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CLIMATE-INDUCED MIGRATION: GAPS IN REFUGEE LAW AND THE RIGHT TO ENVIRONMENTAL ASYLUM

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Abstract
Climate change has been acknowledged not only as a development challenge that has a strong effect on human displacement. Higher sea levels, desertification, extreme weather events and ensuing long spells of drought are displacing people in their millions as they are driven to seek shelter and feeding grounds. International refugee law, at least the 1951 Refugee Convention, does not acknowledge as a refugee migrant who have been displaced by the impacts of climate change as they leave them without possible protections and rights that would ensure such migrants enjoy immunity to asylum. The paper critically evaluates the phenomenon of climate-related migration and the massive loopholes that deny access of the environmental migrants to the status of a refugee in the existing international systems.
The paper takes a critical view of how a refugee is defined under the convention of 1951 and its 1967 Protocol, and how it fails to deal with climate related displacement. It also examines infamous cases and policy responses by directly affected areas like the pacific islands, sub-Saharan Africa, and south Asia, the regions where climate vulnerability correlates strongly with displacement. Based on this examination, the paper highlights how important it is to change the laws and how these laws should also consider the protection of what can be referred to as environment asylum. It also tests proposed legal solutions such as an expansion of human rights-based approaches, the use of soft law instruments and the development of regional initiatives that can address some of the normative gaps.
This paper aids in adding to this debate on environmental justice and migration by critically evaluating the legal systems that exist today and promoting reforms that speak on behalf of everyone. It makes specific policy recommendations on how to reinforce protection mechanisms to the persons who are displaced as a result of climate change and how the international community should safeguard the dignity and rights of all migrants no matter the cause of their movement.
Keywords: *climate-induced migration, environmental asylum, refugee law, displacement, legal reform, international protection*

Introduction

The climate crisis is no longer a distant or abstract threat; it is an ongoing and intensifying global emergency with tangible consequences for human mobility. Rising sea levels, intensifying

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CJSSR
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Vol.03 No.04 (2025)

droughts, and more frequent extreme weather events have created new categories of displaced persons who flee not from war or persecution, but from environmental degradation. The Internal Displacement Monitoring Centre (IDMC) reported that over 32.6 million new displacements occurred in 2022 alone due to weather-related disasters, eclipsing conflict-related movements in many regions (*IDMC | GRID 2023 | 2023 Global Report on Internal Displacement*, n.d.). Despite the magnitude of these movements, individuals displaced by environmental factors are not formally recognized as "refugees" under existing international law.

The 1951 Refugee Convention and its 1967 Protocol define a refugee as a person who has a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion (*The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees | UNHCR*, n.d.) . This narrow definition excludes those fleeing environmental destruction, even when displacement threatens their survival and livelihood. As a result, millions of climate-displaced individuals fall through legal and policy gaps, unable to access international protection mechanisms or asylum rights.

This paper explores the disconnect between the lived realities of climate-induced migrants and the rigid legal categories of international refugee law. It begins by contextualizing the scope and nature of climate-induced migration and then critiques the limitations of existing legal frameworks in providing protection. Drawing upon case studies from vulnerable regions and current scholarly debates, the paper argues for a more inclusive legal response—potentially through the recognition of "environmental asylum" as a legitimate basis for international protection.

In doing so, this study aims to inform ongoing policy discussions on environmental displacement and to propose normative solutions rooted in human rights and global justice.

Understanding Climate-Induced Migration

Climate-induced migration refers to the movement of people compelled to leave their homes due to sudden or progressive environmental changes that adversely affect their living conditions. These include extreme weather events such as hurricanes and floods, as well as slow-onset processes like desertification, sea-level rise, and glacial melting. Unlike traditional migration drivers, such as conflict or economic hardship, climate factors present unique and often irreversible challenges, blurring the lines between voluntary and forced (*(PDF) One Step Forward, Two Steps Back? The Fading Contours of (in)Justice in Competing Discourses on Climate Migration*, n.d.).

