTHROPY (July 11, 2014), <https://perma.cc/KR3T-N6MK>.

<sup>174</sup> See Rep. of the H.R.C., *supra* note 47, ¶ 72.

<sup>175</sup> See *id.*



defines a disaster as “[a] serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts.”<sup>176</sup> This definition acknowledges that the effects of a climate disaster may be immediate and acute, but may also be widespread, slow-onset, and long-lasting.<sup>177</sup> International law does not clearly define “public order.” However, in the context of the OAU Convention and the Cartagena Declaration, public order refers to the “prevailing level of the administrative, social, political and moral order as assessed according to the effective functioning of the State in relation to its population and based on respect for the rule of law and human dignity.”<sup>178</sup>

A “disturbance” to this order is anything that disrupts its stable functioning.<sup>179</sup> The UNHCR makes clear that the seriousness of this disturbance should be assessed on a case-by-case basis, considering factors such as “the nature and duration of the disruption and its consequences for the security and stability of the State and society.”<sup>180</sup> Because climate change could be said to seriously disturb the public order due to its duration, severity, and effects on national and global security, aligning the 1951 Convention with the public order prong of the regional agreements’ refugee definition would help provide legal protection to climate refugees.

## 2. “Compelled to Leave and Seek Protection Abroad”

The 1951 Convention can also draw on the second prong of the regional agreements’ refugee definition to protect internally displaced people, thereby addressing gaps in the global refugee framework. To qualify for protection under the OAU Convention (and the Cartagena Declaration), climate change or a climate disaster must have an impact on the person’s habitual place of residence so as to put them at risk of serious harm, forcing them to flee.<sup>181</sup> Whether the effects of climate change or a natural disaster are severe enough to force people to flee and seek protection abroad depends on a number of factors. These include the aftermath of the climate event or disaster; its proximity to the refugee’s residence; its effect on the refugee’s life, liberty, health, and exercise of other human rights; and the state’s disaster response.<sup>182</sup> Even if a disaster

---

<sup>176</sup> UNHCR LEGAL CONSIDERATIONS, *supra* note 145, ¶ 15.

<sup>177</sup> *See id.*

<sup>178</sup> *Id.* ¶ 16.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* The effect of the disturbance is the central question in the assessment of seriousness, not whether the disturbance has a human or other cause. *Id.*

<sup>181</sup> *See* UNHCR LEGAL CONSIDERATIONS, *supra* note 145, ¶ 17.

<sup>182</sup> *See id.*

seriously disrupts public order, refugee claims will only be permitted when the state is unable or unwilling, even with international assistance, to address the disaster's impacts on the state and its population.<sup>183</sup>

Furthermore, the regional agreements fill one of the glaring gaps in other global refugee treaties: protection for internally displaced people. The availability of internal relocation alternatives may weaken refugee claims under the 1951 Convention, but not under the regional agreements. This is because the OAU Convention covers persons who flee situations that affect the “part *or* the whole” of their country of origin.<sup>184</sup> Therefore, the 1951 Convention should be altered to incorporate aspects of the refugee and public order definitions in the regional agreements that protect internationally *and* internally displaced people.

## VI. CONCLUSION

The global community can and must do more to protect climate refugees. We already have many of the tools needed to do so. The most promising solutions to protect climate refugees would come from recognition under the 1951 Convention. Such claims are most compelling when climate change and natural disasters overlap with armed conflict and violence, as the claims in those circumstances cannot be predicated on the effects of climate change alone. Regional agreements and human rights law provide examples of how to expand the refugee definition in the 1951 Convention and interpret existing terms more broadly to provide strong protection for climate refugees.

International tribunals have recognized the right to life and freedom from cruel and unusual punishment under the ICCPR as a basis for blocking the repatriation of climate refugees. However, a tribunal has yet to determine that a climate refugee claim meets the required imminent harm threshold for protection. Nevertheless, international tribunals could be viable avenues for climate refugee recognition and protection, provided that judges approach such cases with an understanding of the factors influencing climate-driven migration. In the long term, future research may examine the possibility of specialty international tribunals or specialized judges with expertise in the interactions between migration, environmental law, and climate change.

Some national governments, nongovernmental organizations, and Indigenous groups are leading the way in developing solutions to displacement due to climate change and natural disasters. Beginning in 2012, the governments of Switzerland and Norway co-chaired the Nansen Initiative,<sup>185</sup> which resulted in

---

<sup>183</sup> *See id.*

<sup>184</sup> *Id.* ¶ 13 (emphasis added); *see id.* ¶¶ 12, 18. In a similar vein, the Cartagena Declaration recommends using the refugee definition in the OAU Convention as a precedent for refugee protection in Central America. *See* 1984 Cartagena Declaration, *supra* note 168, Conclusion III(3).

