

# Reconceptualising the Principle of *Non-Refoulement* in the Context of Climate-Induced Migration: Navigating through International Obligations

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**Abstract:** *The novelty and complexity of climate-induced migration are increasingly challenging the established domains of international human rights and refugee law worldwide. It is widely established that the current international legal frameworks are inadequate in addressing the protection needs of migrant people due to climate change. This article examines how the reinterpretation of the principle of non-refoulement, primarily articulated in Article 33 of the 1951 Refugee Convention and expanded through international human rights instruments, can protect those migrated by climate-induced harms. Drawing on international treaties, instruments, and case laws, this article argues that climate-related harm can be addressed within the broader frameworks of human rights and refugee law through the reinterpretation of key legal concepts. In addition to addressing other issues, the article criticises the prevailing emphasis on ‘imminence’ in international refugee and human rights law. It proposes a more nuanced approach that considers the severity and foreseeability of climate-related threats. It concludes that a human rights-based and forward-looking legal response is necessary to minimise the protection gap for individuals displaced by climate change.*

**Keywords:** *Non-refoulement, Climate-induced migration, climate refugees, international law, human rights, protection gaps, environmental migration.*

## 1. Introduction

Climate change has become one of the most critical issues in the world in the 21<sup>st</sup> century. This has implications for human rights, migration, international law, and many other areas. One of the most important yet least studied consequences of climate change is its ability to compel individuals to leave their homes.<sup>1</sup> The phenomenon of climate change-induced migration, commonly referred to as ‘climate migration’, is on the increase due to the effects of sea level rise, desertification, severe weather occurrences, and the deterioration of the environment.<sup>2</sup> With the most severe repercussions of climate change on the horizon, it is anticipated that millions of people, especially in small island

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<sup>1</sup> Alex de Sherbinin, ‘Climate Impacts as Drivers of Migration’ ([migrationpolicy.org](https://migrationpolicy.org), 20 October 2020) <<https://www.migrationpolicy.org/article/climate-impacts-drivers-migration>> accessed 19 June 2025.

<sup>2</sup> *ibid.*

developing states, coastal regions and dry areas, will be dislocated from their homes and means of survival, including their countries of residence.<sup>3</sup>

Nonetheless, the existing rules and legislation at the international level are insufficient to protect those who have been dislocated within or beyond the national border because of climate change.<sup>4</sup> In article 1A (2), the 1951 Refugee Convention, which is the foundation of international refugee law, identifies a refugee as an individual who is –

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>5</sup>

This post-Second World war-centered definition does not include victims of environmental degradation.<sup>6</sup> Consequently, those who are compelled to abandon their countries due to decreased land from rising sea levels, excessive droughts, and other forms of calamities are not considered refugees under international law and, therefore, are not afforded legal protection.<sup>7</sup>

At the center of the protection of refugees is the concept of non-refoulement under international refugee and human rights law, which prohibits states from forcing an individual to go back to their home country if they will be persecuted, tortured, or suffer any other gross violation of human rights.<sup>8</sup> In article 33 of the 1951 Refugee Convention it is clearly stated that - “[n]o Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>9</sup> This is the central tenet of the Convention Relating to the Status of Refugees, 1951,<sup>10</sup> and it has been elaborated upon in various human rights instruments, such as the Convention against Torture and Other Forms of Cruel,

<sup>3</sup> Walter Kälin and Nina Schrepfer, ‘Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches’ (Research Paper No. 24, UNHCR February 2012) <<https://www.refworld.org/reference/lprps/unhcr/2012/en/85058>> accessed 19 June 2025.

<sup>4</sup> Caitlan M Sussman, ‘A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?’ (2023) 2(1) Chicago Journal of International Law 41.

<sup>5</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

<sup>6</sup> Francesca Rosignoli, ‘Decolonizing Refugeehood: The Rise of Climate Refugees as a New Legal Subjectivity’ (2024) 31 Journal of Political Ecology 747 <<http://journals.librarypublishing.arizona.edu/jpe/article/id/5658/>> accessed 15 June 2025.

<sup>7</sup> See Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP 2012).

<sup>8</sup> See Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (OUP 2007).

<sup>9</sup> Convention Relating to the Status of Refugees (n 5).

<sup>10</sup> *ibid.*

Inhuman, or Degrading Treatment or Punishment (Article 3).<sup>11</sup> The International Covenant on Civil and Political Rights (ICCPR) does not contain a dedicated article on non-refoulement. However, Articles 6 (right to life) and 7 (prohibition of torture or cruel, inhuman or degrading treatment) form the legal foundation for non-refoulement obligations under international human rights law.<sup>12</sup> Even though the principle of non-refoulement has been applied over the years mainly in situations involving persecution, it is now being appreciated that it may also cover people who have been displaced due to climate change, especially those who would face severe harm or risk death if returned to their home countries.<sup>13</sup>

Current research demonstrates that the application of the principle of non-refoulement to the climate refugees has gained increasing scholarly and legal attention.<sup>14</sup> In 2020, the United Nations Human Rights Committee addressed the matter in detail in the case of *Teitiota v. New Zealand*,<sup>15</sup> where it, for the very first time, recognised that in some circumstances, the non-refoulement principle may arise under human rights law due to climate change. This concerned Ioane Teitiota, a man from the island nation of Kiribati who claimed that a deportation order from New Zealand to a country about to submerge under rising sea levels would breach his right to life as guaranteed under the ICCPR.<sup>16</sup> New Zealand argued that the risk Teitiota would encounter upon return—such as scarcity of water, land dispute, or food insecurity due to climate change—did not amount to a personal and imminent risk to his life. The Committee observed that the risk had to be personal, real, and present—not hypothetical or abstract. While the Committee recognised climate change as a valid threat to life, it also maintained that Teitiota’s case fell short of the required burden of proof. It also said that slow-onset risks (such as sea-level rise that will render Kiribati uninhabitable in 10–15 years) do not yet trigger non-refoulement, since there is still time for the international community or Kiribati to act. Though the Committee did not overturn the ruling in favour of Teitiota, still, the judgment represented a breakthrough in the understanding of how climate change could impact the violation of the non-refoulement principle.<sup>17</sup> The UN Human Rights Committee specifically addresses this discussion in paragraph 9.11 of its views. In that paragraph, the Committee states:

“The Committee takes note of the observation ... that both sudden-onset events ... and slow-onset processes ... can propel cross-border movement... The Committee is of

<sup>11</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (opened for signature 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

<sup>12</sup> UNHRC, ‘General Comment No 20: Article 7’ (1992) UN Doc CCPR/C/GC/20; UNHRC, ‘General Comment No 31’ (2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 80.

