

There Is No Refuge in Climate Change, Only Death: Exploring International Human Rights Approaches

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ABSTRACT

The collective consciousness of climate change is often reduced to many stark images of destruction, depicting its most blatant consequences: flooded cities, scorched landscapes, disappearing islands, and communities devastated by natural disasters. While we recognize this suffering, its implications for our own lives can feel like a distant prophecy, something we can anticipate experiencing but believe we may never personally encounter. This Note confronts that distance, exploring the human rights dimensions of climate-induced displacement and the urgent reality of climate refugees. It critiques existing international frameworks and protocols, revealing gaps that leave the most vulnerable exposed. Advocating for a transformative expansion of international standards, protections, and remedies, this Note argues that without urgent reform, the global community and nation-states risk perpetuating conditions that threaten human dignity, survival, and the very possibility of a life worth living.

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INTRODUCTION

Largely uncontested among climate scientists is the daunting assertion that the repercussions of global warming pose catastrophic threats to nearly “every aspect of our lives.”¹ Many of these threats range from economic and housing devastations caused by unprecedented flooding² to the emerging consequences of natural resource insecurity.³

Because the impacts of climate change are experienced across various facets of our lives, governmental responses often default to reactive mitigation and adaptation strategies.⁴ On November 14, 2023, President Joe Biden’s administration announced an allocation of nearly \$6 billion to reduce global warming and mitigate the impacts of climate-induced natural disasters through substantial financial and infrastructural aid.⁵ While these measures signal a commitment to addressing the climate crisis, they often operate more like temporary fixes than comprehensive solutions.

One crucial factor is that marginalized and Indigenous communities experience the effects of climate change in acute and often existential ways that conventional policy approaches frequently overlook.⁶ These lived experiences limit the applicability of solutions that focus primarily on emissions reduction, post-disaster rebuilding, and expanded disaster aid—strategies world leaders commonly advocate.⁷

Many marginalized and Indigenous communities exist both within and outside the geopolitical spectrum of what this Note terms “free rider” and “forced rider” nation-states.⁸ Free rider nations are those that contribute disproportionately to global greenhouse gas emissions yet derive economic and political benefits from exploiting resources without internalizing environmental costs.⁹ These nations benefit from climate inaction elsewhere while remaining largely insulated from immediate existential threats posed by climate change.¹⁰

In contrast, forced rider nations—such as small island states—bear a disproportionate burden of climate consequences despite contributing minimally to the global

¹Rachel Frazin, *Biden Rolls Out Billions for Climate Resilience in the Wake of Dire Climate Report*, The Hill (Nov. 14, 2023, 11:56 AM), <https://thehill.com/policy/energy-environment/4308964-biden-billions-climate-resilience-dire-report/>.

²Adam B. Smith, *2023: A Historic Year of U.S. Billion-Dollar Weather and Climate Disasters*, NOAA Climate.gov (Jan. 8, 2024), <https://www.climate.gov/news-features/blogs/beyond-data/2023-historic-year-us-billion-dollar-weather-and-climate-disasters>.

³Michael Brottrager et al., *Natural Resources Modulate the Nexus Between Environmental Shocks and Human Mobility*, 14 *Nature Commc’ns* 1393 (2023).

⁴Rosina Bierbaum, *A Comprehensive Review of Climate Adaptation in the United States: More Than Before, but Less Than Needed*, 18 *Mitig. Adapt. Strateg. Glob. Change* 361 (2013).

⁵Raymond Zhong, *The Toll of Climate Disasters Is Rising. But a U.S. Report Has Good News, Too*, N.Y. Times (Nov. 14, 2023), <https://www.nytimes.com/2023/11/14/climate/biden-national-climate-assessment.html>.

⁶U.S. Environmental Protection Agency, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*, EPA 430-R-21-003 (Sept. 2021), <https://www.epa.gov/cira/social-vulnerability-report>.

⁷*Id.*

⁸Natalie M. Roy, *Climate Change’s Free Rider Problem: Why We Must Relinquish Freedom to Become Free*, 45 *Wm. & Mary Env’tl. L. & Pol’y Rev.* 821, 837 (2021).

