

---

# Forging a Legal Shield for Climate Refugees: Adopting a Comprehensive International Legal Framework to Protect Their Rights

---

Tianbao Qin\* & Elias Kujo McDave\*\* & Donatus Dunee\*\*\*  
& Palmer Prince Dagadu\*\*\*\*

*The escalating impacts of climate change are compelling individuals to flee their homes, giving rise to a new category of refugees known as climate refugees. Despite clear evidence linking climate change to forced migration, the protection of these refugees' human rights remains unaddressed by any existing international legal framework. This paper explores the necessity of embracing a new comprehensive international legal framework tailored to climate refugees. It advocates for a legal framework that addresses prevention and remedies the issues faced by climate refugees and ensures their human rights are safeguarded. We*

\* Distinguished Luojiashan Professor of International Law at Wuhan University School of Law; Dean of Wuhan University School of Law; Director of the Research Institute of Environmental Law (RIEL), Wuhan University, China. LL.B./LL.M./Ph.D. (Wuhan). The author may be contacted at: [fxqtb@whu.edu.cn](mailto:fxqtb@whu.edu.cn) / Address: Luojiashan Street, Wuhan, Hubei, China, 430072.

\*\* Former Dean, Faculty of Law of University of Cape Coast, Ghana. LL.B. (U. Ghana), BL (Ghana School of Law), LL.M. (U. New Hampshire). ORCID: <https://orcid.org/0009-0001-6838-0244>. The author may be contacted at: [mcdaveap@yahoo.com](mailto:mcdaveap@yahoo.com) / Address: No. 3 Ekem, Ferguson Road, Cape Coast, Ghana.

\*\*\* Ph.D. candidate in Law at the Research Institute of Environmental Law (RIEL) of Wuhan University, China. B.Sc. (U. Development Studies, Ghana), LL.M. (Ocean U.-China). ORCID: <https://orcid.org/0000-0002-2611-4300>. The author may be contacted at: [donatusdunee@gmail.com](mailto:donatusdunee@gmail.com) / Address: Luojiashan Street, Wuhan, Hubei, China, 430072.

\*\*\*\* Corresponding Author. Postdoctoral Research Fellow at the Research Institute of Environmental Law (RIEL) of Wuhan University, China; Affiliate, Refugee Law Initiative at the School of Advanced Study of the University of London. B.Ed. (U. Cape Coast, Ghana), LL.B. (Kaaf U.-Ghana), LL.M./Ph.D. (Xiamen). ORCID: <https://orcid.org/0000-0002-4718-0868>. The author may be contacted at: [palmerdag@whu.edu.cn](mailto:palmerdag@whu.edu.cn) / Address: Luojiashan Street, Wuhan, Hubei, China, 430072.

All the websites cited in this article were last visited on May 9, 2025.

*also argued that the Comprehensive International Legal Framework should have a collective obligation to safeguard the rights of climate refugees on the global scale and to provide a solution that integrates the various rules of law, meets humanitarian needs, and is tailored to the protection of the rights of climate refugees.*

### **Keywords**

Climate Change, Climate Refugees, Human Rights, UNFCCC, UNHCR, 1951 Refugee Convention, Comprehensive International Legal Framework

## **I. Introduction**

People are already being forced to seek refuge in almost every corner of the world due to the effects of climate change.<sup>1</sup> A new subgroup of refugees known as climate refugees has emerged as climate change accelerates.<sup>2</sup> Despite data pointing to a clear link between climate change and forced migration,<sup>3</sup> the protection of climate refugees is not yet covered by any international legal framework.<sup>4</sup> Although the international community is obliged to prioritize the relationship between climate change and migration in order to prevent a crisis of unimaginable size,<sup>5</sup> governments and international organizations do not sufficiently protect the rights of climate refugees. It is no longer prudent to ignore their crisis because there is no recognized definition or international legal framework to protect them. None of the pertinent legal frameworks relating to climate change and refugees specifically and conclusively address the issue of climate refugees and their protection.<sup>6</sup> Neither specific legal framework addresses the issue of climate refugees, nor international agreement has a clear mandate to regulate human rights protection and humanitarian assistance for them.

Most scholars have not considered climate refugees a term that has acquired

1 SIMON BEHRMAN & AVIDAN KENT, CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE? 305-10 (2018).

2 *Id.* at 306.

3 Benoit Mayer & François Crepeau, *Introduction*, in RESEARCH HANDBOOK ON CLIMATE CHANGE, MIGRATION AND THE LAW (Benoit Mayer & François Crepeau eds., 2017).

4 BEHRMAN & KENT, *supra* note 1, at 307.

5 DIMITRA MANOU ET AL., CLIMATE CHANGE, MIGRATION AND HUMAN RIGHTS: LAW AND POLICY PERSPECTIVES 2-8 (2017).

6 SUMUDU ATAPATTU, HUMAN RIGHTS APPROACHES TO CLIMATE CHANGE: CHALLENGES AND OPPORTUNITIES 348 (2016).

popularity long after the Refugee Convention was ratified in 1951.<sup>7</sup> They argued that, unlike traditional refugees, those affected by climate change had not been persecuted in the same way traditional refugees do.<sup>8</sup> Although the legal basis for protecting and assisting climate refugees might be embedded in the international legal regime, current international law and organizations are not addressing the problems.<sup>9</sup>

The term, “climate refugee” is difficult and contentious to define because it is not recognized as a legal category by international refugee law including the 1951 Refugee Convention with its 1967 Additional Protocol.<sup>10</sup> However, the narrow focus of the 1951 Refugee Convention and its 1967 Additional Protocol is a major obstacle to solving the situation of people uprooted by climate change. A refugee under Article 1.A(2) of the 1951 Refugee Convention is someone outside their place of nationality and unable or unwilling to return, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>11</sup> This term does not specifically provide defense for persons escaping life-threatening environmental changes brought on by climate change. Therefore, people forcefully displaced by catastrophic weather events, desertification, and rising sea levels usually fall beyond the scope of international refugee protection policies.<sup>12</sup>

This paper purposefully uses the term “climate refugee” as the nature of displacement brought on by climate change is more like that of traditional refugees. In both scenarios, people are forced to leave their houses because of uncontrollable events and face existential risks should they be returned. The difference is in the source of the threat: while conventional refugees fled persecution usually stemming from official action, climate refugees flee structural vulnerabilities or inactivity on behalf of their governments, therefore acting as creative persecution. Many times, governments would either fail to act or purposefully overlook their obligation to shield weaker populations from predictable and avoidable environmental damage. Under a more comprehensive view of Article 1.A(2), such omissions might disproportionately harm underprivileged communities and be seen as a kind of persecution.

Furthermore, supporting this broader view are newly established legal precedents.

7 JANE McADAM, *CLIMATE CHANGE, FORCED MIGRATION AND INTERNATIONAL LAW* 131 (2010).

8 Christopher Rossi, *The Nomos of Climate Change and the Sociological Refugee in a Sinking Century*, 50:3 GEO. WASH. L. REV. 613 (2017).