Climate change acts as a threat multiplier, exacerbating existing vulnerabilities related to poverty, food insecurity, and weak governance. It disproportionately affects low-lying island nations, arid regions, and coastal zones in the Global South. The World Bank (2021) estimates that without urgent climate action, more than 216 million people could be internally displaced by climate impacts by 2050 across regions like Sub-Saharan Africa, South Asia, and Latin America.

However, climate-induced migration is not uniformly defined or recognized across legal, academic, or policy frameworks. Scholars have proposed various terminologies—such as "climate refugees," "environmental migrants," and "ecological displacement"—but none have achieved consensus or legal codification (Serraglio & Adaawen, n.d.) .This conceptual ambiguity hampers the development of cohesive responses at national and international levels.

Moreover, the pathways of displacement vary. Some movements are temporary and cyclical (e.g., seasonal drought migration), while others are permanent (e.g., relocation due to rising seas). Migration may be internal or cross-border, voluntary or forced, and often involves complex decision-making processes shaped by social, economic, and political pressures (*From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate*

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CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
Vol.03 No.04 (2025)

Change, Disasters and Displacement Thematic: Remaking Climate Change and the Law 39 University of New South Wales Law Journal 2016, n.d.) . These characteristics highlight the need for a differentiated and multidimensional understanding of climate mobility—one that transcends simplistic binaries of choice versus coercion.

In essence, climate-induced migration is a symptom of both environmental crisis and systemic injustice. Without appropriate recognition and legal safeguards, the affected populations remain at risk of statelessness, marginalization, and rights deprivation.

Legal Definition of a Refugee: Limitations under International Law

The foundation of international refugee protection lies in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which define a refugee as a person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion," is outside their country of origin and unable or unwilling to return (*Search | International Organization for Migration*, n.d.). Notably absent from this definition are environmental factors, including those stemming from climate change.

This exclusion is not merely semantic; it has far-reaching consequences for climate-displaced individuals. Because environmental degradation is not considered persecution under the Convention, individuals fleeing rising seas, droughts, or ecosystem collapse are legally ineligible for refugee status, regardless of the existential threat they face (*The CHH–Lancet Commission on Health, Conflict, and Forced Displacement: Reimagining the Humanitarian System - The Lancet*, n.d.). As a result, countries are not obligated under international law to admit or protect such individuals, leaving them vulnerable to statelessness and human rights violations.

Efforts to reinterpret the existing refugee definition through judicial activism or expansive readings have yielded limited success. For example, in *Teitiota v. New Zealand*, the United Nations Human Rights Committee acknowledged the seriousness of climate risks faced by Kiribati citizens but ultimately found no violation of the International Covenant on Civil and Political Rights in denying asylum (*Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2728/2016 :*, n.d.). The case highlighted the legal rigidity of existing frameworks and the insufficiency of current protections.

Scholars and advocacy organizations have proposed either amending the 1951 Convention or creating a supplementary legal instrument to address environmental displacement (*Project MUSE - Climate-Induced Displacement and the International Protection of Forced Migrants*, n.d.). However, political resistance to expanding the refugee regime, particularly in the Global North, has rendered such reform efforts slow and contested.

Moreover, soft law instruments like the *Guiding Principles on Internal Displacement* or the *Platform on Disaster Displacement* provide moral and policy guidance but lack binding legal force (*The 1951 Refugee Convention | UNHCR*, n.d.). Consequently, climate-induced migrants continue to fall into a "protection gap," where they are neither recognized nor assisted by traditional asylum systems.

Case Studies: Pacific Islands, Sub-Saharan Africa, and South Asia

Empirical evidence from regions most affected by climate change reveals both the scale of displacement and the limitations of current legal protection frameworks. The following case studies from the Pacific Islands, Sub-Saharan Africa, and South Asia underscore the urgent need for normative reform.