<sup>13</sup> Jane McAdam and Tamara Wood, ‘Kaldor Centre Principles on Climate Mobility’ (2023) 35 International Journal of Refugee Law 483.

<sup>14</sup> Kälén and Schrepfer (n 3).

<sup>15</sup> UNHRC, ‘Ioane Teitiota v New Zealand’ (2020) UN Doc CCPR/C/127/D/2728/2016.

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

the view that without robust national and international efforts, the effects of climate change ... may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states.”<sup>18</sup>

However, broadening the non-refoulement principle to include displaced persons due to climate change presents challenges. Most countries are not willing to be flexible on the refugee definition, as they are afraid that it might allow many climate refugees to come into the country.<sup>19</sup> In addition, it is practically difficult to determine at what juncture environmental degradation is serious enough to require non-refoulement protection.<sup>20</sup> Notwithstanding these difficulties, existing jurisprudence and academic writings indicate that the migration of people as a result of climate change will serve an ever-increasing function in international law, which will seek creative means to address the challenges of climate change concerning susceptible populations.<sup>21</sup>

## 2. The Principle of Non-Refoulement in International Law

The principle of non-refoulement is one of the core principles of international refugee law and human rights law, and it provides that no one should be returned to a country in which they would have a well-founded fear of persecution, torture, or other forms of inhuman treatment.<sup>22</sup> Non-refoulement is enshrined in both treaty law and customary international law; therefore, it is one of the key principles in strengthening the protection of refugees from any attempts by states to forcibly remove or return them to areas where their life or liberty is at risk.<sup>23</sup> Eventually, the principle of non-refoulement has broadened its scope and has gone beyond the limited bounds of refugee law and has come to encompass all regimes of human rights.<sup>24</sup>

In the course of time, the principle has become wider both in its extent and application. More than its primary use in refugee law, non-refoulement has come to be upheld as a wider human right of all persons, rather than only of refugees.<sup>25</sup> As pointed out by *Violeta Stoyanova*, this principle has turned into an essential set of norms of human rights law, which provides that asylum seekers and other persons who are being persecuted have the right to enter into and stay within a safe territory.<sup>26</sup> Stoyanova asserts that the right of asylum seekers to enter the

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<sup>18</sup> *ibid.*

<sup>19</sup> McAdam (n 7).

<sup>20</sup> *ibid.*

<sup>21</sup> Kälén and Schrepfer (n 3).

<sup>22</sup> Convention Relating to the Status of Refugees (n 5).

<sup>23</sup> *ibid.*

<sup>24</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n 11).

<sup>25</sup> Goodwin-Gill and McAdam (n 8).

<sup>26</sup> Vladislava Stoyanova, 'The Principle of Non-Refoulement and the Right of Asylum-Seekers to Enter State Territory' (2008) 3(1) *Interdisciplinary Journal of Human Rights Law* 1.

territory of the state is subsequent to the principle of non-refoulement.<sup>27</sup> This is because it is not enough for a state to simply ensure that individuals are not sent back to a hostile state, but that individuals in such situations are also afforded the opportunity to seek asylum.<sup>28</sup>

The principle of non-refoulement applies extraterritorially, meaning that states cannot avoid their obligations by intercepting individuals in international waters or through actions outside their territory.<sup>29</sup> This principle was affirmed by various international judicial bodies, which have ruled that non-refoulement obligations extend beyond territorial borders.<sup>30</sup> The European Court of Human Rights, for instance, has held that states remain responsible for the treatment of individuals intercepted at sea, even when those individuals are not within the state's jurisdiction.<sup>31</sup>

The acknowledgement of the non-refoulement principle as a component of customary international law is one of its most significant advancements. Non-refoulement is a tenet of customary international law that is binding on all states, irrespective of whether they are parties to the 1951 Refugee Convention.<sup>32</sup> This is evident in state practice and *opinio juris*, the notion that states are legally obligated to maintain the principle.<sup>33</sup>

In addition, Jean Allain, Cathryn Costello and Michelle Foster contend that non-refoulement has attained *jus cogens* status, which entails that it is a peremptory international law norm from which no derogation is permissible.<sup>34</sup> *Jus cogens* norms are the most advanced form of international law, superseding any conflicting treaties or agreements.<sup>35</sup> The absolute prohibition on returning

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<sup>27</sup> *ibid.*

<sup>28</sup> *ibid.*

<sup>29</sup> UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol' (26 January 2007) <<https://www.unhcr.org/media/advisory-opinion-extraterritorial-application-non-refoulement-obligations-under-1951-0>> accessed 10 August 2025.

<sup>30</sup> *ibid.*

<sup>31</sup> *Hirsi Jamaa and Others v. Italy* [2012] ECHR 1845 (Grand Chamber); *Loizidou v. Turkey* (1996) 23 EHRR 513 (Grand Chamber).

<sup>32</sup> UNHCR, 'Executive Committee Conclusion No 25 (XXXIII) on General Conclusion on International Protection' (1982) UN Doc A/37/12/Add.1 para 2(b).

<sup>33</sup> Elihu Lauterpacht and Daniel Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (CUP 2003) 87, 116–120.

<sup>34</sup> See Jean Allain, 'The Jus Cogens Nature of Non-Refoulement' (2001) 13(4) *International Journal of Refugee Law* 533. Cathryn Costello and Michelle Foster, 'Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test' (2015) 46 *Netherlands Yearbook of International Law* 273.

<sup>35</sup> Ulf Linderfalk, 'What Is So Special About Jus Cogens? – On the Difference between the Ordinary and the Peremptory International Law' (2012) 14(1) *International Community Law Review* 3.

individuals to circumstances where they may face torture, persecution, or inhuman treatment is further emphasised by the *jus cogens* nature of non-refoulement.<sup>36</sup> This perspective emphasises the significance of non-refoulement as a universal human rights principle that is incapable of being restricted or waived, even in exceptional situations.