9 *Id.*

10 Bruce Burson, *Protecting the Rights of People Displaced by Climate Change: Global Issues and Regional Perspectives*, in *CLIMATE CHANGE AND MIGRATION: SOUTH PACIFIC PERSPECTIVES* 150-79 (Bruce Burson ed., 2010).

11 Convention Relating to the Status of Refugees [hereinafter ‘Refugee Convention’], July 28, 1951, 189 U.N.T.S. 137.

12 BEHRMAN & KENT, *supra* note 1, at 309.

Returning people to nations where the effects of climate change seriously jeopardize life may breach Article 6 of the International Covenant on Civil and Political Rights (ICCPR),<sup>13</sup> according to the 2020 UN Human Rights Committee ruling in *Ioane Teitiota v. New Zealand*.<sup>14</sup> This ruling shows how international human rights legislation may and ought to change to accommodate issue related to displacement by climate change. It underlines the idea that limited legal definitions created for prior crises cannot undermine human dignity or the right to life.

This paper, therefore, defines “climate refugees” as those people who have traversed international boundaries due to the effects of climate change and argues for the acceptance of climate refugees by means of an enlarged interpretation of Article 1.A (2) of the 1951 Refugee Convention, thereby suggesting the inclusion of “existential environmental threat” as a new legal foundation for refugee protection. Such a change would maintain the Convention’s initial framework. Acknowledging existential environmental threat as a valid reason for forced migration would not only increase the humanitarian reach of international law, but also fit the Responsibility to Protect (R2P) paradigm,<sup>15</sup> which mandates states and the international community to stop damage, including through inaction, that endangers human life. In this sense, the term “climate refugee” may be referred to because it is more fitting for those crossing international boundaries because of climate-induced hazards rendering their return difficult and in need of international protection.

Meanwhile, no comprehensive response has evolved internationally or nationally, and ad hoc attempts are unlikely to provide the consistency and breathing room required for a long-term solution.<sup>16</sup> The UNHCR has not adopted protections for climate refugees, even though it recently created a separate section for them on its website.<sup>17</sup> Existing UNFCCC structures are inadequate to address the climate refugee crisis.<sup>18</sup> Its adaptation efforts are primarily focused on preventing and mitigating climate change, not assisting those who cross borders to escape its impacts.<sup>19</sup>

Several proposals have surfaced in light of the commonly used term climate refugees

13 International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

14 *Ioane Teitiota v. New Zealand*, U.N. Human Rights Committee, Communication No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 7, 2020).

15 Heintze Hans-Joachim, *Responsibility to Protect and the Protection of Persons in the Event of Disasters*, in *RESPONSIBILITY TO PROTECT (R2P), A NEW PARADIGM OF INTERNATIONAL LAW?* 309-28 (Peter Hilpord ed., 2014).

16 BEHRMAN & KENT, *supra* note 1, at 310.

17 Tom Clark & François Crépeau, *Mainstreaming Refugee Rights: The 1951 Refugee Convention and International Human Rights Law*, 17:4 NETH. Q. HUM. RTS. 389-410 (1999).

18 UN Refugees and Migrants, *Global Compact for Safe, Orderly and Regular Migration* (2018), at 5-34, [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf).

19 Guy Abel et al., *Climate, Conflict and Forced Migration*, 54 GLOB. ENV'T CHANGE 239 (2019).

and the lack of an international organization or legal framework to acknowledge, problematize, and thoroughly handle all aspects of climate displacement.<sup>20</sup> However, these proposals fall short of capturing the legal and policy ramifications of migration brought on by climate change in several areas, including human rights, development, humanitarian aid, asylum, immigration, and the environment, with a focus primarily on environmental law, refugee law, and human rights.<sup>21</sup> A method that goes beyond the restrictions of subject-specific approaches is necessary to solve the problem. Climate change law currently covers state responsibility for adaptation and mitigation<sup>22</sup> and the degree of protection accorded to traditional refugees is defined by refugee law.<sup>23</sup> International human rights law offers all people the minimal protection standards based on respect for the human person's dignity.<sup>24</sup>

In this regard, it is necessary to employ the hybrid integration of international legal principles comprehensively and supplementary.<sup>25</sup> The concept of hybrid international law is a comprehensive and all-inclusive amalgamation of three branches of international law: environment law, human rights law, and refugee law.

It provides comprehensive coverage: where environmental law identifies the root causes of displacement and holds polluters accountable; human rights law protects fundamental rights like life and health during displacement; and refugee law evolves to recognize climate refugees and set protection standards. This hybrid approach fills the current legal vacuum, addressing cross-border issues through enhanced international cooperation. It also boosts state responsibility, as states face obligations across the three legal spheres, and strengthens enforcement via international bodies like the UN and regional courts, which can monitor, adjudicate, and sanction non-compliance.

There are numerous advantages to utilizing a hybrid system, as it aids in capturing the true complexity of the situation and developing comprehensive norms to address the issue of climate refugees. In addition, the hybrid approach can emphasize the human impact of climate issues, which state-centric international human rights law cannot. This research is sufficient to demonstrate that the hybrid principle can be

20 BENOÎT MAYER, *THE CONCEPT OF CLIMATE MIGRATION* 392 (2016).

21 Jane McAdam, *Swimming against the Tide: Why a Climate Change Displacement Treaty is not the Answer*, 23:1 INT'L J. REFUGEE L. 13-4 (2011).

22 Harro van Asselt et al., *Climate Policy Integration*, in *RESEARCH HANDBOOK ON CLIMATE GOVERNANCE* 388-99 (Karin Bäckstrand & Eva Lövbrand eds., 2015).

23 Jane McAdam, *COMPLEMENTARY PROTECTION IN INTERNATIONAL REFUGEE LAW* 322 (2017).

24 ATAPATTU, *supra* note 6, at 360.

25 Cosmin Coredea, *Regionalism, human rights and migration in relation to climate change*, CONVERSATION (Feb. 28, 2019), <https://theconversation.com/regionalism-human-rights-and-migration-in-relation-to-climate-change-90129>.

applied to other regions despite its initial application to the context of Pacific low-lying islands.<sup>26</sup>

The paper will propose a comprehensive international legal framework that should be adopted at the earliest time to give a long-lasting outcome for the protection of affected persons and accommodate global funding and decision-making locally to address the problems of climate refugees. This legal architecture would impose obligations to deal with the climate refugee problem before and after it arises. First, the architecture is required to guarantee the preservation of human rights and the provision of aid to climate refugees. Second, it should distribute the responsibility for upholding such assurances among the home state, the host state, and the global community. The comprehensive architecture would offer a legally sound solution, satisfies humanitarian needs, and is tailored to the unique circumstances of climate refugees.