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Vol.03 No.04 (2025)

Pacific Islands: The Threat of Submersion

Small island states in the Pacific, such as Kiribati, Tuvalu, and the Marshall Islands, are among the most vulnerable to rising sea levels. Projections suggest that these nations may become uninhabitable within decades due to the salinization of freshwater supplies, coastal erosion, and intensified storm activity (Aleinikoff, 2024a). The 2020 UN Human Rights Committee decision in Ioane Teitiota v. New Zealand brought global attention to the plight of Pacific Islanders. Although the Committee acknowledged that climate change can pose a threat to the right to life under the International Covenant on Civil and Political Rights, it ruled that Mr. Teitiota's claim did not meet the threshold of imminent danger (UN. Human Rights Committee (127th sess. : 2019 : Geneva), 23a). This decision reflects both the recognition of climate risks and the legal ambiguity surrounding climate-induced displacement.

Sub-Saharan Africa: Drought, Conflict, and Displacement

Sub-Saharan Africa faces severe environmental stress due to recurring droughts, desertification, and erratic rainfall patterns, all of which have intensified rural-to-urban migration and resource-based conflicts. In countries like Chad, Niger, and Ethiopia, climate pressures exacerbate already fragile socio-political contexts (*Open Knowledge Repository*, n.d.-a). Although the African Union's 2009 Kampala Convention is a progressive regional instrument that includes displacement caused by natural disasters and climate change, its focus is limited to internally displaced persons and lacks binding enforcement mechanisms (*36846-Treaty-Kampala_convention*, n.d.). This leaves cross-border climate migrants outside its scope, despite increasing displacement patterns in the Sahel and Horn of Africa regions.

South Asia: Floods, Cyclones, and Coastal Erosion

South Asia is another climate hotspot, with countries like Bangladesh, India, and Pakistan facing a range of threats including glacial melt, sea-level rise, and monsoon variability. Bangladesh alone could see over 13 million people displaced due to climate impacts by 2050 (*Open Knowledge Repository*, n.d.-b). While some adaptive measures such as embankments and planned relocation have been implemented, legal frameworks across the region lack any formal recognition of cross-border environmental displacement. Moreover, there is no domestic legal category for climate migrants in most South Asian states, leaving displaced populations with little access to legal remedies (Bibi & Abbasi, 2024).

These regional experiences demonstrate that climate-induced migration is not only a growing phenomenon but also a legally unprotected one. Without internationally recognized mechanisms or consistent national policies, those displaced by environmental causes remain in a legal limbo marginalized by the very systems designed to offer humanitarian protection.

Proposals for Legal Reform: Environmental Asylum and Human Rights Protections

The inadequacy of existing legal frameworks to address climate-induced migration necessitates urgent reform. While legal scholars and human rights advocates have debated various solutions, a consensus is emerging that new normative pathways must be developed either by expanding current refugee definitions or by establishing dedicated legal regimes for environmental displacement.

Expanding the Definition of "Refugee"

One widely debated reform option is to revise the 1951 Refugee Convention to include individuals fleeing environmental degradation. However, such an amendment faces considerable political resistance from states wary of expanding their obligations under international refugee law (McAdam, 2012a). Moreover, reopening the Convention could risk undermining existing

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CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
Vol.03 No.04 (2025)

protections for traditional refugees. A more feasible approach may lie in the interpretive expansion of persecution grounds, particularly the concept of "membership in a particular social group", to encompass communities threatened by environmental collapse (Aleinikoff, 2024b).

Recognizing "Environmental Asylum"

Some scholars advocate for the creation of a new international legal category: "environmental asylum" or "climate refugee status" (Salako, 2025a). This would entail the development of a binding instrument tailored to the realities of climate-induced displacement. Such a treaty could define thresholds of displacement, outline state obligations, and provide procedural safeguards for asylum seekers. While this approach would offer legal clarity and moral legitimacy, it would also require significant international consensus and institutional support, which currently appears lacking.

Regional and Soft Law Instruments

In the absence of global treaty reform, regional agreements and soft law instruments offer interim solutions. The African Union's Kampala Convention is notable for its inclusion of natural disasters as a cause of internal displacement (*36846-Treaty-Kampala_convention*, n.d.), while the *Platform on Disaster Displacement (PDD)* builds upon the Nansen Initiative's non-binding principles to assist states in responding to cross-border disaster displacement (*Platform on Disaster Displacement*, n.d.-a). Though these instruments lack enforceability, they reflect growing normative recognition of environmental migration as a legitimate concern.

