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A Looming Crisis: Exploring the Precarious Legal Status of 'Climate Refugees' Under International and Human Rights Law

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Abstract

As climate change worsens, millions of people around the world will be displaced, exacerbating conflicts and resource scarcity. In recent years, individuals displaced by climate change have sought legal recognition as 'climate refugees' under the Convention Relating to the Status of Refugees, adopted by the UN General Assembly in 1951. This paper argues that the Convention, originally designed to address persecution-based displacement, lacks provisions for those fleeing environmental crises. This paper explores existing legal frameworks relating to the status of 'climate refugees' under international and human rights law, with a focus on recent judicial opinions. It also examines alternative frameworks for refugee claims, including human rights treaties, as well as regional agreements such as the 1984 Cartagena Declaration on Refugees and the 2009 African Union Kampala Convention. These mechanisms offer potential pathways for recognizing and protecting those displaced by climate change beyond the narrow definition of the 1951 Refugee Convention. The paper concludes that regional agreements, modeled after the Kampala Convention, provide the most practical and enforceable solutions for addressing the complex legal challenges posed by climate-induced displacement.

Keywords: International law, Climate refugees, Climate displacement, Internally Displaced Persons, Human rights

Introduction

In recent years, the effects of climate change have produced waves of migration around the world, raising challenging questions regarding international refugee law and human rights. Although quantifying migration remains challenging, recent estimates found that between 2008 and 2014, sudden-onset disasters displaced over 184.4 million people. Of these, an annual average of 22.5 million people were displaced by weather-and climate-related hazards (UNHCR, n.d.). These weather and climate-related disasters will only increase in the coming decades, leaving hundreds of millions with the impossible choice of staying in a dangerous area or fleeing to an unknown place that may refuse or mistreat them. Furthermore, climate change acts as a “risk multiplier” that intensifies existing issues including resource scarcity, economic instability, and violence. This exacerbation will compound the global refugee crisis, leaving migrants at greater risk and overwhelming inadequately equipped nations.

In response to the present refugee crisis and the prospect of a global climate migration catastrophe, a large body of legal scholarship has grown around the issue of “climate refugees” and designations of “climate refugee status” under international law. Under different legal standards and principles, scholars debate whether “climate refugees” deserve statehood in the countries responsible for climate change, whether displacement can be attributed to climate change, and whether existing legal frameworks can adequately respond to the challenges ahead (UNHCR, n.d.).

Though many scholars, activists, and government agencies are pushing for the protection of populations vulnerable to climate change, the issue of climate refugee status under international law remains contested. This essay will argue that existing international law does not explicitly provide for the protection or designation of climate refugees, but innovative legal and political mechanisms, including human rights and regional frameworks, may give states avenues for addressing climate migration and internal displacement. Ultimately, this essay will propose that the best course of action to protect victims of climate change will be creating more binding regional agreements that can respond to climate displacement on a local level.

I: Does the existing legal framework apply to climate refugees?

A) The Refugee Convention of 1951

The primary document regarding refugees and refugee status is the 1951 Convention Relating to the Status of Refugees (“The Refugee Convention”). The Refugee Convention was developed in response to the mass displacement of citizens during and after World War II. The Convention was amended in 1967 to remove geographic and time-based limitations connected to WWII, extending protection to people in any country fleeing conflict, violence, or persecution (UNHCR US, n.d.). Despite this amendment, the Convention has not evolved further, and it has proven difficult for legal advocates to categorize ‘climate refugees’ solely based on the Convention’s definitions.

The Refugee Convention primarily addresses issues of violence, persecution, and political targeting but currently does not encompass individuals displaced solely by environmental factors, including climate change. The Refugee Convention defines “refugee” narrowly. Article 1(A2) of the convention states that the term “refugee” shall apply to anyone who is outside his country of nationality “owing to a well-founded fear of being persecuted for reasons of race, religion,

nationality, membership of a particular social group or political opinion” or someone who does “not have a nationality and [is] outside the country of his former habitual residence as a result of such [fear-inducing] events” (UNHCR US, n.d., p. 14). Displacement due solely to climate change does not meet these specific criteria. Though climate impacts may amplify threats of persecution or violence, they are “spatially and socially differentiated” (UNHCR US, n.d., p. 9). Since emissions in one country cannot be directly linked to violence in another, it is difficult for people to claim refugee status based on the consequences of climate change (UNCHR, 2020).