## II. The Concept and Dimensions of Climate Refugee Protection

A climate refugee can be characterized from a variety of angles; It used to imply environmentally induced migrants, environmental refugees, and, more recently, climate refugees.<sup>27</sup> The environment and migration have historically been predicated on the concept of concealing and seeking, as well as the architecture of absence and presence.<sup>28</sup> Environmental change specialists and academics once believed that the environment was a catalyst for human migration.<sup>29</sup>

The issue of definition formation may take on several nomenclatures. Still, crucial is to serve the physical protection and humanitarian goals of climate refugees as a distinct category within the existing international legal mechanisms or new instruments. By appreciating and comprehending the theoretical framework within

26 Cosmin Coredea, *Hybrid Legal Approaches towards Climate Change: Concepts, Mechanisms and Implementation*, 21:1 ANN. SURV. INT'L & COMP. L. 29-41 (2016).

27 Frank Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10:1 GLOB. ENV'T POL. 60-88 (2010).

28 Etienne Piguet, From "Primitive Migration" to "Climate Refugees": *The Curious Fate of the Natural Environment in Migration Studies*, 103:1 ANNALS ASS'N AM. GEOGRAPHY 148-62 (2013).

29 Walter Kalin, *Conceptualising Climate-induced Displacement*, in CLIMATE CHANGE AND DISPLACEMENT 87 (Jane McAdam ed., 2010).

which the climate refugees have been situated regarding the protection of their human rights and humane treatment in the host state, the contours of the normative debate<sup>30</sup> on climate refugees<sup>31</sup> can be identified. These are the essential elements of the theoretical framework that forms the basis of expectations for how countries should behave in the international community.<sup>32</sup>

In the beginning, Essamel Hinnawi described environmental refugees as those who are compelled to leave their customary habitat, either temporarily or permanently, due to a noticeable ecological change that has endangered their existence or negatively impacted their quality of life.<sup>33</sup> He has identified three major groups of ecological refugees: Firstly, people who have been temporarily relocated and are given the chance to return to their old residence after the status quo has been restored; Secondly, people who relocate permanently after being displaced; and third, people relocating away from their original residence because it has become uninhabitable due to degradation.<sup>34</sup>

According to Norman Myers,<sup>35</sup> climate refugees are people who are no longer able to obtain or establish a stable means of subsistence in their own countries due to population pressures, extreme poverty, and environmental issues such as soil erosion, drought, deforestation, and desertification. In desperation or despair, these people believe that their only option or alternative is to look for sanctuary somewhere else. Despite the risky endeavour, not all of them have left their nations or fled, with many being internally displaced. But everyone has moved away from their home countries on a temporary, if not permanent, basis with no or little expectation of returning shortly.<sup>36</sup>

Biermann and Boas identified a distinct category of climate refugees and defined the term as people who are forced to leave their homes due to abrupt or gradual changes in their natural surroundings brought on by at least one of the three effects of climate change: sea level rise, extreme weather, and drought and water scarcity.<sup>37</sup> Instead of adopting the term, however, the UNHCR has cautiously defined climate

30 Ian Manners, *The Normative Ethics of the European Union*, 84:1 INT'L AFF. 45-60 (2008).

31 Jessica Cooper, *Environmental Refugees: Meeting the Requirements of the Refugee Definition*, 6:2 N.Y.U. ENVTL J. 480-529 (1998).

32 Jane Steffens, *Climate Change Refugees in the Time of Sinking Islands*, 52:3 VAND. J. TRANSNAT'L L. 738 (2019).

33 ESSAM EL-HINNAWI, ENVIRONMENTAL REFUGEES 41 (1985).

34 *Id.*

35 Norman Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century*, 357:1420 PHIL. TRANSACTION: BIO SCI. 609-11 (2002).

36 *Id.*

37 Biermann & Boas, *supra* note 27, at 62.

refugees in the following manner: people who are forced to leave their regular place of residence or who feel compelled to do so because their lives, livelihoods, or welfare have been jeopardized as a result of unfavourable environmental, ecological, or climatic processes and occurrences.<sup>38</sup> Without including cross-border mobility caused by persecution due to armed conflict and human rights violations, the UNHCR aimed to avoid ambiguities and confusions.<sup>39</sup> The International Organisation for Migration also made an effort to define climate refugees as individuals or groups of individuals who, primarily due to environmental changes that are gradual or abrupt and hurt people's lives or way of life situations, must leave their usual residences or choose to do so, either temporarily or indefinitely, and who relocate both domestically and internationally.<sup>40</sup>

In this paper, however, we defined the climate refugees as individuals forced to migrate or relocate permanently or temporarily across international borders due to well-founded reasons such as anthropogenic climate change, sudden or gradual climate disturbances, or uninhabitable conditions in their country of origin.

This definition may be criticized for lacking ethical obligations, moral imperatives, a human rights framework,<sup>41</sup> and a story of fundamental human rights. Nonetheless, human rights protection of climate refugees may be considered in light of the 2005 Responsibility to Protect Framework (R2P)<sup>42</sup> adopted at the UN World Summit and endorsed by all nations as a collective responsibility to prevent ethnic cleansing, genocide, war crimes, and crimes against humanity, while upholding the principle of non-interference<sup>43</sup> in domestic political and humanitarian affairs.

Even though, there is no provision in the Universal Declaration of Human Rights (UDHR) that requires States to recognize and safeguard the rights of climate refugees, those rights are implicit in Article 2<sup>44</sup> and Article 13<sup>45</sup> of the UDHR. From the provisions above, nothing would make climate refugees ineligible for protection.

38 Jerry I-H Hsiao, *Climate Refugee and Disappearing states: In Need for a New Legal Regime?*, 5:5 J. CULTURAL & RELIG. STUD. 270 (2017).

39 Camillo Boano et al., *Environmentally Displaced People: Understanding the Linkages between Environmental Change, Livelihoods and Forced Migration* 1 (Refugee Studies Centre, Forced Migration Policy Briefing 1, 2008).

40 IOM, INTERNATIONAL DIALOGUE ON MIGRATION No. 20 - MOVING TO SAFETY: MIGRATION CONSEQUENCES OF COMPLEX CRISES 10-2 (2012), <https://publications.iom.int/books/international-dialogue-migration-ndeg20-moving-safety-migration-consequences-complex-crises>.

41 Brooke Havard, *Seeking Protection: Recognition of Environmentally Displaced Persons under International Human Rights Law*, 18:1 VILL. ENVTL J. 65-82 (2007).

42 Sheri Rosenberg, *Responsibility to Protect: A Framework for Prevention*, 1:4 RESP. PROT. 442-4 (2009).

43 U.N. Charter art. 2(7).

44 UDHR art. 2. It provides: "Everyone is entitled to all the rights and freedoms...without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

45 *Id.* art. 13. It provides: "Everyone has the right to freedom of movement and residence within the borders of each state."



In 2008, Scott Leckie, a prominent human rights commentator, pointed out: “The right to life, freedom of movement and choice of residence, right to land and rights in land, right to adequate housing and right to privacy and respect for the home are relevant rights and freedoms in the context of climate change.”<sup>46</sup>

Meanwhile, the United Nations Human Rights Council (UNHRC) passed a resolution recognizing the link between human rights, migration, and climate change.<sup>47</sup> Resolution 7/23 which stated: “Climate change poses an immediate and far-reaching threat to people...and has implications for the full enjoyment of human rights.”<sup>48</sup> This resolution is not legally binding but primarily relies on the goodwill of the states; as such, states are more inclined to provide subsidiary protection. Subsidiary protection is given to non-European Union (EU) nationals or stateless who do not qualify as a refugee but would “face a real risk of suffering serious harm”<sup>49</sup> if they returned to their country of origin.