⁹*Id.*

¹⁰*Id.*

emissions that drive them.¹¹ For these communities, the consequences of climate change extend far beyond physical reconstruction after disasters; they confront the stark realities of displacement, statelessness, and the erosion of cultural and communal ties.¹²

For small island nations and similarly vulnerable populations, climate-induced disruptions may render displacement inevitable within the next 10–15 years.¹³ To understand the disparities between climate adaptation and mitigation strategies proposed by free rider nations and the lived experiences of communities facing imminent displacement, one must examine the underlying differences in axiology—the values and priorities guiding national decision-making. Free rider nations often overlook climate-induced displacement because their citizens are not imminently threatened with statelessness or loss of homeland; they cannot envision themselves as climate refugees.¹⁴ By contrast, forced rider nations face the tangible reality of being rendered stateless, uprooted from ancestral lands, and disconnected from the sociopolitical protections of their nations.¹⁵

Despite the geographic and political insulation of free rider nations, they cannot be absolved of responsibility for the disproportionate harms inflicted upon marginalized and Indigenous populations. This Note argues that while conventional measures to reduce the impact of climate change are necessary, they are insufficient. A more comprehensive approach must include a paradigm shift in international and domestic legal frameworks to recognize and protect individuals displaced by climate change. Current definitions of “refugee” fail to encompass climate-induced displacement, denying essential rights and recognition. This legal gap not only restricts accountability and support from free rider nations but also constitutes a human rights violation—effectively rendering climate refugees civilly dead.

I. WHAT IS A REFUGEE?

A. *History Of International Refugee Recognition*

The origins of refugee recognition and its extension of legal protection have deep historical roots that can be traced back to an ancient global history in which individuals fleeing political despotism sought refuge in neighboring states.¹⁶ In more recent history, the foundations of modern refugee protection were firmly established in 1948 following the conclusion of World War II, when the United Nations (U.N.) adopted the Universal Declaration of Human Rights (U.D.H.R.).¹⁷ Driven by a mission to pre-

¹¹Frederica Cappelli et al., *The Trap of Climate Change-Induced “Natural” Disasters and Inequality*, 70 *Glob. Environ. Change* 2 (2021).

¹²Grace Bowie, *Why Cultural Heritage Belongs in the Climate Conversation*, *Folklife Magazine* (Oct. 23, 2023), <https://folklife.si.edu/magazine/cultural-heritage-climate-conversation>.

¹³Hossein Ayazi & Elsadig Elsheikh, *Climate Refugees: The Climate Crisis and Rights Denied*, UC Berkeley, <https://escholarship.org/uc/item/3s21m9p2>.

¹⁴Beatrice Magistro et al., *Identifying American Climate Change Free Riders and Motivating Sustainable Behavior*, 14 *Sci. Rep.* 6574 (2024).

¹⁵*Id.*

¹⁶M. Cherif Bassiouni, *International Extradition: United States Law & Practice* 6 (6th ed. 2014).

¹⁷United Nations General Assembly, *Universal Declaration of Human Rights* (1948).

vent the recurrence of wartime atrocities, the U.N. adopted the U.D.H.R. to recognize, proclaim, and assert universal civil, political, and economic rights afforded to every person. This affirmed the principle that all individuals are entitled to humanity and dignity, regardless of whether they or their nations face domestic or international conflict.

The U.D.H.R., integral to the recognition and evolution of international refugee status and rights, articulated three critical articles that shape contemporary understanding:

Article 13: Grants the right to leave one's own country.¹⁸

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14: Grants the right to seek and enjoy asylum from persecution.¹⁹

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Article 15: Grants the right to nationality.²⁰

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Shortly after the adoption of the U.D.H.R., the U.N. confronted the stark reality of millions displaced by the war. Building upon the U.D.H.R.'s guarantees—especially Articles 13, 14, and 15—the U.N. translated these principles into concrete action by establishing the United Nations High Commissioner for Refugees (U.N.H.C.R.) in 1950.²¹ The following year, the U.N. adopted the Convention Relating to the Status of Refugees, formally recognizing international refugee status and articulating forty-six articles guaranteeing rights and protections for refugees seeking temporary or permanent refuge within signatory states.²² These protections were later expanded through the 1967 Protocol Relating to the Status of Refugees.²³

¹⁸Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, art. 13 (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹⁹Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, art. 14 (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

²⁰Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, art. 15 (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

²¹U.N. General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <https://www.refworld.org/docid/3be01b964.html>.

²²See *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 150; G.A. Res. 217 (III) A, *Universal Declaration of Human Rights* (Dec. 10, 1948).

²³U.N. General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <https://www.refworld.org/docid/3ae6b3ae4.html>.