The non-refoulement principle is confronted with obstacles within the contemporary international legal order, despite its robust legal foundation.<sup>37</sup> The unwillingness of states to fully comply with their non-refoulement obligations, particularly in the context of migration control and border security, is a significant challenge.<sup>38</sup> The efficacy of the non-refoulement principle may be compromised by the escalating implementation of policies such as externalised asylum procedures, interception at sea, and bilateral agreements with third countries to prevent migrants and asylum-seekers from entering state territory.<sup>39</sup>

In certain instances, states have attempted to circumvent their non-refoulement obligations by classifying specific individuals as economic migrants rather than refugees or by enacting policies that obstruct asylum-seekers from accessing safe territory.<sup>40</sup> This has resulted in criticism from legal scholars and human rights organisations, who contend that these practices violate international law and compromise the protection of vulnerable individuals.<sup>41</sup>

### 3. Climate Change as a Driver of Migration

People have moved for a variety of reasons throughout history. The connection between migration and the surroundings is not a modern phenomenon. Population migrations have always suffered from climate change factors. Climate change is defined in the United Nations Framework Convention on Climate Change of 1992 (UNFCCC) as

“a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere, and which is in addition to other natural climate variability that has been observed over comparable time periods”<sup>42</sup>

This definition has been expanded by the Intergovernmental Panel on Climate Change (IPCC), which refers to any change in climate over time because of human

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<sup>36</sup> Lauterpacht and Bethlehem (n 33).

<sup>37</sup> Goodwin-Gill and Jane McAdam (n 8) 201–25.

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> Stoyanova (n 26).

<sup>41</sup> *ibid.*

<sup>42</sup> United Nations Framework Convention on Climate Change (opened for signature 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

activity or due to natural variability.<sup>43</sup> The complex and evolving issue of climate change as a catalyst for migration is affecting numerous regions and vulnerable populations. It is anticipated that climate-induced migration will reach unprecedented levels as environmental disruptions become more severe. Recent studies have estimated that up to 1.2 billion people could be displaced by 2050 if current trends proceed.<sup>44</sup> Persecution and conflict, natural calamities like flooding, or famine brought on by drought could all be contributing factors to these migrations. The character-dynamics and the ratio of climate-induced migration have drastically changed recently. An increasingly acknowledged reality, climate-induced migration has become one of the primary issues of the 21<sup>st</sup> century and must be given top priority to guarantee sustainable development.<sup>45</sup> Disaster-related displacing of 265 million individuals from their place of origin occurred between 2008 and 2018 of this, more than 90% of the migration came from weather- and climate-related events including floods, extreme rains linked with El Nino, droughts, bushfires, cyclones, etc.<sup>46</sup> With a worldwide average of 24 million displaced annually (2008–2018), disaster-induced migrations impact developed as well as developing nations. 33.4 million Individuals moved in 2019 alone in response to disasters; 24.9 million of them were impacted by weather- and climate-induced ones.<sup>47</sup>

### 3.1 Theoretical Framework for Climate Change and Human Mobility

At present, it is emphasised that the relationship between environmental change and migration is intricate, multifaceted, and influenced by various political, economic, and social variables.<sup>48</sup> This realisation is mirrored by the advanced and advanced environmental degradation patterns. Now, environmental change is increasingly recognised as a determinant of human migration. It is essential to situate environmental issues within a conceptual framework that acknowledges the interconnected dynamics of state instability, poverty, resource competition, and livelihood loss, all of which collectively impact migration decisions.

<sup>43</sup> Intergovernmental Panel on Climate Change (IPCC), 'Climate Change 2007: Synthesis Report' (IPCC, 2007) <[https://www.ipcc.ch/site/assets/uploads/2018/02/ar4\\_syr\\_full\\_report.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_full_report.pdf)> accessed 10 August 2025.

<sup>44</sup> Institute for Economics and Peace (IEP), 'Over One Billion People at Threat of Being Displaced by 2050 Due to Environmental Change, Conflict and Civil Unrest' (*Institute for Economics and Peace*, 2020) <<https://www.economicsandpeace.org/wp-content/uploads/2020/09/Ecological-Threat-Register-Press-Release-27.08-FINAL.pdf>> accessed 10 August 2025.

<sup>45</sup> Andrej Přivara and Magdaléna Přivarová, 'Nexus between Climate Change, Displacement and Conflict: Afghanistan Case' (2019) 11(20) *Sustainability* 5586.

<sup>46</sup> Sylvain Ponsérre and Justin Ginnetti, *Disaster Displacement: A Global Review 2008–2018* (Internal Displacement Monitoring Centre 2019).

<sup>47</sup> Sk Mustak, 'Climate Change and Disaster-Induced Displacement in the Global South: A Review' in Azizur Rahman Siddiqui and Avijit Sahay (eds), *Climate Change, Disaster and Adaptations: Contextualising Human Responses to Ecological Change* (Springer 2022).

<sup>48</sup> R Black and others, 'The Effect of Environmental Change on Human Migration' (2011) 21(1) *Global Environmental Change* S3–S11.



Consequently, migration serves as a means to address vulnerability and facilitate adaptation.<sup>49</sup>

Blatant violations of human rights and the disintegration of governmental systems are not the exclusive catalysts for human migration. Migration increasingly results from a confluence of factors, including severe poverty, the erosion of traditional livelihoods due to globalisation and urbanisation, and environmental stressors such as climate change, natural disasters, and ecological degradation, which frequently exacerbate competition for limited resources.<sup>50</sup> These forces occasionally collaborate in non-linear manners, complicating the narrative of causation.<sup>51</sup>

Three significant factors highlighted by the current study merit attention:

- i. Climate change does not directly induce migration; nevertheless, its consequences, such as rising sea levels, catastrophic weather phenomena, and resource scarcity, might significantly motivate individuals to abandon their residences.<sup>52</sup>
- ii. Scientists still find it challenging to demonstrate that certain climatic events induce human migration. Hurricane Katrina and similar events illustrate the extent of potential devastation; yet current approaches fail to appropriately associate these storms with anthropogenic climate change. Numerous factors contribute to human migration.<sup>53</sup>
- iii. Even when climate-related threats are readily identifiable, their capacity to influence is contingent upon the magnitude, scale, and frequency of the occurrence, the vulnerability and socioeconomic position of the affected individuals and their capacity to adapt or seek assistance as necessary.<sup>54</sup>

### ***3.2 Categories of Individuals Migrating Due to Climate***

#### ***i. Sudden Occurrences***

Floods, hurricanes, and wildfires exemplify sudden-onset disasters that necessitate the most evident and immediate forms of evacuation. The Internal Displacement Monitoring Centre (IDMC) reports that around 30 million persons were forcibly displaced in 2020, with over 98% of these migrations

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<sup>49</sup> *ibid.*

<sup>50</sup> UN High Commissioner for Refugees (UNHCR), 'UNHCR's Strategic Directions 2017–2021' (UNHCR, 16 January 2017) <<https://data.unhcr.org/en/documents/details/53367>> accessed 19 June 2025.