The Court of Justice of the European Union defines serious harm as the risk of: “Death penalty or execution; or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian’s life or person by reasons of indiscriminate violence in situations of international or internal armed conflict.”<sup>50</sup> There is no threat of the death sentence or execution for climate refugees. Nevertheless, climate refugees could still qualify for subsidiary protection. Although climate refugees are not susceptible to torture, their home governments may treat them inhumanely or degradingly. Moreover, climate-driven impacts represent a grave and individual threat to human life. Certain states have accorded climate refugees subsidiary protection. Finland and Sweden, for instance, have enacted legislation offering subsidiary protection to anyone who fled their country and cannot return due to an environmental calamity.<sup>51</sup> Yet, this is not the case at the international level.<sup>52</sup>

Most importantly, the UN Human Rights Committee (HRC)’s January 2020

46 SCOTT LECKIE, HUMAN RIGHTS IMPLICATION 18-9 (2008).

47 EMINE KARAKITAPOGLU ET AL., CLIMATE REFUGEES: THE SCIENCE, THE PEOPLE, THE JURISDICTION AND THE FUTURE 41-3 (2017).

48 OHCHR, Human Rights and Climate Change, Resolution 7/23 (2008), [https://www.unccllearn.org/wp-content/uploads/library/a\\_hrc\\_res\\_7\\_23.pdf](https://www.unccllearn.org/wp-content/uploads/library/a_hrc_res_7_23.pdf).

49 EUAA, Subsidiary protection, <https://euaa.europa.eu/easo-practical-guide-qualification-international-protection/subsidiary-protection>.

50 *Id.*

51 Mariya Gromilova, *Legal Protection of the People at Risk of Climate Induced Cross-border Displacement: Application of the 1951 Refugee Convention* 2-55 (unpublished Master’s thesis, Tilburg University, 2011), <https://arno.uvt.nl/show.cgi?fid=122939>.

52 *Id.*

decision regarding Ioane Teitiota's (hereafter Teitiota) deportation to his home country of the Republic of Kiribati suggests that the current framework is amenable to expansion to address the issue of climate refugees and its protection.<sup>53</sup> The Teitiota decision indicates that there are two possible legal pathways through which climate refugees may find legal standing and protection: (1) an expanded reading of the definition of "refugee" under the 1951 Convention; and (2) an application of Article 6 of the ICCPR for the protections of climate refugees.<sup>54</sup>

### **III. The Need for a Specialized Comprehensive International Legal Framework for Climate Refugees**

The proposed legal framework may aid in finding a long-term solution for the defence of the rights of climate refugees by ensuring that they get both human rights protections and humanitarian relief. The instrument should make these assurances attainable by distributing the responsibility for realizing and sustaining climate refugees among all states. Establishing financial, coordinating, and scientific entities should make it easier to put its provisions into action. The architecture should have a legal foundation, be sensitive to humanitarian requirements, and be customized for the unique circumstances of climate change. States, international organizations and advocates should pursue an entirely distinct framework rather than trying to cram the climate refugee instrument into the 1951 Refugee Convention or the UNFCCC, both of which have limited missions and legal or political restrictions.

Adopting a new and robust legal architecture would have many benefits, such as giving the growing issue of climate refugees the attention it deserves, allowing for a more tailored framework that incorporates principles and solutions from such areas as human rights, humanitarian aid, and environmental law, and providing more room for the participation of civil society.

#### **A. Prioritization of the Climate Refugees Problem**

A new legal instrument should be created because of the magnitude of the climate refugee issue. More people beyond those protected by the 1951 Refugee Convention

<sup>53</sup> Rose Lucia, *The World After Teitiota: What the HRC Decision Means for the Future of Climate Migration*, 12:41 SAN DIEGO J. CLIMATE & ENERGY L. 41 (2021), <https://digital.sandiego.edu/jcel/vol12/iss1/4>.

<sup>54</sup> *Id.*

are projected to be displaced due to climate change.<sup>55</sup> A specific legal system should be in place to deal with the situation if an entire country vanishes, vast coastal zones are submerged, and millions are forced to cross international boundaries due to drought and desertification.<sup>56</sup> A fresh issue necessitates a fresh agreement. While the UNFCCC and the 1951 Refugee Convention touch on some general concerns pertinent to climate refugees, they do not provide clarity or firm answers to essential challenges that this impacted community faces with. Therefore, a new convention that creates remedies specifically for this situation is required.

## **B. Specialized Comprehensive International Legal Framework blending Principles and Solutions**

The advantage of being able to combine various regimes into one specialized instrument is one that an independent climate refugee treaty has. A customized treaty would address the fundamental problems caused by the climate refugee issue and close the existing legal loophole with the level of detail that governments and communities require. The issue crosses over into the various areas of the environment and human rights. The proposed treaty would unite those fields and ideas of humanitarian aid through its fundamental elements. Although human rights, humanitarian aid, and international environmental law have not typically been linked in a single convention, the issue of refugees from climate change not only encourages such connections, but also would benefit from explicitly highlighting these connections in a new treaty.<sup>57</sup>

A new treaty should make use legal frameworks that include both vertical responsibilities and horizontal obligations because the nature of the problem encompasses both individual rights and state-to-state obligations. The best way to ensure that these sets of obligations are treated equally is through a new convention, as opposed to a protocol under the UNFCCC or the 1951 Refugee Convention, where it is more probable that one set of requirements will supplement the other. An independent convention should, for instance, enhance the current refugee system and use ideas from international environmental law for finance methods, cross-border collaboration, and shared state responsibility. It should look to refugee law, including effective corrective mechanisms, humanitarian foundations, and rights for those impacted, to assist and overcome the limited state oriented environmental regime.

<sup>55</sup> MAYER, *supra* note 20, at 394.

<sup>56</sup> Klein Solomon & Warner Koko, *Protection of Persons Displaced as a Result of Climate Change: Existing Tools and Emerging Frameworks*, in THREATENED ISLAND NATIONS. LEGAL IMPLICATIONS OF RISING SEAS AND A CHANGING CLIMATE 243 (Michael Gerrard & Gregory Wannier eds., 2013).

<sup>57</sup> Gromilova, *supra* note 51.

Such a multidisciplinary strategy is necessary for fixing a broad issue most likely to occur within a separate convention's adaptability.<sup>58</sup>

### C. The Civil Society and Affected Communities in Designing the Architecture

A new legal architecture is chosen to address the proposed climate refugee mechanism. In this course, drafting an independent treaty is indispensable. Designing a protocol for an existing treaty may appear less complicated than starting from scratch. International humanitarian law has recently established precedents for resolving issues outside of pre-existing treaty frameworks by adopting new conventions, such as the development of the Oslo Process, which resulted in the Convention on Cluster Munitions in 2008 and was born out of the Ottawa Process, which delivered the Mine Ban Treaty in 1997.<sup>59</sup> States attempted to address the issues posed by those weapons as protocols to the Convention on Conventional Weapons (CCW), but the CCW process could not deliver satisfactory results in either case.