<sup>185</sup> *The Nansen Initiative*, INT'L. ORG. FOR MIGRATION (2022), <https://perma.cc/2UAY-35V9>.

the 2015 Platform on Disaster Displacement, a protection agenda for climate-displaced individuals backed by 109 countries.<sup>186</sup> In Denmark, in the face of an immigration-resistant government,<sup>187</sup> nonprofit organizations such as the Danish Refugee Council have developed frameworks to advocate for climate refugees.<sup>188</sup> The island of Fiji has introduced government-run schemes for relocating its eighty at-risk communities.<sup>189</sup>

At the community level, Indigenous Pacific Islanders have called for cross-national collaboration to mitigate the effects of climate change.<sup>190</sup> On October 8, 2021, after an unprecedented plea from climate-vulnerable Bangladesh and a cross-regional group of fifty-six states, the HRC passed a resolution establishing a “Special Rapporteur on the promotion and protection of human rights in the context of climate change.”<sup>191</sup> In December 2022, a coalition of eighteen states, led by the Pacific Island nation of Vanuatu, presented a draft resolution to the U.N. General Assembly requesting an advisory opinion on climate change from the International Court of Justice (ICJ).<sup>192</sup> If the General Assembly passes this

---

<sup>186</sup> See *Platform on Disaster Displacement*, FED. DEPT OF FOREIGN AFFS. (SWITZ.) (2022), <https://perma.cc/QE9X-U51T>.

<sup>187</sup> See Thomas Erdbrink & Jasmina Nielsen, *Former Immigration Minister in Denmark Sentenced to Prison for Separating Couples*, N.Y. TIMES (Dec. 13, 2021), <https://www.nytimes.com/2021/12/13/world/europe/denmark-immigration-minister-migrants-prison.html>.

<sup>188</sup> See DANISH REFUGEE COUNCIL, *FRAMEWORK ON CLIMATE CHANGE AND THE ENVIRONMENT 2* (Jan. 2021), <https://perma.cc/KWP5-T9R7>.

<sup>189</sup> See Pearlman, *supra* note 83.

<sup>190</sup> See *id.* Groups of Indigenous activists, including Kiribati’s former president and two-time Nobel Peace Prize nominee Anote Tong; poet-educator Kathy Jetñil Kijiner from the Marshall Islands; and Simon Kofe, Tuvalu’s current Foreign Minister and a Nobel Peace Prize nominee, have been at the forefront of climate activism and adaptation efforts. Carol Farbotko & Taufieki Kitara, *Climate Leadership in the ‘Disappearing Islands’*, GEO. J. INT’L AFFS. (May 6, 2022), <https://perma.cc/TS3D-CQ25>.

<sup>191</sup> Human Rights Council Res. 48/14, U.N. Doc. A/HRC/RES/48/14 (Oct. 8, 2021); Amali Tower, *With One Voice, Global Civil Society and Indigenous Groups Call for U.N. Special Rapporteur on Human Rights and Climate Change*, CLIMATE REFUGEES (June 22, 2021), <https://perma.cc/C35Q-AR4C>. In 2021, over 500 global civil society organizations, Indigenous groups, and academics signed an open letter to the HRC calling for a dedicated Special Rapporteur on human rights and climate change. *An Open Letter by Global Civil Society and Indigenous Peoples for the Establishment of a New U.N. Special Rapporteur on Human Rights and Climate Change* (July 14, 2021), <https://perma.cc/SGL3-YSG4>. The first Special Rapporteur’s mandate went into effect on May 1, 2022. See *Special Rapporteur on Climate Change*, U.N. (2022), <https://perma.cc/84EG-9CHF>. The issue of climate migration will be discussed at the 2023 climate change conference, COP 28. See *Mass Climate Migration Is Coming*, *supra* note 35.

<sup>192</sup> Chloé Farand, *Vanuatu Publishes Draft Resolution Seeking Climate Justice at U.N. Court*, CLIMATE HOME NEWS (Nov. 30, 2022), <https://perma.cc/X9AW-ZLB6>. An advisory opinion on climate change from the ICJ, the principal judicial organ of the U.N., would not be binding. *Id.* Such an opinion would, however, strengthen the international legal framework on climate change and fortify the positions of vulnerable nations in climate negotiations. *Id.*

resolution, the ICJ will issue an advisory opinion detailing the responsibilities and obligations of states under international environmental law and international human rights law to protect present and future generations from the adverse effects of climate change.<sup>193</sup> These developments signal that, although there are challenges ahead, the future for climate refugees is not lost.

Despite some progress, developed nations have lagged in introducing additional practical measures to protect climate refugees. These include humanitarian visa programs in cooperation with beneficiary nations and communities most affected by climate change. Climate change and its political, economic, and social impacts have the potential to disrupt the stability and security of our planet, particularly its most vulnerable populations. In the face of this crisis, international cooperation and leadership are critical to fill the legal void and achieve climate justice for the planet's most vulnerable populations. The future of our planet and its people is in our hands.

---

<sup>193</sup> *Climate Crisis: International Court Should Play Key Role in Delivering Climate Justice*, AMNESTY INT'L (Dec. 8, 2022), <https://perma.cc/MP36-LCKZ>.