<sup>51</sup> Lennart Olsson and others, 'Livelihoods and Poverty' in *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (Cambridge University Press 2014) 793–832 <<https://research-repository.uwa.edu.au/en/publications/chapter-13-livelihoods-and-poverty>> accessed 19 June 2025.

<sup>52</sup> Kälin and Schrepfer (n 3).

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*



attributed to natural disasters. Bangladesh and India are two South Asian nations that experience the annual migration of millions of individuals due to flooding. This frequently devastates residences, employment, and community infrastructure.<sup>55</sup>

ii. Gradual occurrences that render locations uninhabitable

The long-term habitability of entire regions is jeopardised due to slow *environmental changes, including rising sea levels, desertification, and increasing temperatures*. The IPCC asserts that Small Island Developing States (SIDS) such as Kiribati, the Maldives, and many Caribbean nations continue to face the threats of extinction. By the conclusion of this century, several islands may become uninhabitable even under moderate climatic scenarios due to increasing sea levels, which would compromise land, saline freshwater supplies, and destabilize agricultural systems.<sup>56</sup>

iii. Insufficient access to food and water

Droughts and temperature extremes induced by climate change significantly affect agriculture and water resources, particularly in regions that are already vulnerable. A study published in *Nature Climate Change* in 2021 revealed that diminished agricultural yields and soil degradation are anticipated to result in increased migration from regions such as Sub-Saharan Africa and Central America, where rural livelihoods are significantly reliant on climatic conditions. The World Bank's Groundswell analysis indicates that by 2050, 143 million individuals in Latin America, Sub-Saharan Africa, and South Asia may be compelled to abandon their residences due to escalating issues related to food and water security.<sup>57</sup>

#### 4. Non-Refoulement and Climate Migration: Legal Gaps

There will be new legal difficulties that need to be addressed because of the changing climate. Extreme weather events and the gradual onset of climate impacts pose the threat of internal and international migration, making migration one of the most politically contentious issues intensified by climate change.<sup>58</sup> A report given to the 53rd session of the Human Rights Council, by the first-ever

<sup>55</sup> Internal Displacement Monitoring Centre (IDMC), 'Global Report on Internal Displacement 2021' (*GRID*, 20 May 2021) <<https://www.internal-displacement.org/publications/2021-global-report-on-internal-displacement-grid/>> accessed 19 June 2025.

<sup>56</sup> Marco Letta, Pierluigi Montalbano and Adriana Paolantonio, 'Understanding the Climate Change–Migration Nexus through the Lens of Household Surveys: An Empirical Review to Assess Data Gaps' (2024) 38(4) *Journal of Economic Surveys* 1234–1275.

<sup>57</sup> *ibid.*

<sup>58</sup> 'The Human Crisis in the Climate Crisis: On the Legal Limbo of Climate-Related Displacement' (*International Law Blog*, 19 June 2023) <<https://internationallaw.blog/2023/06/19/the-human-crisis-in-the-climate-crisis-on-the-legal-limbo-of-climate-related-displacement/>> accessed 19 June 2025.

United Nations (UN) Special Rapporteur on Climate Change, Ian Fry, has lately drawn attention to the seeming inadequacy of current international legal frameworks in offering a response.<sup>59</sup> Although consensus is lacking on the optimal approach to tackle climate-related migration, as well as the safeguarding of impacted individuals, a legal & normative gap undeniably exists concerning cross-border migration.<sup>60</sup>

#### ***4.1 Legal Gap under the 1951 Refugee Convention***

International refugee law was not designed to safeguard those displaced across borders due to climate change, notwithstanding their flight from specific threats that may place them in a refugee-like predicament.<sup>61</sup> The refugee definition in Article 1A(2) of the 1951 Refugee Convention comprises three essential components: (i) presence outside the country of origin, (ii) persecution due to specific grounds (race, religion, nationality, membership in a particular social group, or political opinion), and (iii) the inability or unwillingness to seek the protection of one's country.<sup>62</sup> Individuals moved across international borders due to climate change, and met the initial condition of having crossed a national boundary. Nevertheless, in majority of instances, they fail to meet the condition of being persecuted based on any of the previously mentioned causes. Identifying primary polluters or labelling the international community as a persecutor would pose significant challenges, as it would necessitate establishing causality between their actions or inactions and the corresponding climate change impacts in each specific instance, a task that is nearly impossible given the current state of scientific understanding.<sup>63</sup> As articulated by Jane McAdam, it would also invert the refugee paradigm. The separation of the persecutor from the territory from which an individual flees is not recognised under refugee law. Because of this, the term "climate refugees" is technically incorrect; the United Nations High Commissioner for Refugees (UNHCR) does not support it.<sup>64</sup> and it elicits conflicting reactions from academics

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<sup>59</sup> Ian Fry, 'Providing Legal Options to Protect the Human Rights of Persons Displaced Across International Borders Due to Climate Change (Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change' UN Doc A/HRC/53/34, 18 April 2023).

<sup>60</sup> Kälin and Schrepfer (n 3).

<sup>61</sup> Goodwin-Gill and McAdam (n 8).

<sup>62</sup> Convention Relating to the Status of Refugees (n 5).

<sup>63</sup> *Lliuya v RWE AG* (Oberlandesgericht Hamm, 30 November 2017) Case No 5 U 15/17; *Native Village of Kivalina v ExxonMobil Corp* 663 F Supp 2d 863 (ND Cal 2009) aff'd 696 F 3d 849 (9th Cir 2012); See also RF Stuart-Smith and others, 'Filling the Evidentiary Gap in Climate Litigation' (2021) 11(8) *Nature Climate Change* 651–655.