B. Refugee Rights, Protections Entitlements

The Convention Relating to the Status of Refugees is a foundational source of international law that uplifts and expands nation-states' normative customs regarding accepting and acknowledging refugees within their borders.²⁴ At its core, the Convention sets forth minimum standards, protections, and fundamental rights afforded to refugees, with the encouragement of expansion.²⁵ These rights and protections include entitlements and equal access to education,²⁶ employment,²⁷ healthcare,²⁸ and judicial proceedings,²⁹ following a hosting nation's formal notice and acceptance of a refugee. Additionally, the Convention underscores that all rights and protections included in the Convention are governed by the guiding principle of Article 33: Non-Refoulement.³⁰

Article 33: Non-Refoulement³¹

No state “shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Non-refoulement is a critical rule of international customary law. It reflects the principle that once an individual has fled their country of origin due to threats of political persecution—or conditions that demonstrate persecution-based intent—nation-states may not forcibly return them.³² International law recognizes that returning a person to a country posing a significant threat to their life would be unconscionable and would violate core rights enshrined not only in the Refugee Convention but also in other international human rights instruments.³³ Non-refoulement thus ensures fundamental protection and affirms a refugee's entitlement to human rights amid political turmoil and instability. Moreover, the principle implicitly rejects punitive measures against refugees for seeking protection, affirming that they deserve a minimum standard of treatment as they attempt to establish new lives following displacement.

Despite its importance, climate refugees are currently excluded from these rights and protections because they do not fall within the Refugee Convention's formal definition of a refugee.³⁴ This is deeply concerning given the escalating severity

²⁴UN High Commissioner for Refugees (UNHCR), *The Principle of Non-Refoulement as a Norm of Customary International Law* (1994), available at <https://www.refworld.org/docid/437b6db64.html>.

²⁵*Id.*

²⁶U.N. General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 168.

²⁷*Id.* at 164–66.

²⁸*Id.* at 168.

²⁹*Id.* at 164.

³⁰UNHCR, *The Principle of Non-Refoulement*, *supra* note 24.

³¹*Id.* at 176.

³²UNHCR, *The Principle of Non-Refoulement*, *supra* note 24.

³³*Id.* at 176.

³⁴Caitlan M. Sussman, *A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?*, 2 *Chi. J. Int'l L.* 41, 50 (2023).

of climate-induced consequences, the inadequacy of existing climate mitigation and adaptation strategies, and the disproportionate impacts on at-risk nations.

In addition to excluding climate refugees from Convention protections, another significant limitation emerges in Article 31 of the Refugee Convention.

Article 31: Refugees Unlawfully in the Country of Refuge³⁵

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary, and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all necessary facilities to obtain admission into another country.

Article 31 protects Convention-recognized refugees from penalties for unlawful or unauthorized entry.³⁶ However, because climate refugees fall outside the Convention's definition, they receive none of these protections. Instead, Article 31's structure implicitly authorizes punitive measures—including criminal penalties—for all people fleeing life-threatening environmental collapse.

This legal gap means that climate refugees may face sanctions for circumstances entirely beyond their control.³⁷ They risk being rendered illegally stateless, without legal protection, and without recognition from the international system or signatory states. The gap underscores the urgent need for an expanded refugee definition, a reconceptualization of legally cognizable forms of forced displacement, and legal frameworks that specifically address life after climate-induced migration.

C. Legal Framework: U.N.H.C.R.'S Definition

The U.N.H.C.R.'s 1951 Refugee Convention formally defined a refugee as someone:

“Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”³⁸

³⁵*Id.* at 174.

³⁶*Id.*

³⁷UNHCR, *The Exclusion Clauses: Guidelines on Their Application* (1996), available at <https://www.refworld.org/docid/3ae6b31d9f.html>.

³⁸Convention Relating to the Status of Refugees, art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

D. *Limitations In Addressing Climate-Induced Displacement*

The U.N.H.C.R.'s current definition of a refugee excludes various characteristics, factors, and conditions that significantly affect an individual's need to seek refuge beyond their nation of origin. This broad exclusion has prompted climate refugees—formerly referred to as environmental refugees—to call for a radical and necessary definitional change.³⁹ Climate refugees have long sought an expansion of the definition that would entitle them to international recognition and the protections afforded under the 1951 Refugee Convention and its Protocol.⁴⁰ Despite decades of advocacy, minimal progress has been made toward amending the Convention or its Protocol to encompass climate-induced displacement.⁴¹

This stagnation raises several critical concerns that leave climate-displaced persons in grave danger if the definition remains unchanged.