When state and non-state actors shifted negotiations from the CCW conferences to independent fora, however, they could swiftly conclude comprehensive weapons bans with humanitarian components based on successful cases in which both state and non-state actors were asked to participate. For instance, a core group of countries led by Norway convened meetings, secured support for the proposed convention, and prepared text as part of the Oslo Process.<sup>60</sup> While this was happening, civil society exerted constant pressure on nations to move forward and impacted the Convention on Cluster Munitions' wording.<sup>61</sup>

The nongovernmental Cluster Munition Coalition (CMC) had around 200 representatives at the final negotiating table throughout the Oslo Process,<sup>62</sup> which they actively and effectively utilized. Many cluster bomb survivors were among the campaigners, speaking at conferences and engaging in covert lobbying to make sure their concerns were taken into account in the pact.

To press for a new treaty, particularly vulnerable countries like Bangladesh, Egypt, and the small island states can collaborate with impacted local communities in low-

58 Clark & Crépeau, *supra* note 17.

59 Stephen Goose, *Cluster Munitions in the Crosshairs: In Pursuit of a Prohibition*, in BANNING LANDMINES: DISARMAMENT, CITIZEN DIPLOMACY, AND HUMAN SECURITY 217 (Jody Williams et al. eds., 2008).

60 Docherty Bonnie, *Breaking New Ground: The Convention on Cluster Munitions and the Evolution of International Humanitarian Law*, 31:4 HUM. RTS. Q. 934-63 (2009).

61 *Id.*

62 *Id.*

lying coastal zones and areas with severe desertification. For humanitarian reasons, other sympathetic but less impacted governments may join these like-minded states and non-state actors. While the Ottawa and Oslo processes grew out of international humanitarian law, the participation of civil society and the affected people is a reflection of participatory principles found in both international environmental law and human rights law, which are directly relevant to the climate refugees.<sup>63</sup>

## IV. Key Elements of the Proposed Comprehensive International Legal Framework in Climate Refugees

To fight the looming catastrophe of climate refugees, we argue that a new international instrument be created that combines an innovative and multidisciplinary mix of elements with ethical and valuable provisions. This measure should guarantee that displaced people who fall under the proposed concept of climate refugees receive the necessary protections for their human rights and humanitarian relief. The instrument should distribute the cost of providing that aid among the several governments directly impacted by migration and the entire international community. It should also establish a management structure to effectively carry out the complex regime. The climate refugee instrument can help achieve these goals by coming up with inventive solutions that combine concepts from different sources. Science and economics are essential, as are the laws governing refugees, the environment, human rights, and international humanitarian law. The following essential elements should ultimately be present in the legal architecture for the protection of climate refugees' rights for it to be effective.

### A. Assessment Criteria

The definition of climate refugee, which was covered in detail above, is intended to be both inclusive and legally defensible, while still covering those refugees who are most directly impacted by climate change. When developing the procedure for choosing who qualifies for status under these criteria, the new legal instrument should similarly consider prior legal precedent and the unique qualities of climate refugees. It should

63 Maxwell Cameron, *Democratization of Foreign Policy: The Ottawa Process as a Model*, 5:3 CAN. FOREIGN POL'Y J. 147-65 (1998); TO WALK WITHOUT FEAR: THE GLOBAL MOVEMENT TO BAN LANDMINES 20 (Maxwell Cameron et al. eds., 1998).

include a significant preference for the latter and allow for individual or group assessments of whether a person is a climate refugee. States to whom the UNHCR delegated authority to typically decide whether a person is a traditional refugee on a case-by-case.<sup>64</sup>

In mass influx, states and the UNHCR frequently use a group decision-making approach. They assume that members of migrant groups are refugees for practical reasons.<sup>65</sup> This strategy would be especially suitable for relocation due to climate change, whether the relocation resulted from a sudden incident, like a powerful hurricane, or a gradual disturbance, like an island being submerged. According to how communities are impacted by climate change, such relocation involves sizable populations. Therefore, the climate refugee instrument should make group status determination the default, while still allowing for individual status determination because it would generally be preferable for climate refugees. By defaulting to this, the procedure's costs would be lower; equality of application would be guaranteed; the provision of assistance would be made easier; and relocation before it is necessary would be discouraged.<sup>66</sup>

To guarantee that aid reaches those who genuinely require it, the new instrument on climate refugees must acknowledge people will no longer be eligible for assistance if they voluntarily acquire nationality and protection from a new country, return to or accept the protections of their home country, or refuse to return to or accept the protections of their home country once their survival is no longer in danger, as is the case with the 1951 Refugee Convention.<sup>67</sup>

## B. Human Rights Safeguards

The climate refugee instrument should clearly define those whose human rights are safeguarded. The 1951 Refugee Convention codifies refugees' rights thorough the manner ever attempted at the international level, consolidating earlier international agreements pertaining to refugees. The 1951 Refugee Convention refers to the idea that everyone should have access to fundamental freedoms and rights without restriction.<sup>68</sup> As a result, it provides a helpful example of the types of human rights protections that should be included in a new instrument. The new framework shall

64 UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR Doc. HCR/IP/4/Eng/REV.1 (1992), at 7-8, <https://www.unhcr.org/sites/default/files/legacy-pdf/4d93528a9.pdf>.

65 *Id.*

66 Clark & Crépeau, *supra* note 17.

67 *Id.*

68 Refugee Convention art. 26

safeguard a variety of civil and political rights, as well as economic, social, and cultural freedoms and rights to mobility that are specific to refugees' situations. It should be done so without discrimination and ensure that all climate refugees are treated with at least a minimal level of respect.<sup>69</sup>

The new legal framework should ensure that climate refugees are treated reasonably and immediately. The agreement should give these refugees rights at least on a par with those of other foreign nationals in the receiving country. Certain rights should be explicitly guaranteed under the climate refugee instrument. On the civil and political fronts, climate refugees should have access to courts and legal representation, much like under the 1951 Refugee Convention.<sup>70</sup> They should be allowed to associate freely as well.<sup>71</sup> Both of these safeguards must be equal with those offered to host country citizens.<sup>72</sup>

Climate refugees should be provided access to rations, elementary education, public assistance, job benefits, social security, and workers' compensation under exceptional care. Additionally, as part of a general standard of care, climate refugees should be given access to higher education, housing assistance, and employment rights.<sup>73</sup> The essential humanitarian and livelihood protections that climate refugees require when they leave their inhabitants should be established by these principles, which are also stated in the Refugee Convention.<sup>74</sup> Finally, the new legal framework should guarantee some rights protections expressly related to movement, as climate refugees, by definition, traverse state borders.<sup>75</sup>

### C. Humanitarian Relief

Humanitarian relief is necessary for climate refugees after a forced migration, even though human rights protections are equally important. The climate refugee mechanism should go beyond the Refugee Convention to satisfy the most fundamental demands. It can leave it up to the assigned agency to decide how that aid will be distributed. However, the document should make clear that state parties are required to make varied contributions to the supply of aid.