Under current interpretations of the Refugee Convention, individuals cannot easily attribute their “well-founded fear of being persecuted” to the broad and indirect impacts of climate change. However, recent judicial interpretations suggest that the Convention’s applicability may evolve as the effects of climate change become increasingly severe and attributable to state action or inaction.

B) *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation, and Employment*

The case of Ioane Teitiota in New Zealand from 2015 highlights the limited situations in which the Refugee Convention could address climate-induced displacement. In *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation, and Employment*, Teitiota, a citizen of a small island called Kiribati, appealed his denial of refugee status in the New Zealand High Court due to his island’s vulnerability to climate change. Teitiota argued that the effects of climate change on Kiribati, including rising sea levels, freshwater contamination due to rising seas, and environmental degradation were forcing citizens off the island. Ultimately, the High Court determined that Teitiota does not qualify as an “environmental refugee” under the Refugee Convention because Teitiota would not face “serious harm” if he returned, and “there is no evidence that the Government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation.” This ruling underscores that the Refugee Convention’s application remains narrow and excludes the broader concept of ‘climate refugees.’

While the Refugee Convention does not currently apply to climate refugees, judicial interpretations in *Ioane* hint that climate refugee status may become relevant as climate impacts escalate. In *Ioane Teitiota*, the court noted that their decision does “not mean that environmental degradation resulting from climate change or other natural disasters could never create a pathway into the Refugee Convention or protected person jurisdiction.” This suggests that if future litigants can demonstrate a “well-founded fear of being persecuted” as a *direct* result of their state’s failure to respond to climate change, their claims might eventually align with the Convention’s requirements. Climate change’s exacerbation of resource scarcity, land disputes, and state vulnerability could strengthen the link between persecution and climate impacts, potentially satisfying the Convention’s criteria for refugee status.

Furthermore, if in the future, small island states physically cease to exist due to sea level rise, former citizens may be able to make legal arguments for refugee status under the Refugee Convention for “not having a nationality” and “being outside the country of his formal habitual residence as a result of such events.” If/when this issue of complete statelessness due to climate change arises, the Refugee Convention may be more applicable to those impacted by climate change.

Overall, this analysis of the Refugee Convention and relevant cases demonstrates that legal refugee status under the Convention necessitates a direct connection to persecution, imminent threats, or violence. While climate change’s compounding effects may increase the number of cases

meeting the Convention's criteria, climate factors alone cannot currently determine refugee status within this legal framework.

II: What other approaches can states and vulnerable populations utilize to respond to climate migration and internal displacement?

A) International Law and Rights-Based Approaches

While 'climate refugees' may not meet the strict criteria of 'refugee' under the Refugee Convention, other international and regional frameworks may be better equipped to support those forced to leave their country of origin due to climate change. In recent years, the UN has developed several international frameworks addressing climate-induced migration that go beyond the scope of the Refugee Convention. These frameworks, while serving as essential guidelines, are not legally binding. For example, in 2016, the UN adopted the New York Declaration for Refugees, followed by the Global Compact for Safe, Orderly, and Regular Migration in 2018 (Weerasinghe, 2018). Both documents emphasize the urgency of displacement linked to climate change and acknowledge it as a "risk multiplier" likely to compound refugee movements. These frameworks set valuable standards for global solidarity and burden-sharing and serve as supplementary guidance to existing agreements. However, they fall short of addressing the immediate needs of migrants or providing the funding necessary for managing migration effectively on the ground.

Beyond the walls of the UN, countries have developed collaborative mechanisms to respond to the issue of climate-induced migration. In 2012, the governments of Norway and Switzerland launched the Nansen Initiative, an intergovernmental process aimed at building consensus on the protection of people displaced by climate change and addressing gaps in existing international law (The Nansen Initiative, 2015). In 2016, this state-led consultative process established a non-binding "Protection Agenda" to provide a toolbox to better prevent, anticipate, and prepare for displacement before it strikes (European Parliament, 2021). The Protection Agenda also intends to help states improve their protocols for situations where people are forced to find refuge in a new place, whether through internal or external migration (European Parliament, 2021). The Nansen Initiative did not define the legal status of 'climate refugees,' yet it provided an important platform for international collaboration and demonstrated that many states are intent on responding to climate-induced movements through diplomatic, rights-based approaches.