Persecution Requirement. Under the Convention, refugee status requires a “well-founded fear of persecution” based on membership in a protected category.⁴² This threshold inherently excludes individuals displaced by climate change. Although the persecution standard is indispensable for protecting those fleeing political oppression, it fails to extend protection to climate-displaced persons who experience comparable violence, deprivation, and threats to life. Extensive research demonstrates a clear connection between climate-driven deprivation—such as food insecurity,⁴³ natural-resource scarcity,⁴⁴ inadequate housing,⁴⁵ and economic instability⁴⁶—and increased conflict.⁴⁷ These conditions fuel internal violence (including disproportionate violence against women and children)⁴⁸ and external violence, such as xenophobic attacks triggered by climate-driven migration.⁴⁹ By maintaining a narrow persecution standard and refusing to recognize climate-driven violence as analogous to political persecution, states risk violating their obligations under the U.D.H.R. and the Refugee Convention.

Availment Challenge. To qualify as a refugee, an individual must be “unwilling or unable” to avail themselves of their nation's protection.⁵⁰ This requirement poses significant problems for states facing climate-induced displacement. Many of the na-

³⁹Saverio Bellizzi et al., *Global Health, Climate Change and Migration: The Need for Recognition of “Climate Refugees,”* 13 *J. Glob. Health* 1 (2023).

⁴⁰Issa Ibrahim Berchin et al., *Climate Change and Forced Migrations: An Effect Toward Recognizing Climate Refugees,* 84 *Geoforum* 147 (2017).

⁴¹*Id.*

⁴²Convention Relating to the Status of Refugees, art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

⁴³Hans G. Bohle et al., *Climate Change and Social Vulnerability: Toward a Sociology and Geography of Food Insecurity,* 4 *Glob. Environ. Change* 37 (1994).

⁴⁴World Bank, *World Development Report 2011: Conflict, Security, and Development* (2011).

⁴⁵Simon Hales et al., *Implications of Global Climate Change for Housing, Human Settlements, and Public Health,* 22 *Rev. Environ. Health* 301 (2007).

⁴⁶*Id.*

⁴⁷Vally Koubi, *Climate Change and Conflict,* 22 *Ann. Rev. Pol. Sci.* 343 (2019).

⁴⁸United Nations Human Rights Office of the High Commissioner, *Climate Change Exacerbates Violence Against Women and Girls* (July 12, 2022).

⁴⁹Craig A. Anderson & Matt DeLisi, *Implications of Global Climate Change for Violence in Developed and Developing Countries,* in *The Psychology of Social Conflict and Aggression* 249 (2011).

⁵⁰Art. 1(A)(2).

tions most endangered by climate impacts lack the infrastructure, resources, or political capacity to provide “availment” pathways for their citizens.⁵¹ While exhaustion of domestic protections is a necessary component of the Convention’s refugee-status determination,⁵² the availment requirement unfairly attributes fault to nations ravaged by climate impacts—nations that are not the cause of their vulnerabilities. Reducing the scope of what constitutes “availment” is essential for holding high-emitting nations accountable and for preventing the isolation of climate-vulnerable nations.

Limitation on Fear Versus Resilience. The Refugee Convention’s emphasis on fear as the central motivator for displacement overlooks the importance of resilience in the survival strategies of displaced people.⁵³ People flee not only because they fear imminent harm, but also because they possess a fundamental desire to live, exist, and persevere. An expanded definition that acknowledges both resilience and fear would better reflect the complex motivations underlying modern displacement and support a more robust and inclusive framework for refugee classification.

Fled Status Limitations. The Convention currently requires an individual to have already left their country of origin to qualify as a refugee. This requirement presents a unique challenge for climate refugees, whose need to flee arises on an unpredictable climate timeline.⁵⁴ Imminent climate threats—such as sea-level rise, salinization, or ecosystem collapse—may not result in immediate displacement, yet still warrant international protection. Expanding the criteria for “fled status” to include those facing impending climate-based threats would establish a proactive protection framework and ensure legal recognition before total catastrophe occurs.