Human Rights-Based Approaches

Another promising avenue is to frame climate displacement as a human rights issue. The UN Human Rights Committee's decision in *Teitiota v. New Zealand* established that environmental conditions can violate the right to life under the International Covenant on Civil and Political Rights, potentially triggering non-refoulement obligations under international law (UN. Human Rights Committee (127th sess. : 2019 : Geneva), 23b). Human rights mechanisms may therefore serve as legal backdoors to protection, especially when traditional refugee frameworks fail to apply.

Ultimately, a hybrid approach, incorporating human rights, regional cooperation, and incremental legal recognition, may be the most pragmatic path forward. While comprehensive reform remains politically difficult, targeted strategies can begin to bridge the protection gap for those displaced by climate change.

Role of Regional and International Organizations

Addressing the complex challenges of climate-induced migration requires coordinated action at both regional and international levels. While no single entity has a binding mandate to protect climate-displaced persons, several organizations and regional bodies are beginning to play an increasingly important role in shaping normative frameworks and policy responses.

The United Nations and Multilateral Frameworks

The United Nations High Commissioner for Refugees (UNHCR) has acknowledged the growing threat of climate-induced displacement but continues to operate within the limitations of the 1951 Refugee Convention. Nevertheless, UNHCR has promoted legal guidance on how environmental factors may intersect with existing refugee definitions, such as through indirect persecution or state neglect (Cantor et al., 2024). Additionally, the United Nations Framework Convention on Climate Change (UNFCCC) recognizes displacement in the context of loss and damage, and the 2015 Paris Agreement includes provisions on climate migration under the Warsaw International Mechanism

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CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
Vol.03 No.04 (2025)

(*UNClimateChange_AnnualReport_2022*, n.d.). However, these instruments largely rely on state discretion and lack enforcement power.

The Platform on Disaster Displacement (PDD)

The Platform on Disaster Displacement, launched as a successor to the Nansen Initiative, plays a crucial role in promoting non-binding principles and best practices to protect people displaced across borders due to disasters and climate change. It has facilitated policy dialogues, conducted research, and supported states in crafting national instruments to address displacement risks (*Platform on Disaster Displacement*, n.d.-b). While not a treaty body, its efforts have advanced recognition of climate displacement in international discourse.

Regional Cooperation and the Role of the African Union

The African Union (AU) has taken the lead among regional entities with its Kampala Convention, which explicitly includes displacement due to natural disasters and climate-related events. Although it applies only to internal displacement, it has been a model for integrating environmental triggers into legal frameworks at the regional level (*36846-Treaty-Kampala_convention*, n.d.). The African Development Bank and Intergovernmental Authority on Development (IGAD) have also developed frameworks on migration and environmental resilience, demonstrating the potential for regional governance to complement international efforts ("Regional Strategy 2021 - 2025 (Popular Version)," n.d.).

International Organization for Migration (IOM)

The IOM has emerged as a leading actor in the climate-migration nexus, operating at the intersection of policy, humanitarian response, and research. It supports states in data collection, capacity-building, and the development of migration-sensitive climate adaptation policies. The IOM's "Migration, Environment and Climate Change" division has published global guidance on integrating displacement into national adaptation plans (*Institutional Strategy on Migration, Environment and Climate Change 2021–2030*, 2020). While not a rights-based institution, IOM's technical and operational capacity makes it essential for coordinated climate-mobility responses.

Gaps and Opportunities for Governance Reform

Despite these growing initiatives, institutional fragmentation and the voluntary nature of most instruments hinder the development of a coherent global response. International law lacks a binding treaty specifically addressing cross-border climate migration, and current efforts often overlap without creating enforceable obligations (Davidoff-Gore, n.d.). Strengthening inter-agency coordination and establishing binding legal obligations remain key challenges for the future.