69 ATAPATTU, *supra* note 6, at 348.

70 *Id.*

71 Refugee Convention arts. 20 & 22(1).

72 *Id.* arts. 20 & 22(2).

73 *Id.* arts. 17-9

74 *Id.* art. 31.

75 François Crépeau, *Climate Refugees and the Right to Movement: Toward a New Legal Paradigm*, 24:1 EUR. J. MIGRATION & L. 1 (2017).

The growing principle of victim assistance,<sup>76</sup> recently articulated in the Convention on Cluster Munitions, which opened for signature in December 2008<sup>77</sup> could be used by the Climate Refugee Instrument.<sup>78</sup> States must adequately give age- and gender-sensitive assistance, including medical care, rehabilitation, and psychological support, as well as ensure victims' social and economic engagement are met. While the specifics of victim support will need to be worked out by negotiators, the precedent set by the Convention on Cluster Munitions to include such a provision is valuable.<sup>79</sup> The precedent demonstrates that legal instruments may call for both concrete and abstract rights protection.

Giving aid is crucial for humanitarian reasons as well as for its connection to defend human rights. Protection and material assistance are intertwined, according to the UNHCR, which acts as a clearinghouse for humanitarian relief to traditional refugees. If a person's fundamental requirements, such as housing, food, water, sanitation, and medical treatment, are satisfied,<sup>80</sup> adequate protection for human rights consequently make the availability and fair distribution of humanitarian aid possible. The new climate refugee mechanism, and the individuals it helps, should ensure safety and aid rather than forcing people to choose between them.<sup>81</sup>

## D. Collective Obligation

In varying degrees, all countries should share obligations for safeguarding human rights and humanitarian relief under the climate refugee instrument. The primary responsibility for putting the guarantees into effect should fall to the receiving countries because refugees relocate there.<sup>82</sup> Home countries should be obligated to assist with remedial measures to the greatest extent practicable, but they should pay special attention to preventing or preparing for displacement brought on by climate change that originates on their own. States that have made the most significant contributions to climate change should be obliged to support in-kind or, more frequently, cash

76 UNODC, Victim Assistance and Witness Protection, <https://www.unodc.org/unodc/en/organized-crime/witness-protection.html>; Minnesota Department of Public Safety, Best Practices Guidelines: Crime Victim Services (2010), at 1-27, [https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/InnovativePractices/Practices\\_Best%20practices%20guidelines-508.pdf](https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/InnovativePractices/Practices_Best%20practices%20guidelines-508.pdf).

77 The Convention on Cluster Munitions, art. 5. [https://www.clusterconvention.org/files/convention\\_text/Convention-ENG.pdf#page=8](https://www.clusterconvention.org/files/convention_text/Convention-ENG.pdf#page=8).

78 *Id.*

79 *Id.*

80 UNHCR, Protecting Refugees & the Role of UNHCR, 2007-08, <https://digitallibrary.un.org/record/633514?v=pdf>.

81 Crépeau, *supra* note 75

82 Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENVTL REP. 349 (2009).



assistance proportionate to each state's contribution to climate change and financial ability to pay.<sup>83</sup> Such a distributed system of accountability is appropriate given the global origins and transnational consequences of a climate refugee catastrophe.

Countries willing to admit climate refugees must take action to realize the above-described guarantees. Because climate refugees reside on their territory, host states should be held accountable for implementing the assistance. According to the established standards for treatment, refugees must get the same level of protection for their human rights as foreigners or citizens of the host country.<sup>84</sup> Climate refugees should be subject to this acknowledged legal premise. Similarly, each country receiving climate refugees must take the initiative to ensure that those who have fled into its territory receive humanitarian relief. The actual distribution may be carried out by the government of the receiving country, a global organization, or nongovernmental organizations.<sup>85</sup>

When possible, other countries should offer financial or in-kind assistance, with the receiving country's consent as required by the principles of state sovereignty.<sup>86</sup> However, the climate refugee instrument should require receiving countries to offer help to the greatest extent practicable by executing the protection and aid regime. Although various governments have varying capabilities, states are required to protect their own citizens under international law, and particularly by human rights legislation. However, we opine that the legal architecture should mandate that climate refugees who have not assimilated into a new country return to their original country once their survival is no longer in danger. Therefore, receiving countries should be required by the proposed legislative framework to allow such a return.<sup>87</sup>

The new instrument should require country of origin to the greatest extent possible to offer financial, material, and logistical support for temporary removal or permanent resettlement. The climate refugee instrument can follow the example of agreements that define the parties' obligation and consider that each state has different resources. Countries of origin must be cautious in their domestic affairs in light of other states' legal interests and work to eliminate or lessen the factors that lead to flight. Home countries should also be obligated, to the extent feasible, to deal with increased refugee flows before they reach the crisis stage under a climate refugee regime. Either striving to reduce the need for migration or becoming ready to deal

83 *Id.*

84 UNHCR, *supra* note 80.

85 Docherty & Giannini, *supra* note 82.

86 GUY GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 135 (2007).

87 *Id.*

with it in a planned manner could be considered crisis prevention.<sup>88</sup> For instance, the Netherlands is battling rising sea levels with sophisticated flood control measures as well as river and sea barriers intended to keep the state liveable.<sup>89</sup>

## E. Global Collaboration

The international community should collaborate to defend human rights and deliver humanitarian help to climate refugees. Since the causes of climate change are global, there should be a global response, as well.<sup>90</sup> Because, for the most part, their activities are not the source of the issue, home country and receiving country should not be forced to shoulder the burden of climate refugees alone. Instead, developed countries are required to contribute to climate change through their collective actions. The world would be able to confront the migration brought on by climate change if all countries pool their resources.<sup>91</sup>

Additionally, there are moral and legal justifications for holding those responsible for the most significant portion of adverse consequences due to its mitigation. The shared obligation of the climate refugee mechanism should be based on the recognized legal norm of international collaboration and aid. The new instrument should build a system to disperse help rather than just creating an abstract duty. While many forms of in-kind assistance, such as logistical and material support, would be helpful to climate refugees and the states impacted by their migration, financial support is critical. The climate change refugee instrument should build on academic and legal models to state the idea of global collaboration and support and make it a reality through a global fund.<sup>92</sup>

## F. A Worldwide Fund

A worldwide fund should be set up as part of the climate refugee framework to oversee aid distribution. The framework should permit states to replace cash aid with in-kind assistance, although the latter distribution should go through the instrument's coordinating body. It should create a financial system for aid distribution and gives the Global Environment Facility responsibility for carrying it out. This approach

<sup>88</sup> KATHARINA RIETIG, *LEARNING IN GOVERNANCE: CLIMATE POLICY INTEGRATION IN THE EUROPEAN UNION* 10-37 (2021).