Going forward, policymakers may find success in better incorporating the existing human rights framework into documents and cases in order to improve the legal standing of climate refugee status. Policymakers could argue that extreme weather events threaten the "right to life" under the Convention on the Rights of the Child (CRC), Article 6 of the International Covenant on Civil and Political Rights (ICCPR), and Article 2 of the European Convention on Human Rights (ECHR) (McAdam, 2011). A right-to-life argument was successfully utilized in *Budayeva v. Russia*, a case in which the European Court of Human Rights held that the State's duty to protect life extends to protection from natural disasters (McAdam, 2011, p. 21). This case demonstrates how rights-based frameworks have the potential to protect climate migrants.

Furthermore, policymakers could argue that increased food insecurity and water stress constitute cruel, inhuman, and degrading treatment under Article 7 of the ICCPR, along with violations of the right to adequate food and safe drinking water in the ICCPR, ICESCR, and CRC ((McAdam, 2011, p. 23). Additionally, Article 7 of the ICCPR contains a non-refoulement

obligation, so it could be argued that countries receiving climate refugees may not return migrants to their places of origin where climate change is threatening their lives (McAdam, 2011). Finally, in July 2022, the UN declared a right to a “clean, healthy, and sustainable environment” (UN News, 2022). Through this provision, future climate refugees could argue that the environmental disruptors in their home country required them to flee in violation of their human rights. Many of these human rights arguments are non-binding ‘soft law,’ but they nevertheless have the potential to provide an international legal framework for future agreements and cases.

UN frameworks, national initiatives, and international human rights law lay important groundwork for addressing climate migration by stressing the principles with which a more binding law might be constructed. However, these solutions struggle with the issues of enforceability and practicality. The most effective methods for legally addressing climate-induced displacement and statelessness issues exist on a regional level.

B) Regional Approaches

Regional conventions focused on the status and treatment of refugees displaced by climate change may offer the most effective response to the gaps in the Refugee Convention regarding climate-induced displacement. Two key conventions, the 1984 Cartagena Declaration on Refugees (“Cartagena Declaration”) and the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“Kampala Convention”) demonstrate how regional instruments can be one of the most valuable and practical tools for addressing the plight of those displaced by climate change.

The Cartagena Declaration is a non-binding regional instrument that broadened the concept of a refugee in Latin America, and it has the potential to address the legal challenges of ‘climate refugee’ categorization. The creators of the Cartagena Declaration sought to address some of the fault lines of the 1951 Convention and 1967 Protocol and expand the definition of refugees to fit with modern times and the specific challenges facing Latin America. Cartagena takes a broader approach to refugee protection than the prior Protocol, recognizing the potential for individuals to qualify as refugees due to “circumstances which have seriously disturbed public order” (Organization of American States, 1984). Although the Declaration does not directly address migration caused by climate change, some scholars argue that natural hazards and climate change-related disasters could be considered “circumstances that have seriously disturbed the public order” (Canepa & Gutierrez, 2021). No country has utilized this broader interpretation to grant refugee status based on climate change-related disasters, but the Declaration provides a foundation for future cases that seek to expand the qualifications of ‘climate refugees’ beyond the 1951 definition (Canepa & Gutierrez, 2021).

Although the Cartagena Declaration is not legally binding, the majority of Latin American countries have incorporated its content within their domestic law. Through domestic implementation, the Declaration has more potential to legally include ‘climate refugees’ in its categorization of refugees in the future. The fact that the Cartagena Declaration was developed regionally rather than internationally helped garner strong domestic responses. It is therefore one of the strongest frameworks for responding to climate-induced migration.

The African Union’s (AU) Kampala Convention also demonstrates how regional frameworks can be one of the best tools for addressing the gaps in the Refugee Convention that have failed to

protect people displaced by climate change. While the Refugee Convention focused on refugee movement across borders, it failed to address a key category of migrants: Internally Displaced Persons (IDPs), people displaced within their own borders. Experts predict that most people displaced by climate change will become IDPs, so defining the legal rights of IDPs is key to responding to climate-induced movement (The Brookings Institution, 2014). The Kampala Convention is the only binding, continent-wide convention that determines the rights and responsibilities of individual states with respect to IDPs, regardless of the cause of their displacement.