<sup>64</sup> UNHCR, 'Climate change and disaster displacement' (UNHCR, 2020) <<https://www.unhcr.org/asia/what-we-do/how-we-work/environment-disasters-and-climate-change/climate-change-and-disaster>> accessed 19 June 2025.

and activists.<sup>65</sup> Although the 2010 Cancun Agreements under the UN Framework Convention on Climate Change urge states to implement “measures to enhance understanding, coordination and cooperation concerning climate change induced migration,” there has been a lack of significant action from states in this regard.<sup>66</sup>

There exists another vital gap in the interpretation and application of the non-refoulement principle. The idea of imminence, however, has frequently limited its use since it requires that the injury be immediate or imminent. When it comes to human rights and refugee law, time is of the essence. However, the “imminence” or “immediacy” of danger should not be used as a reason to grant or deny protection when determining whether someone is really at risk of persecution or other significant damage if removed. A decision-maker would be in the wrong legally if they did this.<sup>67</sup>

Nevertheless, we were taken aback by several protection instances that appeared to include the proximity of the harm’s occurrence, such as those concerning the (imminent) effects of climate change and the gradual decline in health. Our curiosity was piqued by the reasons for and methods for the implicit or explicit consideration of the ‘imminence’ of damage while making decisions in this setting.<sup>68</sup> The common thread running across all instances was the assertion that the purported damage will have detrimental effects down the road, even if it was not immediately apparent.<sup>69</sup> In situations with slow-onset effects like climate change, this dependence on imminence has been heavily criticized for undercutting the protective objectives of international law. This part makes the case that we should stop using imminence as a metric and start using severity and predictability instead.<sup>70</sup>

Persecution denotes that the refugee’s country of origin is either unwilling or, in instances of persecution by non-state actors, incapable of fulfilling its fundamental obligation to ensure peace and security for its citizens, thereby undermining the ‘bond of trust, loyalty, protection, and assistance between the citizen and the state that constitutes the normal basis of society’ and is disrupted in the case of refugees. In 1953, Robinson emphasised that an individual cannot

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<sup>65</sup> Frank Biermann and Ingrid J C Boas, “Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees” (2010) 10(1) *Global Environmental Politics* 60–88.

<sup>66</sup> UNFCCC, ‘Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, Addendum. Decision 1/CP’ (15 March 2011) UN Doc FCCC/CP/2010/7/Add.1 para 14(f).

<sup>67</sup> Adrienne Anderson and others, ‘Imminence in Refugee and Human Rights Law: A Misplaced Notion for International Protection’ (2019) 68(1) *International and Comparative Law Quarterly* 111–140.

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

be considered a refugee<sup>71</sup> when facing “events that are being addressed by the government, as in such instances, there would be no justification for a national to refuse the protection of their country (...)”.<sup>72</sup> In instances of cross-border migration due to climate change, the country of origin typically does not oppose the affected individuals but instead seeks to assist and protect them. Even when authorities lack the necessary resources and capacity, they generally endeavour to obtain support from the international community.

#### ***4.2 Legal Gap under International Human Rights Law***

International human rights legislation ensures the essential rights of all persons, including migrants. The Universal Declaration of Human Rights (UDHR) asserts that “everyone has the right to seek and to enjoy in other countries asylum from persecution” (Article 14), and that all persons are entitled to rights “without distinction of any kind” (Article 2).<sup>73</sup> Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) endorse non-discrimination and the rights to life, liberty, appropriate living standards, and family protection.<sup>74</sup>

Nonetheless, these safeguards do not encompass the regulation of a migrant's admission or ongoing residency in a foreign state. Migrants, in contrast to refugees, lack a specific legal status that obligates nations to admit or keep them. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 2(1)) characterises a migrant worker as an individual who “is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national”.<sup>75</sup> This economic perspective neglects the needs of those displaced by climate-related occurrences, who frequently travel not for work but for survival, safety, and dignity.

The New York Declaration for Refugees and Migrants (2016) recognises climate change as a catalyst for migration and relocation, emphasising the necessity for improved collaboration and protection.<sup>76</sup> Nevertheless, it fails to create binding requirements, thereby accentuating the normative deficiency for

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<sup>71</sup> Andrew E Shacknove, ‘Who Is a Refugee?’ (1985) 95 Ethics 274–84.

<sup>72</sup> Nehemiah Robinson, *Convention Relating to the Status of Refugees: Its History, Contents and Interpretation: A Commentary* (Institute of Jewish Affairs, World Jewish Congress 1953).

<sup>73</sup> Universal Declaration of Human Rights (adopted 10 December 1948) arts 2 and 14.

<sup>74</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>75</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, art 2(1).

<sup>76</sup> UNHCR, ‘New York Declaration for Refugees and Migrants’ (19 September 2016) UN Doc A/RES/71/1 paras 1, 12, 43.

climate-induced migration within the existing framework of international human rights law.

Human rights law offers an indirect right to stay in a country if returning would lead to inhuman treatment. This principle is established by the European Court of Human Rights (ECHR) under Article 3, which prohibits inhuman treatment, and Article 2, which safeguards the right to life. The ECHR has determined that expulsion or deportation is not permissible when there is a significant risk of torture or other serious violations of human rights. This legal principle highlights the duty of the sending state in these situations.<sup>77</sup>

#### ***4.3 Prominent Cases across the World on the Principle of Non-refoulement***

In certain exceptional instances, like *D. v. UK*,<sup>78</sup> the ECHR acknowledged that Article 3 ECHR might be applicable even when the threat of harm does not originate from the authorities of the receiving state. In this situation, sending a terminally ill patient to a country with insufficient healthcare was considered inhumane. This reasoning may also apply to scenarios involving natural disasters, where individuals encounter life-threatening circumstances upon their return. The Austrian Constitutional Court found that the Federal Administrative Court had not adequately considered the impact of the 2010 Pakistan floods when assessing an asylum seeker's eligibility for subsidiary protection.<sup>79</sup> This ruling confirms the relevance of Article 3 ECHR in principle, although it did not provide clarity on the extent of its application concerning returns to disaster-affected regions.

Forcibly displaced individuals have access to general human rights protections; however, their absence of a right to enter or remain in foreign countries restricts their overall protection. Although they might qualify as migrant workers according to the Convention, the protections provided do not sufficiently meet the needs of individuals who are compelled to be displaced by climate change.<sup>80</sup>

Moreover, many countries do not have adequate systems to deal with climate-induced movement of people, resulting in inadequate or even the absence of protective laws for those who are forced to move. Oftentimes, these recent national regulations relate to the climate-change-induced internal migration of persons' issues with total disregard, as practiced in several countries around the world. For instance, in many countries, environmental factors are considered in laws dealing with immigration, but very few provide adequate legal protection for such people at the national level. The United Nations Environment Program (UNEP) and United Nations Framework Convention on Climate Change

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<sup>77</sup> European Convention on Human Rights (ECHR) (1950) 213 UNTS 222.