<sup>89</sup> Mark Hertsgaard, *On the Front Lines of Climate Change*, TIME (Mar. 19, 2007), <https://time.com/archive/6596799/on-the-front-lines-of-climate-change>.

<sup>90</sup> Docherty & Giannini, *supra* note 82.

<sup>91</sup> *Id.*

<sup>92</sup> François Gemenne, *Why the Numbers don't Add Up: A Review of Estimates and Predictions of People Displaced by Environmental Changes*, 21(S1) GLOB. ENV'T CHANGE S41-9 (2011).

exemplifies one method for implementing global help and cooperation in the context of climate change.

Benito Muller suggests that a UNFCCC-sponsored Disaster Relief Fund can make initial payments to the international relief effort for climate disasters.<sup>93</sup> The UNFCCC, according to Biermann and Boas, ought to establish a Climate Refugee Protection and Resettlement Fund.<sup>94</sup> They used four guiding principles to create it to avoid competing with the needs of other funds; otherwise, all donations would not go to the climate change fund. In addition, the fund would reimburse refugee protection costs in full when climate change was the only contributing factor in a migration. States parties to the UNFCCC would decide who and how much would be given.

As part of their suggested accord on displaced people due to climate change, who have traversed international boundaries and seeking protection, David Hodgkinson and his co-authors also propose a fund covering both cross-border and internal migration.<sup>95</sup> These proposals show rising consensus for creating such a mechanism, even though they range in specifics and details. The climate refugee instrument should distribute international contributions by countries' "common but differentiated responsibility" principles when establishing a worldwide fund. This fundamental tenet of international environmental law is founded on the notion that all countries share a duty to safeguard the environment.

The climate refugee framework should require state parties to contribute voluntarily to the fund. However, it also acknowledges that there are historical variations in the contributions between developed and developing countries to global environmental issues, as well as in each group's ability to address these issues economically and technically. This strategy of sharing burden is beneficial since it considers the various financial support capacities of each government. The UNHCR, for example, receives the bulk of its operating funding from voluntary contributors, such as countries and private individuals. The UNHCR has not legally obligated the international community to offer financial or in-kind support because this voluntary policy is considered the best solution to the conventional refugee difficulties given that the country of origin is often the cause of the migration.

According to Muller, funding for disaster relief connected to climate change is a prime option for changing from depending on voluntary charitable donations to

93 Benito Müller, *An FCCC Impact Response Instrument as part of a Balanced Global Climate Change Regime*, OXFORD CLIMATE POL'Y (2002), <https://oxfordclimatepolicy.org/publications/documents/iri.pdf>.

94 Biermann & Boas, *supra* note 27.

95 David Hodgkinson et al., *The Hour When the Ship Comes in': A Convention for Persons Displaced by Climate Change*, 36:1 MONASH U. L. REV. 69 (2010).

being based on binding contributions because of the recognized common but varied responsibilities for climate change events.<sup>96</sup> In this case, the global community was responsible for the cause of the issue and its resolution. During the negotiation or implementation of the climate refugee instrument, states should work out the administrative details of a funding system.

Every worldwide fund, however, should consider the following extra factors. First, because home and host states are directly impacted by the climate refugee problem, they should both be eligible for aid. Secondly, the fund should also provide funding for initiatives that will lessen the effects of a future refugee crisis because prevention is just as vital as response. Thirdly, because of both slow environmental change and rapid emergency refugee flows, states should have access to support for migration. A fund that consists of all three components would ensure that the worldwide community shares the responsibility of addressing this global issue and that individuals in need of money can access it.<sup>97</sup>

Accordingly, we argue that the Worldwide Fund for Climate Refugees should be legally formed under a newly ratified Climate Refugee Convention to facilitate the successful mobilization and fair distribution of resources for climate refugees. This Fund must adhere to the values of solidarity, climate justice, and the globally acknowledged philosophy of shared but differentiated responsibilities.<sup>98</sup> The proposal is that the Fund be administered by a Climate Refugee Agency (CRA), a newly established entity based on the UNHCR,<sup>99</sup> under the supervision of a Governing Board. This Board will include members from contributing nations, host and origin countries, civil society organizations, climate migration specialists, and international entities to ensure equitable decision-making and transparency.<sup>100</sup>

Financial contributions to the Fund must originate from a diversified source, encompassing obligatory assessments from high-emission developed countries, voluntary donations from private organizations and philanthropic entities, as well as innovative financing strategies such as climate displacement levies on fossil fuel corporations, carbon border taxes, and revenues from green bonds.<sup>101</sup> The Fund's structure should encompass three primary components: an emergency response division to deliver immediate humanitarian aid post climate-induced displacement; a resilience

96 Biermann & Boas, *supra* note 27.

97 Docherty & Giannini, *supra* note 82.

98 McADAM, *supra* note 7.

99 Biermann Frank & Boas Ingrid, *Protecting Climate Refugees: The Case for a Global Protocol*, 50:6 ENV'T. SCI. & POL'Y SUSTAINABLE DEV. 8-17 (2008).

100 Barnett Jon & Adger Neil, *Climate Change, Human Security, and Violent Conflict*, 26:6 POL. GEOGRAPHY 639-55 (2007).

101 Biermann & Boas, *supra* note 99.

and adaptation sector to aid vulnerable nations in fortifying communities against climate impacts and reducing forced migration; and an integration and reconstruction segment, which would support host nations in facilitating sustainable resettlement, legal assistance, education, and livelihood opportunities for displaced individuals.<sup>102</sup>

The Fund must be available to both states and eligible non-state entities, including local governments and recognised NGOs, contingent upon the submission of well-documented applications that adhere to the Convention's standards.<sup>103</sup> These ideas must establish a clear connection between climate change and relocation, prioritise at-risk groups, and include comprehensive monitoring and assessment mechanisms.<sup>104</sup> Additionally, to guarantee openness, accountability, and efficacy, a specialised supervision structure must be established, including yearly reports, independent audits, and public disclosure of financed projects.<sup>105</sup> By institutionalising these procedures, the Fund will be pivotal in converting the moral and legal responsibilities of the international community into tangible actions and assistance for those forcefully displaced by climate change.

## G. An Organization for Coordinating Activities

The climate refugee instrument should instead create a separate coordinating organization to help carry out its directives. To avoid climate refugee crises, the agency should cooperate with the country of origin and receiving countries to uphold the promises of human rights safeguards and humanitarian relief.<sup>106</sup> To deliver aid, they should develop partnerships with governments, such as intergovernmental or nongovernmental organizations. Additionally, climate refugees should be allowed to participate in decision-making and consider their ideas and worries.

Like the UNHCR for traditional refugees, a separate coordinating organization should be established for climate refugees. The UNHCR's mission is to direct and organize global efforts to protect refugees and find solutions to refugee issues.<sup>107</sup> Specifically, its main goal is to protect the rights and welfare of refugees.<sup>108</sup> This dual goal paralleled the dual guarantees of the climate change refugee mechanism to

<sup>102</sup> *Id.*

<sup>103</sup> BETTS ALEXANDER & WILL JONES, *MOBILISING THE DIASPORA: HOW REFUGEES CHALLENGE AUTHORITARIANISM* 93-112 (2017).