In conclusion, state signatories to the Refugee Convention should work to broaden the definition of “refugee” in light of these critiques. Expanding the definition to encompass the realities of climate-induced displacement would not only ensure protection for nations facing imminent loss of territory, but would also reaffirm the international community’s commitment to human dignity and shared responsibility.

II. CASE STUDY: CLIMATE-INDUCED DISPLACEMENT CIVIL DEATH

A. *Legal Claim Recognition: Teitiota v. New Zealand*

While discussions advocating for the legal recognition of climate refugees have been ongoing for decades, the first-ever case before an international human rights entity took place in 2015. *Teitiota v. New Zealand* is a landmark case that offers critical insights into permissible legal claims related to climate-induced displacement.⁵⁵ The case is paramount because it illuminates the first major declarations concerning the right to life for climate refugees, demonstrates the limitations imposed by state

⁵¹Karen Elizabeth McNamara & Chris Gibson, “We Do Not Want to Leave Our Land”: Pacific Ambassadors at the United Nations Resist the Category of “Climate Refugees,” 40 *Geoforum* 475 (2009).

⁵²U.N. High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status* (2019).

⁵³Chris Methmann & Angela Oels, From “Fearing” to “Empowering” Climate Refugees: Governing Climate-Induced Migration in the Name of Resilience, 46 *Security Dialogue* 51 (2015).

⁵⁴UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (2019).

⁵⁵*Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, U.N. Human Rights Comm. (Jan. 7, 2020), <https://www.refworld.org/cases,HRC,5e26f7134.html>.

courts and international entities like the U.N. Human Rights Committee, and reveals the potential consequences arising from the barriers it introduces.

In 2012, Ioane Teitiota sought refugee status upon the expiration of his residency permit in New Zealand.⁵⁶ In his application, Teitiota argued that he and his family were entitled to refugee status due to the impacts of climate change on Kiribati, a small island nation in the Central Pacific Ocean.⁵⁷ He asserted that rising sea levels had triggered internal migration trends that resulted in overcrowding, increased flooding, violent land disputes, natural-resource scarcity, and widespread environmental degradation.⁵⁸

Despite Teitiota's well-developed application, New Zealand denied refugee status, rendering him an unlawful occupant during his lengthy appeal process.⁵⁹ His first appeal, filed in 2013 with the New Zealand Immigration and Protection Tribunal, was rejected on the ground that he and his family did not objectively face "a real risk of being persecuted if returned to Kiribati" as defined by the 1951 Refugee Convention.⁶⁰ Teitiota then appealed to the New Zealand Court of Appeal and the New Zealand Supreme Court. Both courts upheld the Tribunal's decision, concluding that Teitiota and his family did not face an imminent or likely risk of harm in Kiribati and that the Government of Kiribati had not failed "to take steps to protect its citizens from the effects of environmental degradation to the extent that it could."⁶¹

In 2015, Teitiota and his family were deported to Kiribati.⁶² Following their deportation, Teitiota filed a complaint with the U.N. Human Rights Committee, alleging a violation of Article 6 of the International Covenant on Civil and Political Rights (ICCPR).⁶³ Teitiota argued that New Zealand's denial of refugee status and subsequent deportation violated the principle of non-refoulement because it "exposed him to life-threatening conditions" arising from climate change in Kiribati.⁶⁴ He further claimed that New Zealand had subjected him and his family to an arbitrary deprivation of life and cruel treatment, in violation of Article 6 of the ICCPR.⁶⁵

In 2020, the U.N. Human Rights Committee addressed several critical questions raised by Teitiota's complaint.⁶⁶ First, the Committee considered whether a state is obligated to uphold the principle of non-refoulement when the claimant cites climate-change conditions as a threat to life.⁶⁷ The Committee unequivocally affirmed that states bear an affirmative duty to protect all individuals within their jurisdiction from "foreseeable, life-threatening" conditions, including situations that create risks of "unnatural or premature death."⁶⁸ This groundbreaking declaration broadened the

⁵⁶*Id.* at 2.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰*Id.* at 4, para. 2.8.

⁶¹*Id.* at 5, para. 2.10.

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.* at 7.

⁶⁵*Id.*

⁶⁶*Id.* at 10.

⁶⁷*Id.* at 9, para. 9.3.

⁶⁸*Id.* at 9–10, para. 9.4.

interpretation of Article 6 by establishing that climate-induced risks fall within the scope of what constitutes a deprivation of life.