<sup>78</sup> *D v United Kingdom* (App no 30240/96) ECHR 2 May 1997.

<sup>79</sup> U1907/10 VfGH, Austria- Constitutional Court, 13 December 2011.

<sup>80</sup> Kälin and Schrepfer (n 3).

(UNFCCC) are urging the integration of climate-induced migration policy within the framework of national risk management policies<sup>81</sup> and strategies for disaster preparedness to protect vulnerable groups.<sup>82</sup>

## 5. Expanding Non-Refoulement to Climate-Induced Migration

Non-refoulement does not serve as a comprehensive solution for the protection of climate-induced displaced people. The approach lacks a forward-looking and proactive stance, instead necessitating that the displaced persons traverse international borders before accessing their protection.<sup>83</sup> This represents a significant limitation of the global refugee regime, where 99% of refugees lack access to resettlement or alternative mobility pathways.<sup>84</sup> Nonetheless, as a core and extensively recognised tenet of customary international law, non-refoulement provides a means for states and stakeholders to offer protection to some of the most vulnerable individuals globally. In line with the commitments established in the Cancun Agreement, the global community must adopt a more assertive approach to our understanding of non-refoulement, taking immediate responsibility to implement effective mechanisms for the protection and survival of climate-induced displaced peoples. We have arrived at a critical juncture, and *Duncan Laki Muhumuza's* perspective is particularly relevant: if the global community postpones action until environmental circumstances amount to human rights violations regarding climate migration, it will be too late.<sup>85</sup>

One possible way to fill this existing protection gap is to include so-called “climate refugees” in the Refugee Convention by revising its language. Protecting people from climate change-related migration would necessitate reinterpreting current international law to include environmental dangers as types of persecution or severe injury, thus expanding the norm of non-refoulement. To apply and understand the non-refoulement principle in situations of climate-induced migration, the following tactics might be useful.

### 5.1 Using Climate Change Concerns to Establish “Serious Harm”

Considering major environmental hazards as a type of “serious harm” that necessitates protective duties is one way to broaden non-refoulement. In *Ioane Teitiota v New Zealand*, the UN Human Rights Committee recognised for the first

<sup>81</sup> UNFCCC, 'Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks' (UNFCCC, 2018) <<https://unfccc.int/documents/181435>> accessed 19 June 2025.

<sup>82</sup> Sarah Opitz Stapleton and others, *Climate Change, Migration and Displacement: The Need for a Risk-Informed and Coherent Approach* (Overseas Development Institute and United Nations Development Programme 2017).

<sup>83</sup> Convention Relating to the Status of Refugees (n 5) art 33(1); see also McAdam (n 7) 68–70.

<sup>84</sup> UNHCR, 'Refugee Resettlement: An Important and Growing Tool for Responsibility Sharing' (UNHCR, 2023) <<https://www.unhcr.org/resettlement>> accessed 19 June 2025.

<sup>85</sup> UNHRC, 'Ioane Teitiota v New Zealand' (n 15).



time that environmental degradation can, in some circumstances, infringe upon the right to life as stipulated in Article 6 of the ICCPR, hence invoking non-refoulement responsibilities.<sup>86</sup> In 2021, the French Conseil d'État decided in favor of a Bangladeshi man with asthma, preventing his deportation on the basis that the air pollution in Bangladesh would jeopardise his life, so invoking the principle of non-refoulement.<sup>87</sup> The European Court of Human Rights ruling in *D v United Kingdom* (1997),<sup>88</sup> while not an environmental issue, determined that deportation to a nation where an individual would endure inhuman or humiliating treatment—such as inadequate medical care—constitutes a violation of Article 3 of the ECHR. This case endorses a broad interpretation of non-refoulement that may be applied to climate-related damage in the future. Returning individuals to nations where climate change is a major concern may infringe upon the principle of non-refoulement as stated in the International Covenant on Civil and Political Rights (ICCPR), as the United Nations Human Rights Committee (UNHRC) acknowledged in the case of *Ioane Teitiota v. New Zealand*.<sup>89</sup> The scope of non-refoulement safeguards would be expanded to encompass climate-related crises if environmental dangers were seen as equivalent to persecution risks to life and dignity. Predictable dangers, such as the loss of arable land because of desertification or increasing sea levels, should be considered serious harm. A precedent for giving weight to the inevitable rather than the immediate threat of damage may be seen in the case of *D v. United Kingdom*,<sup>90</sup> in which the ECtHR halted the deportation of a terminally sick person because his or her suffering was reasonably foreseeable. This kind of thinking, when applied to climate-induced migration, would guarantee that people are not sent back to places where they face threats to their lives and dignity.<sup>91</sup>

## ***5.2 Removing the misguided concept of 'Imminence' in Non-Refoulement Principle***

Neither refugee law nor human rights law is obligated to adhere to the notion of imminence. A "well-founded fear" of persecution is necessary to qualify as a refugee under the 1951 Refugee Convention, whereas human rights frameworks like the ICCPR<sup>92</sup> and the CAT<sup>93</sup> determine if a "real risk" of damage exists. As a protective criterion, temporal immediacy is not fundamental to either framework. Nevertheless, imminence has become a growing obstacle in the eyes of courts and

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<sup>86</sup> *ibid.*

<sup>87</sup> Decision No 428409, Conseil d'État, 9 July 2021.

<sup>88</sup> (1997) 24 EHRR 423.

<sup>89</sup> Stapleton and others (n 82).

<sup>90</sup> *D v United Kingdom* (n 88).

<sup>91</sup> Anderson and others (n 67).

<sup>92</sup> International Covenant on Civil and Political Rights (n 74).

<sup>93</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (n 11).



decision-makers, reducing safeguards for individuals confronting slow but certain damages.