<sup>104</sup> *Id.*

<sup>105</sup> Biermann & Boas, *supra* note 99.

<sup>106</sup> *Id.*

<sup>107</sup> UNHCR Global Appeal 2009 (update) - About, <https://www.unhcr.org/us/media/unhcr-global-appeal-2009-update-about>.

<sup>108</sup> UNHCR, *supra* note 80.

protect human rights and provide humanitarian relief. Each provision of the 1951 Refugee Convention serves as the benchmark for protecting the human rights of refugees.<sup>109</sup> It carries out its responsibility to offer humanitarian relief by overseeing refugee camps and providing essentials, including food, water, shelter, and medical attention. Also, the UNHCR interacts with various organizations, according to its mission statement.<sup>110</sup>

As a result, we argue that to implement the proposed Comprehensive International Legal Framework for Climate Refugees, it is imperative to create a dedicated international organisation similar to the UNHCR.<sup>111</sup> The entity, designated as the International Climate Refugee Protection Agency (ICRPA), will function as the primary institution responsible for coordinating protection, humanitarian aid, and sustainable solutions for climate refugees.

The ICRPA would possess a dual mission. Initially, a protection mandate is required to maintain and implement the rights of climate refugees as delineated in the revised provisions of Article 1.A(2) of the 1951 Refugee Convention,<sup>112</sup> specifically addressing displacement resulting from climate change. Secondly, a mandate is needed for assistance to guarantee the provision of humanitarian relief and resettlement services, in collaboration with national governments, civil society, and international entities. The agency's governance will have a Governing Council comprised of members from several areas, with particular emphasis on vulnerable nations, donor countries, and civil society.<sup>113</sup> The agency would be led by a Director-General, chosen by the UN General Assembly based on a proposal by the Governing Council. Regional and field offices would oversee on-site activities, including the registration and documentation of displaced persons. A Scientific and Policy Advisory Board would inform decision-making via evidence-based research in climate science, migration, and legislation.

The ICRPA would be tasked with creating systems for the determination of climate refugee status for both groups and individuals, guaranteeing equity and efficacy. It would promote relocation, local integration, or voluntary repatriation where practicable, while also ensuring adherence to international standards. The organization will provide yearly reports on displacement patterns, legal enforcement, and operational advancements. It would provide capacity-building assistance to

109 UNHCR, *supra* note 107.

110 UNHCR, Mission Statement, <https://www.unhcr.org/sites/default/files/legacy-pdf/4371d18d0.pdf>.

111 Jolly Stellina & Nafees Ahmad, *Climate Refugees under International Climate Law and International Refugee Law: Towards Addressing the Protection Gaps and Exploring the Legal Alternatives for Criminal Justice*, 15 ISIL Y.B. INT'L HUM. & REFUGEE L. 216 (2014).

112 Refugee Convention art. 1.

113 Richard Black et al., *The Effect of Environmental Change on Human Migration*, 21(S1) GLOB. ENV'T CHANGE 3-11(2011).

countries, particularly in legislative reform and institutional development, and endeavour to enhance domestic and regional readiness for climate refugees.<sup>114</sup>

Financial resources for the ICRPA would mostly derive from the suggested Global Climate Refugee Fund, supplemented by voluntary donations from nations, international entities, and individual benefactors. It would preserve financial autonomy within the larger UN framework to guarantee neutrality and independence. The ICRPA would be constituted by treaty and hold legal authority to negotiate, mediate, and give recommendations. The ICRPA would collaborate with UNHCR, UNFCCC, IOM, and OCHA, although it would maintain its status as a separate agency with a specific emphasis on climate displacement, reporting directly to the UN General Assembly.<sup>115</sup>

The ICRPA would institutionalize inclusive involvement from impacted groups under international environmental and human rights legislation. Displaced individuals and representatives of affected communities would be given consultative roles in decision-making, access to grievance processes, and a forum to express concerns.<sup>116</sup> This participatory design guarantees legitimacy, responsibility, and responsiveness. The ICRPA would provide the essential leadership and coordination required to tackle the escalating catastrophe of climate refugees on a global scale.

In summary, the UNHCR's mandate can serve as a model for an organization that should handle climate refugees. The UNHCR may oversee climate architecture, giving climate refugees access to knowledge of forced migration, established infrastructure, and established authority. The agency's mandate should be based on the UNHCR's, but it should also establish its procedures and modify them to suit the needs of climate refugees. This organization should draw from the UNHCR's experiences while developing its structure and policies, adapting the UNHCR's organizational structure and operational procedures as needed.

## V. Conclusion

The existence of ostensibly pertinent agreements may indeed make it difficult to create a new instrument. However, there are solid grounds for optimism that countries will

<sup>114</sup> Biermann & Boas, *supra* note 99.

<sup>115</sup> Stellina & Ahmad, *supra* note 111.

<sup>116</sup> Julie Brugger & Michael Crimmins, *The Art of adaptation: Living with Climate Change in the Rural American Southwest*, 23:6 GLOB. ENVTL CHANGE 1830-40 (2013).

support an international instrument, civil society and impacted communities. Both receiving country and country of origin should pursue such an autonomous tool in cooperation with the international community. Aid should be provided to the states immediately under climate disaster. The receiving country is not able to receive support for humanitarian relief in case of climate crisis without a Comprehensive International Legal Framework for climate refugees. This is why a legal architecture is indispensable for the global community.

However, receiving countries may deny the migration of climate refugees for political, economic and social ground. A comprehensive international legal framework thus will be a pragmatic solution to this climate refugee's crisis which would be coming soon. Some countries may be motivated by humanitarian needs. A refugee regime would put a greater emphasis on humanitarian issues and avoid making the same trade-offs with regard to future economic decisions involving emissions. Additionally, rather than taking in refugees directly, some states might want to help home states stop refugee flows or host states with integration. The new legal architecture may also be financially advantageous and culturally suitable by supporting regional efforts to accommodate refugees, especially where local languages and cultures are comparable among neighbouring states.

If realized, the comprehensive international framework for climate refugees can assist in managing displacement and preventing refugee flows, which may be significantly less expensive than resolving local conflicts or providing assistance to those who migrate to a country in large numbers due to a conflict caused by climate change. These incentives provide solid justification for confidence towards the proposed climate refugee framework. Such a simplest option is to create a climate refugee instrument that is distinct and independent from the existing refugee and climate conventions. Then, countries may be motivated to accept such a new framework. The proposed legal architecture would probably bring the growing issue of climate refugees to the attention of the public, which may give room for multidisciplinary solutions to assist people in need and affected communities and civil society a significant voice at the negotiating table. Such a final legal framework will guarantee the achievement of these objectives.

Received: February 1, 2025

Modified: April 10, 2025

Accepted: May 1, 2025