The Kampala Convention defines IDPs as “persons or groups of persons who have been forced or obliged to flee” due to “armed conflicts...violence, violations of human rights or natural or human-made disasters” (African Union, 2009). Through this broad definition, the Kampala Convention protects a wide array of people and demonstrates how disasters, whether caused by people, the weather, or the climate, have a significant impact on vulnerable populations. In Article 5(4), Article 2(a), and Article 4(2), the Kampala Convention requires states to protect those displaced by disasters caused by climate change, prevent and mitigate the root causes of internal displacement, and create warning systems and emergency management measures for crises. Through these provisions, the Kampala Convention underscores how regional solutions can provide more robust protections for climate-displaced populations within national borders than the Refugee Convention currently does for cross-border climate migrants.

Together, the Kampala Convention and the Cartagena Declaration show how regional, legally binding frameworks based on domestic law can provide a more effective legal solution to climate displacement. These regional approaches are especially relevant since climate migration often happens within local and regional contexts.

III: How regional agreements address challenges relating to refugee status

Regional agreements like the Cartagena Declaration and the Kampala Convention can offer practical solutions to two major challenges in climate migration: transborder responsibility and state resistance.

One of the key challenges in addressing the status of climate migrants is transborder responsibility. Climate change is a uniquely vexing problem because CO₂ emissions travel far from their place of origin. It is therefore difficult to establish a “causal chain” of transborder responsibility between emissions in America or China, a drought in Africa, and a flood in Bangladesh, for example. In the context of climate-induced migration, this transborder responsibility issue raises difficult questions about whether countries that did not cause the climate crisis should be responsible for climate refugees.

Most climate-induced migration occurs internally or between neighboring countries in the Global South, placing an undue burden on countries with little climate responsibility. Some argue that instead of taking a “nearest neighbor” approach, the countries most responsible for climate change should take the most refugees (McAdam, 2011). A global, responsibility-based approach would be more ethical and equitable than a “nearest neighbor” approach. However, there is little political appetite among developed countries, most of which bear the brunt of climate change responsibility, to take accountability for the impact of their emissions, particularly by taking in more refugees. In the past, developed countries have failed to protect the refugees that clearly fit within

the Refugee Convention's refugee definition—like Syrian and North African refugees fleeing conflict—so it is unlikely that they will take transboundary responsibility for a new category of 'climate refugees.'

Regional frameworks, however, help alleviate this challenge of transboundary responsibility by focusing on local cooperation among neighboring countries that are most directly affected by climate displacement. For instance, the Kampala Convention directly addresses the needs of Internally Displaced Persons (IDPs), not 'climate refugees' around the world, and requires *only* state cooperation within Africa. Through regional approaches such as the Kampala Convention, countries can mitigate the challenges created by climate-induced migration without needing to wait for the cooperation of developed nations.

Secondly, regional agreements like the Kampala Convention may reduce the likelihood of state resistance or noncompliance, which is often a significant barrier in international climate migration frameworks. Even if a framework is developed to define the status of 'climate refugees', grant them particular rights, and assign transborder responsibility, states will likely resist taking in their fair share of refugees and protecting their rights. This state resistance or noncompliance could lead to an increase in international conflict, with vulnerable populations caught helpless in the middle.

Regional agreements may be a strong mechanism for addressing state non-compliance because individual countries are often better equipped to develop strong local enforcement mechanisms that don't depend on distant actors. With approaches that respond to the needs of each region, political will for compliance with climate migration agreements may increase.

This paper determines that the best solution for policymakers going forward is the creation of more binding regional agreements regarding the status of climate migrants, modeled after the Kampala Convention and Cartagena Declaration. Regional agreements like Kampala often have better enforcement mechanisms and more political will than international agreements, decreasing the likelihood of state resistance or noncompliance. Since most displacement occurs locally, it is in the interest of the countries that will manage refugees to help determine their status, even if those countries do not bear the brunt of responsibility for climate change.

Conclusion

This paper has highlighted the challenges in recognizing 'climate refugees' under the 1951 Refugee Convention and proposes that emerging regional treaties and international frameworks may provide a promising avenue for addressing the status of individuals displaced by climate change. As the effects of climate change continue to intensify global crises, the plight of 'climate refugees' will only gain significance. Robust regional legal frameworks that are implemented domestically and focused on IDPs will be essential for a comprehensive global response to the intertwined issues of climate change and migration. It is vital for both international and domestic policy makers to bridge the gaps in existing international law regarding 'climate refugees' by adopting regional, rights-based approaches that safeguard the rights and dignity of the world's most vulnerable populations.

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