The Committee emphasized that climate-related consequences represent “some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”⁶⁹ This ruling is significant for future climate-refugee claimants because it affirms that individuals may seek protection under international human rights law—after exhausting domestic remedies—based on the principles articulated in this decision.

The Committee next clarified what constitutes permissible refoulement in the context of climate-induced deprivation claims. It identified four central factors to determine whether refoulement violates Article 6:

1. There must be a “real, personal, and reasonably foreseeable risk” that distinguishes the claimant from the general population, acknowledging that extreme cases may allow for general risk assessments.⁷⁰
2. There must be concrete, credible evidence of a foreseeable threat to health or life, including the risk of premature death.⁷¹
3. State-based remedies or interventions must be unavailable, resulting in deprivation of essential resources or extreme indigence.⁷²
4. Climate-induced consequences must pose a severe risk to life such that neither domestic nor international intervention could reasonably mitigate the harm.⁷³

Upon evaluating Teitiota’s evidence, the Committee concluded that he failed to satisfy any of the four factors.⁷⁴ The Committee determined that state-based remedies were available in Kiribati to mitigate climate-related harms and that neither Teitiota nor his family faced a “real, personal risk to life.”⁷⁵ Consequently, it held that New Zealand’s actions did not violate Article 6 of the ICCPR or the principle of non-refoulement.⁷⁶

Although Teitiota was unsuccessful, the precedent established in his case provides a crucial framework for future claimants pursuing climate-related asylum claims. The Committee’s reasoning—its articulated standards, thresholds, and interpretive guidance—creates a vital legal foundation for recognizing the unique claims raised by climate refugees.

B. Legal Resettlement Recognition: Australia & Tuvalu

For nearly two decades, Tuvalu, an island nation in the South Pacific Ocean, has faced existential threats due to rising sea levels, resulting in a gradual submersion

⁶⁹*Id.*

⁷⁰*Id.* at 11, para. 9.7.

⁷¹*Id.* at 11, para. 9.8.

⁷²*Id.* at 11, para. 9.9.

⁷³*Id.* at 12, para. 9.12.

⁷⁴*Id.* at 12, para. 9.14.

⁷⁵*Id.*

⁷⁶*Id.* at 12.

that has forecasted the country's disappearance by 2035.⁷⁷ Despite a history marked by resilience and repeated pleas for global intervention, the international community has largely overlooked Tuvalu's climate crisis.

Since 2000, when the Tuvaluan government implored Australia and New Zealand to accept their citizens as refugees, the international response has been insufficient and inadequate.⁷⁸ Instead of receiving structural and financial support to mitigate climate consequences, Tuvalu and similarly threatened islands find themselves sanctioned to a state of civil death. Historically, civil death referred to circumstances within the criminal legal system in which a convicted person had their legal rights stripped following a criminal infraction.⁷⁹ In the modern context, however, civil death symbolizes the abrogation of rights absent a criminal conviction, effectively depriving a person of legal existence.⁸⁰

Tuvalu has arguably confronted the harsh realities of civil death as the international community continues to hold it accountable for mitigating climate consequences that are beyond its control and capacity. Despite facing the imminent threat of statelessness, Tuvaluans—like many climate-vulnerable populations—were left without legal recognition or proactive protective measures for decades, as reflected in both the 1951 Refugee Convention and the Human Rights Committee's 2020 precedent in *Teitiota v. New Zealand*. This long history of lacking legal avenues has exacerbated the risk of internal and external conflicts, leaving Tuvaluans without a designated refugee classification, without recognized rights under international law, and without protection from host nations. The result is a sentence of civil death: the absence of meaningful means to escape climate-induced conditions, and a future marked by illegality, marginalization, and punitive consequences.

After two decades of advocacy, however, the Tuvaluan government and Australia signed the Australia–Tuvalu Falepili Union treaty.⁸¹ This landmark agreement aims to “help citizens of Tuvalu stay in their homes” and preserve their cultural identity and ties to the land.⁸² It also establishes a special visa category enabling up to 280 Tuvaluan citizens each year to obtain streamlined permanent residency in Australia.⁸³ The Falepili Union treaty represents a promising first step, demonstrating how innovative treaty-based solutions can recognize, protect, and provide international support for climate refugees—especially when existing human rights instruments lack binding power or adequate scope.