Recommendations

To address the normative and institutional shortcomings in the current legal regime concerning climate-induced migration, the following recommendations are proposed. They are grounded in recent scholarly and policy debates that seek to close the protection gap for environmentally displaced persons.

Establish a Legal Framework for Environmental Asylum

The creation of a dedicated international legal instrument recognizing climate-induced displacement is imperative. This treaty should provide clear definitions, legal protections, and mechanisms for resettlement and adaptation. Such an instrument would overcome the limitations of the 1951 Refugee Convention and provide binding commitments by states (Salako, 2025b).

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CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
Vol.03 No.04 (2025)

Expand Interpretations of the 1951 Refugee Convention

Until a new framework is adopted, broader interpretations of "persecution" under the 1951 Convention can partially bridge the protection gap. For instance, in cases where environmental degradation is linked to state neglect or conflict over resources, a protection claim may still arise under current refugee definitions (McAdam, 2012b).

Integrate Climate Mobility into National Adaptation Plans

States should proactively integrate human mobility considerations into their National Adaptation Plans (NAPs). This includes planning for managed retreat, livelihood restoration, and community-based resilience strategies (*IOM-Institutional-Strategy-MECCC_0*, n.d.). The inclusion of migration as a form of adaptation has been increasingly recognized in global frameworks such as the Cancun Adaptation Framework.

Strengthen Regional Frameworks and South-South Cooperation

Drawing lessons from Africa's Kampala Convention and initiatives by the Intergovernmental Authority on Development (IGAD), regional efforts can provide tailored legal and policy responses. South-South cooperation is especially valuable for building localized solutions and facilitating mutual assistance in regions most affected by displacement (*Open Knowledge Repository*, n.d.-c).

Enhance the Role of Human Rights Mechanisms

Human rights mechanisms must play a more active role in responding to climate mobility. The principle of non-refoulement, along with rights to life, housing, and a healthy environment, can form the basis for protection under international human rights law. The *Teitiota v. New Zealand* decision before the UN Human Rights Committee marks a step toward recognizing environmental harm as a legitimate ground for protection (*UNClimateChange_AnnualReport_2022*, n.d.).

Conclusion

The intensifying impact of climate change has emerged as one of the defining humanitarian challenges of the 21st century, driving millions of people to leave their homes in search of safety, sustenance, and dignity. Despite this reality, international legal frameworks continue to lag behind, offering no formal recognition or protection to climate-induced migrants. The narrow scope of the 1951 Refugee Convention, while vital in addressing traditional forms of persecution, fails to accommodate the multifaceted nature of environmental displacement.

As this paper has demonstrated, climate-induced migration is not confined to a single region or demographic; it affects diverse communities across the Pacific Islands, Sub-Saharan Africa, and South Asia. Yet, these populations often find themselves in legal limbo, lacking both the political recognition and institutional support needed to assert their rights. The failure to update or reinterpret international refugee law has resulted in a growing protection gap—one that exposes environmentally displaced persons to further vulnerabilities, including poverty, statelessness, and exploitation.

While non-binding instruments, regional treaties, and human rights bodies have made notable progress in acknowledging climate-related mobility, these efforts remain fragmented and largely unenforceable. The role of institutions such as the UNHCR, IOM, and the Platform on Disaster Displacement underscores a growing awareness of the issue, but also highlights the limitations of a system overly reliant on soft law and discretionary policy.

In conclusion, climate-induced migration presents not only a legal challenge but also a moral and ethical imperative. If the international community fails to respond with clarity, compassion, and coherence, millions may continue to fall outside the scope of legal protection. Bridging the

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CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
CJSSR
CONTEMPORARY JOURNAL OF SOCIAL SCIENCE REVIEW
Vol.03 No.04 (2025)

normative gap requires transformative legal thinking—one that embraces environmental asylum as a legitimate category and affirms the fundamental rights of all displaced persons, regardless of the causes of their migration.

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CJSSR
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Vol.03 No.04 (2025)

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