The United Nations Human Rights Committee ruled against Ioane Teitiota in the case *Teitiota v. New Zealand*, despite recognising that climate change might trigger non-refoulement responsibilities, because the damage to Kiribati from increasing sea levels was not considered “imminent”. This case emphasises how vulnerable persons are not protected based on imminence, even when damage may be seen coming.<sup>94</sup>

### **5.2.1 Validating Non-Refoulement based on Slow-Onset Harms**

The effects of climate change, such as desertification, increasing sea levels, and the creeping loss of habitability, manifest over extended periods. These damages are serious and predictable, albeit they won't show up right away. Because the damage is not considered to be immediately imminent, people displaced by such circumstances are frequently refused protection under the existing interpretation of imminence. To avoid returning to places where their lives, health, or dignity would progressively degrade, non-refoulement requirements can cover situations where damage is unavoidable but develops over time, according to a reinterpretation approach that does away with imminence as a prerequisite. As an example, although the land in island nations like Kiribati may not be submerged immediately, the territory becomes more and more inhospitable due to rising sea levels (as seen in *Teitiota v. New Zealand*). This inevitability would be enough to trigger non-refoulement according to a re-interpretation approach.<sup>95</sup>

### **5.3 Extending the Scope of "Persecution"**

Persecution is described as "severe discrimination or harm" under international refugee law, typically based on nationality, religion, or ethnicity. *De facto* persecution, in which authorities do little to stop serious environmental damage, can be considered persecution in the context of climate-induced relocation. According to legal academics, if a state does nothing while a given group is in danger, it might be seen as a kind of persecution or neglect, and displaced people would be eligible for protection under the non-refoulement clause.

#### **5.3.1 Instances of abrupt or gradual calamities**

The denial of aid and protection by authorities based on race, religion, nationality, social group affiliation, or political beliefs may result in persecution. This encompasses situations in which climate-related effects stem from

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<sup>94</sup> Anderson and others (n 67).

<sup>95</sup> UNHRC, ‘Ioane Teitiota v New Zealand’ (n 15).

discriminatory governmental policies aimed at certain populations or where environmental degradation is deliberately employed to persecute these communities. Persecution can arise in situations where disaster help is politicised, as shown by a case in *New Zealand* in which refugee status was conferred upon a *Myanmar* activist apprehensive of arrest for providing humanitarian supplies in cyclone-stricken regions.<sup>96</sup>

Moreover, restrictions on residing in certain places may amount to persecution if they are founded on the above-listed reasons and result in persecutory consequences. This encompasses instances where the establishment of no-go zones is justified yet results in forced relocations that infringe against human rights, especially if such measures are driven by the affected persons' race, religion, nationality, social group affiliation, or political beliefs. Moreover, if relocated persons are abandoned without support and protection, it may pose significant threats to their lives and health.<sup>97</sup>

### 5.3.2 Comparative Regional Frameworks on Climate-Induced Migration

If persecutors target people based on race, religion, nationality, social group membership, or political opinion. In circumstances of relevant persecution, refugee status must be conferred regardless of the basic causes of armed conflict or violence, including climate change. However, the 1951 Refugee Convention does not cover those escaping general violent conflicts that are not targeted at any of the five criteria. Africa and Central America's regional instruments define refugees as persons escaping armed conflicts, widespread violence, and occurrences substantially affecting public order, which covers most people displaced by climate change for the above reasons.

The EU Temporary Protection Directive provides temporary protection for people fleeing armed conflict in mass-influx situations, and Article 15 of the EU Qualification Directive allows subsidiary protection in cases of "a serious and individual threat to a civilian's life or person because of indiscriminate violence in situations of international or internal armed conflict" and inhuman or degrading treatment in the country of origin. Because they refer to serious disruption of public order, the African Refugee Convention and the Cartagena Declaration may cover climate change-related and other natural disasters if their impact is severe enough to disrupt public order. This interpretation is feasible, but African states' *opinio juris* does not support it. According to regional practice, people who cross an international border to flee a natural disaster can stay temporarily (*e.g., Congolese fleeing Mount Nyiragongo in 2002 and crossing into Rwanda*), but African governments have never considered this an OAU Convention obligation.

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<sup>96</sup> Kälén and Schrepfer (n 3).

<sup>97</sup> *ibid.*

Also, the Cartagena Declaration<sup>98</sup> was not intended to encompass natural calamities. There is no sign that a process leading to a wider interpretation of these instruments is underway, although it is possible. In any event, interpreting the two instruments broadly risks overstretching their scope and contradicting the drafters' objective, which was not to encompass natural catastrophes. The Arab Convention on Regulating the Status of Refugees<sup>99</sup> In Arab Countries, 1994 is the sole agreement that addresses disaster-induced cross-border relocation if it disrupts public order. But the Convention has little practical use.

#### *5.4 Respecting Human Rights Law*

Human rights advocates argue that it is a breach of the non-refoulement principle to return a foreign individual to a place that poses a threat to their human rights or fundamental freedoms. Legal scholars have pushed for a "returnability test"<sup>100</sup> to be used to climate-related migration as a means of proving that the required gravity level has been met. The cumulative impact of rights deprivations would be considered by this test to determine the safety of returning. People who do not meet the criteria for refugee status but would be subject to human rights violations upon their return should be granted protection by states under international human rights law. The 2018 UN Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations stipulates that individuals who would encounter "irreparable" or "cumulative" human rights violations upon repatriation cannot be returned due to the customary and treaty-based principle of non-refoulement. It instructs authorities to make a comprehensive, anticipatory risk assessment that considers all interrelated civic, political, economic, social, and cultural losses, including those induced by both gradual and rapid climate change. States are obliged to provide individuals with a legitimate means of protection, such as humanitarian visas, temporary protection, or regularisation, if it cannot be certain that their repatriation would be "safe, dignified, and sustainable." They must ensure access to legal counsel and the right to remain during appeals. In summary, the Guidance transforms human rights obligations into a concrete responsibility to safeguard climate-affected and other at-risk migrants who do not conform to the conventional definition of a refugee. It accomplishes this by establishing a "returnability test".<sup>101</sup>

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<sup>98</sup> Cartagena Declaration on Refugees (adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984).

<sup>99</sup> Arab Convention on Regulating the Status of Refugees in the Arab Countries (adopted by the League of Arab States, 1994).

<sup>100</sup> Vikram Kolmannskog, 'Climate Change, Environmental Displacement and International Law' (2012) 24 *Journal of International Development* 1071.

<sup>101</sup> UNCHR, 'Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations' (2017) UN Doc A/HRC/34/31.