⁷⁷Diego Cerdeiro et al., *Tuvalu Needs to Build Resilience Amid Threat from Rising Seas*, Int'l Monetary Fund (July 26, 2023), <https://www.imf.org/en/News/Articles/2023/07/26/cf-tuvalu-needs-to-build-resilience-amid-threat-from-rising-seas>.

⁷⁸Alex Kirby, *Pacific Islanders Flee Rising Seas*, BBC News (Oct. 9, 2001), <http://news.bbc.co.uk/2/hi/science/nature/1581457.stm>.

⁷⁹Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. Pa. L. Rev. 1789 (2012).

⁸⁰*Id.*

⁸¹See Australia–Tuvalu Falepili Union Treaty (2023).

⁸²*Id.*

⁸³*Id.*

III. RECOMMENDATIONS

Based on the observations analyzed in this paper, I contend that the international community's negligence regarding climate-induced displacement constitutes a human rights violation that requires radical and transformative solutions. These solutions should involve an acknowledgment of wrongdoing, financial reparations, and a deliberate commitment to the preservation of indigenous identity and sovereignty for any nation hosting climate refugees upon displacement. With these principles in mind, I propose the following solutions:

A. *Refugee Definition Expansion*

The 1951 Convention Relating to the Status of Refugees lacks an expansive definition that adequately encompasses the experiences and realities of individuals affected by climate-induced displacement. Two potential recommendations to address this gap involve either amending the current Convention's definition to include climate refugees or creating and developing a new convention and protocol specifically tailored to address the challenges of climate-induced displacement.

Figure 1.

The 1951 Convention Relating to the Status of Refugees Current Definition	Expansive Refugee Definition
Someone "Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or owing to such fear, is unwilling to avail himself to the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." ⁸⁵	[This definition would be included after the political persecution definition]. A climate refugee is an individual compelled to flee or anticipating the need to flee a climate-related crisis, resulting in either short-term or permanent displacement while seeking the ability to relocate or remain outside their country of nationality. The decision to flee, or the imminent necessity to do so, stems from the critical need for physical, social, and/or cultural survival due to climate-induced events. As a result, these individuals find themselves, or will find themselves, outside their former habitual residence. This displacement is a direct outcome of their incapacity or unwillingness to confront the imminent threat of climate-induced harm or inability to return to their previous residence due to climate-induced events.

The decision to amend and expand the Convention's definition is a crucial action that advocates have urged for decades. The proposed definition seeks to establish legal recognition for climate refugees and, by integrating them into the Convention, to provide them with the same rights, protections, and provisions afforded to individuals granted refugee status due to political persecution. It also attempts to address the

unique vulnerabilities and challenges faced by climate refugees by including them as a distinct class not impacted by the Convention's exclusion and cessation clauses.⁸⁴

In essence, the expansive definition represents a proactive effort to create an equitable framework that aligns with the evolving landscape of climate-induced displacement while ensuring that the legal framework keeps pace with the complex realities facing those already affected—and those who soon will be.

While the proposed expanded definition of climate refugees marks a substantial step toward legal recognition, it is not exempt from critique or potential implications. One pressing concern climate advocates identify is the growing global skepticism surrounding climate change and its environmental impacts.⁸⁵ Expanding the Convention's definition may encounter resistance from signatory states, particularly amid widespread political disregard for the consequences of climate change and for the shared responsibilities of the international community toward those affected.

In addition to this challenge, climate advocates contend that the global community is grappling with the rise of anti-immigrant ideologies and political stances that pose significant threats to climate refugees.⁸⁶ These risks manifest both in the potential refusal of nations to recognize and accept climate refugees as a legal class, and in the dangers climate refugees may face upon relocation to countries experiencing increases in xenophobic hate crimes.⁸⁷ Embedded within these concerns is the possibility that climate refugees may be framed through a flawed and dangerous logical fallacy—as “threats to the sovereign order of nation-states.”⁸⁸ This framing risks recasting climate refugees as national-security concerns, prompting increased policing, surveillance, and militarization that can endanger both refugees and citizens of the host nation.

Finally, another critique is that the definition fails to address how a nation-state would determine whether a person's displacement is genuinely attributable to climate-induced consequences.⁸⁹ The lack of specificity raises concerns about overbroad application, future adjudication challenges related to class identification, and complex questions of resource allocation—particularly in light of the recommendations that follow in the subsequent section.

B. Creation of a Climate Refugee Convention & Protocol

Creating and adopting a new convention and protocol specifically tailored for climate-induced displacement represents a focused and necessary approach to addressing the distinct challenges and experiences climate refugees face.⁹⁰ If a climate

⁸⁴UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 152, available at <https://www.refworld.org/docid/3be01b964.html>.

⁸⁵Id.

⁸⁶Id.

⁸⁷Id.

⁸⁸Id.

⁸⁹Id.

⁹⁰Lydia Ayame Hiraide, *The Difficult Business of Defining Climate Refugees*, Green European Journal (Jan. 10, 2022), <https://www.greeneuropeanjournal.eu/the-difficult-business-of-defining-climate-refugees/>.

refugee convention and protocol were to be established, the following comprehensive framework should be considered:

1. **Introductory Statement:** The protocol should open with an introductory statement that explicitly acknowledges the history of climate refugees and the impending futures imposed upon the international community without intervention. It should then firmly ground the document in its explicit goal of recognizing and protecting climate refugees.
2. **Definition:** The protocol should clearly and concisely define a climate refugee.
 - (a) The definition should include a criterion for nation-states to identify climate-induced conditions or events that encompass:
 - [i.]
 - i. Natural resource insecurities;
 - ii. Physical destruction;
 - iii. Forms of deprivation, inclusive of social, political, economic, and cultural deprivations.
3. **Rights Declaration:** The protocol should explicitly declare a list of rights incorporating relevant provisions from the 1951 Convention and/or other international human rights instruments. It should also emphasize specific rights related to mobility during the experience or imminent risk of climate-induced displacement, including rights associated with sovereign establishment upon relocating to a hosting nation.
4. **Legal Claim Recognition:** The protocol should provide a statement recognizing provisions for international instruments, ensuring climate refugees have legal standing and access to applicable protections.
5. **Reparations Framework:** The protocol should establish a legal framework granting climate refugees the right to reparations. The protocol should consider facilitating a reparations-granting entity that allows climate refugees to receive a per capita payment from major contributing countries. Alternatively, the protocol could consider advocating for an internal state remedy process that enables reparations to be allocated through a tax protocol targeting companies significantly contributing to large-scale greenhouse gas emissions.
 - (a) **Additional Reparation Consideration:** The protocol could also implore nation-states to consider a refugee exclusion provision that would grant climate refugees the right to be excluded from participating in a hosting nation's tax system if the hosting nation is a significant contributor to greenhouse gas emissions.
6. **Treaty Advocacy Statement:** The protocol could provide an advocacy statement that urges state signatories to invest in treaty power and invoke agreements outside the provided protocol.

CONCLUSION

In conclusion, the existing legal framework governing refugee status is inadequate for recognizing and addressing the distinct vulnerabilities of climate refugees. As a result, climate refugees are often left in a state of legal limbo, effectively stateless, and deprived of the recognition of legal personhood that would entitle them to the protections and rights guaranteed under international refugee law. This exclusion effectively subjects climate refugees to a form of civil death, representing a clear violation of fundamental human rights and the international legal principles designed to safeguard human dignity.

To address this critical gap, this Note advances two pivotal recommendations. First, the definition of “refugee” under the 1951 Refugee Convention must be expanded to include those forcibly displaced by climate-induced environmental changes. Second, a dedicated Climate Refugee Convention should be established, explicitly recognizing the legal personhood of climate refugees and creating mechanisms to ensure their protection. Future implementation must integrate detailed criteria for state and international adjudication, a comprehensive analysis of resource allocation, and a clear articulation of the responsibilities of the international community in preventing the imposition of civil death, not only on climate refugees but also on other populations left unprotected under current legal regimes.

Although these proposals may appear audacious, they represent a radical yet indispensable vision, particularly in light of the accelerating climate crisis and the narrowing window for effective international action. Failure to establish the necessary legal infrastructure to recognize and protect climate refugees not only negligently condemns a vulnerable population to civil death, but also recklessly exposes the global community to the imminent threat of physical destruction, humanitarian collapse, and cascading social instability. The experiences of illegal statelessness are closer to our collective reality than free-rider states would acknowledge, making it imperative to confront the moral and legal obligations that these nations seek to evade.

By codifying protections and granting legal personhood to climate refugees, the international community can fulfill its duties under existing human rights and refugee law while preempting the destabilizing consequences of inaction. In this context, safeguarding climate refugees is not a discretionary or theoretical concern; rather, it is a pressing legal, ethical, and existential necessity essential to preserving global stability and human dignity.