In a similar vein, the non-refoulement principle is used in situations when serious violations of human rights, perhaps involving crimes against humanity, are about to occur.

### 5.5 Reinterpreting the principle through judicial application

Although courts have not yet recognised the non-refoulement requirement for the detrimental effects of climate change on human rights, this could change in the future

The 2019 case of *Ioane Teitiota v New Zealand* was a big step forward in giving people affected by climate change more non-refoulement safeguards.<sup>102</sup> The Human Rights Committee agreed with the domestic court's decision to deny refugee status since there was no immediate risk and the state was working to make things better. However, it did say that climate change might, in future circumstances, lead to non-refoulement duties under international human rights law.

The Committee made it clear that Articles 6 and 7 of the ICCPR, which say that torture and cruel or humiliating treatment are not allowed, might be triggered by harm to the environment.<sup>103</sup> The Committee also said that protection should not be denied only because the threat is not immediate. Ambassador Laki warned that putting the bar too high would not be fair. As the effects of climate change get worse and mix with other social, economic, and political forces, the chances of people having to move will rise.<sup>104</sup> When making decisions on these kinds of claims, decision-makers need to think about the whole risks that people face, taking into account their situations and the bigger picture of the country as a whole. Recent cases in New Zealand involving Pacific Islanders have brought this new reality to light. Courts are starting to see that climate change can lead to refugee or supplementary protection, even if no case has yet been won on these grounds.<sup>105</sup>

Those who suffer because of natural catastrophes and climate change may be eligible for refugee status or further forms of protection, and Italy is building a corpus of case law that explains how this may work. Why is this important? Human rights can be undermined by the effects of disasters even after they have passed. In *PP v Ministero dell'Interno*, a man from Bangladesh was the subject of a recent trial considered by the Tribunal of Milan; he had been relocated many

<sup>102</sup> UNHRC, 'Ioane Teitiota v New Zealand' (n 15).

<sup>103</sup> International Covenant on Civil and Political Rights (n 74).

<sup>104</sup> UNHRC, 'Ioane Teitiota v New Zealand' (n 15) (Dissenting opinion of Ambassador Duncan Laki Muhumuza) [9.11]–[9.13].

<sup>105</sup> Jane McAdam and Chiara Scissa 'How Domestic Courts Are Using International Refugee Law and Human Rights Law in the Context of Climate Change and Disasters' (*EJIL:Talk!*, 2024) <<https://www.ejiltalk.org/how-domestic-courts-are-using-international-refugee-law-and-human-rights-law-in-the-context-of-climate-change-and-disasters/>> accessed 19 June 2025.

times by floods and faced the prospect of further migration in the future. The judges all agreed that the government of Bangladesh should have taken precautions against these known hazards.<sup>106</sup>

The court at *Tribunale Ordinario di Firenze*, Decree, RG No 6142/2019 (10 May 2023), determined that a Pakistani victim of human trafficking had an elevated risk of re-trafficking due to recurrent floods and land disputes. The court observed that the victim's susceptibility was associated with the ongoing detriments he experienced due to climate-related disturbances and the government's inadequate response to assist.<sup>107</sup> In a subsequent verdict regarding Florence, the court determined that his employment loss during the storm exacerbated property conflicts and resource scarcity within the family, rendering him more susceptible to exploitation. The tribunal clarified that his "climate vulnerability" rendered him more susceptible to traffickers and compelled him to seek employment, and that these two threats collectively satisfied the criteria for complementary protection under international human rights law.<sup>108</sup>

There is no need to wait for a new treaty or protocol to the Refugee Convention to be created, since these instances show that current refugee and human rights legislation may already offer protection in the face of climate change and calamities. When it comes to climate change and catastrophes, judges, government officials, and attorneys must understand the when, how, and why of international protection principles.

## 6. Recommendations

### 6.1 Implementing legislative and institutional reforms to enhance human rights-based protection

A comprehensive interpretation of the non-refoulement principle should encompass significant environmental degradation as a legitimate basis for international protection. This entails reinterpreting non-refoulement to encompass individuals beyond traditional refugees, safeguarding those compelled to abandon their residences due to perilous environmental alterations. Although domestic courts have begun to acknowledge these connections, as seen in the *Teitiota* case, the level of protection remains inconsistent across different jurisdictions. A cohesive strategy is essential for international human rights law. The stance of the UN Human Rights Committee might serve as a compelling rationale for courts to establish broader precedents. Furthermore, regional agreements have to be advocated as preliminary measures toward establishing global regulations for

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<sup>106</sup> *PP v Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione – Unità Dublino* (Tribunale di Milano, Italy, case lodged 17 May 2021).

<sup>107</sup> Decree, RG No 6142/2019, Tribunale Ordinario di Firenze, 10 May 2023.

<sup>108</sup> *ibid.*

climate-induced migration that must be adhered to universally. It is crucial to note that these systems provide only reactive protection, not preventive measures.

## ***6.2 International Governance, Policy Advancement and Multilateral Initiatives***

A definitive and progressive legislative framework currently does not exist to assist individuals displaced by climate change. The UN Special Rapporteur emphasised that the global community must assume a “duty of care” and undertake coordinated legislative measures. One method to do this might include the introduction of an optional protocol or amendment to the 1951 Refugee Convention, explicitly stating that environmental migration is encompassed. The United Nations General Assembly and its Sixth Committee should consider adopting a resolution that delineates the responsibilities of governments regarding those displaced by climate change. These entities, in conjunction with the International Law Commission, can assist in establishing new norms for state accountability on the impacts of climate change. Policymakers must shift their emphasis from crisis management to crisis prevention. Ultimately, any transformation must extend beyond anthropocentric approaches to acknowledge the broader ecological ramifications of climate change. A healthy earth is fundamental to the concept of human rights.

## **7. Conclusion**

This article argues that the principle of non-refoulement has historically been fundamental in safeguarding refugees, although it must adapt to address emerging global challenges, particularly the migration resulting from climate change. The current international legal framework fails to provide comprehensive and proactive protection for individuals fleeing environmental degradation. Human rights provisions can facilitate change, yet their use is not always consistent. The international community may address this legal void by expanding the interpretation of existing laws, implementing institutional reforms, and collaborating with other nations. Responses must be proactive, inclusive, and ecologically sustainable to achieve a lasting impact. It is essential to recognise that a planet devoid of life lacks any understanding of human rights.

