
CLIMATE REFUGEES AND INTERNATIONAL LAW: LEGAL PROTECTION IN THE AGE OF DISPLACEMENT

Swaraj Pandey, B.A.LL.B. (H), Amity University, Lucknow, AUUP

ABSTRACT:

Around the world, millions of people are increasingly displaced because of the compounding impacts of climate change. Areas of habitable space are becoming unlivable due to rising sea levels, extreme storms, droughts, floods, and other climate-related disasters. Vulnerable communities are being pushed from their homes. The Internal Displacement Monitoring Centre (IDMC) documented 32.6 million new internal displacements in 2022 due to weather-related disasters, a staggering increase reflecting the escalating climate crisis. Looking into the future, experts estimate over 1.2 billion people could be displaced by 2050 due to climate-related hazards. Despite the urgency and scale of this issue, there currently is no legal status under international law to protect "climate refugees." The 1951 Refugee Convention is limited to persons fleeing persecution related to race, religion, nationality, membership of a particular social group, or political opinion. Courts and tribunals have ruled repeatedly that threats associated with climate change, do not fit this definition. This article additionally will examine the global trends of climate-related displacement, critically review the leading cases including *Teitiota v. New Zealand*, and mark where the legal gaps persist. It will also look at existing instruments, including the 1951 Convention and human rights law, and consider the limits of their utility in protecting those displaced by environmental factors. Part of the article will survey some of the possible solutions, including expanding the refugee definition, regional frameworks, and issuing humanitarian visas with a blended analysis of legal, empirical and policy approaches to get to addressing this protection gap.

Keywords: Climate Displacement, Climate Refugees, International Law, 1951 Refugee Convention, *Teitiota v. New Zealand*

Introduction

As climate change advances, it is no longer just an environmental consideration, but it is a growing driver of displacement for humans. From rising sea levels consuming island nations to droughts no longer allowing communities to rely on agriculture, millions of people are displaced. However, although the displacement numbers tell a significant story, international law has been slow to react. People fleeing environmental collapse can often find themselves in a legal vacuum, not qualifying for refugee status and without clarity in protection. This comment addresses the need to fill the legal void and critically considers the ways in which existing frameworks provide no protection from climate-displaced persons, which will continue to grow.

The climate crisis is increasingly emerging as an important force driving human migration becoming a normal representative in millions of livelihoods, worldwide. Every day, tens of millions are displaced from lives, homes, and jobs as storms, floods, drought, or sea level rise upset their sense of place and home. The IDMC report cites an unprecedented 32.6 million more displaced people from storms in 2022, a 41 % increase from 2008. This trend is striking in a longer term, when we can consider, for one such study, that climate and disaster displacement events displaced 318.7 million between 2008 and 2020 (an average of 24.5 million a year). The islands and low-lying nations face an existential threat: entire territories, like Bangladesh or even parts of Kiribati, can be submerged under water within decades requiring either progressive evacuation or disappearance.

Most climate-displaced persons remain in their country of origin, but while the movement of such people is huge. In 2022, almost 60% of refugees and internally displaced were staying in countries that were highly vulnerable to climate change, the story is growing but cross-border climate migration (CBM) is small. In short, climate hazards cause agriculture and fishery disaster displacement for farmers and fishermen and will indirectly exacerbate conflict by creating refugees. Climate stressors like crop failure and water scarcity have already worsened ethnic hatred and violence in some places.

International statistics illustrate the sheer scale of losses.

In 2019 alone, an estimated 24.9 million people were displaced by disasters globally, the highest number of displacements recorded, since 2012. South and Southeast Asia were most

impacted: As an example, about 5.0 million people fled the disaster in India alone, while more than 4.1 million people fled in Bangladesh and the Philippines combined. By the end of 2020, disasters had displaced nearly 7.0 million people internally. Given the relatively recent climate extremes, unless there is significant mitigative efforts, these numbers are likely to continue to rise.¹

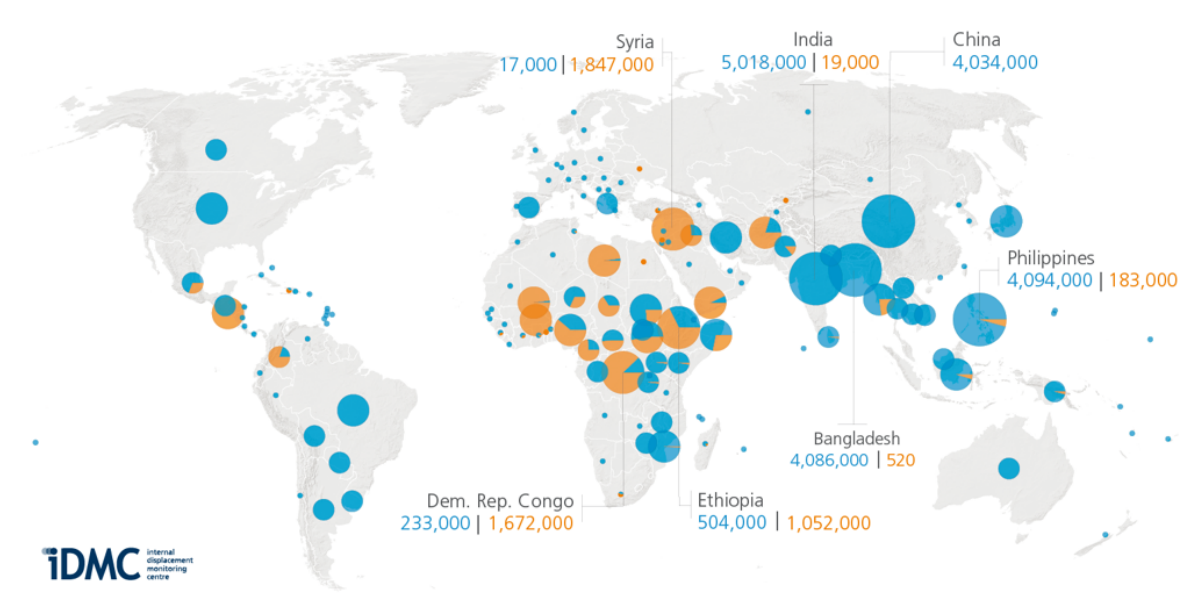


Figure 1: IDMC map of new internal displacements in 2020, by conflict (blue) and disasters (orange). Although conflict (blue) accounted for most movements globally that year, climate-related disasters (orange) still caused tens of millions of displacements (e.g., major circles in Bangladesh, Philippines).

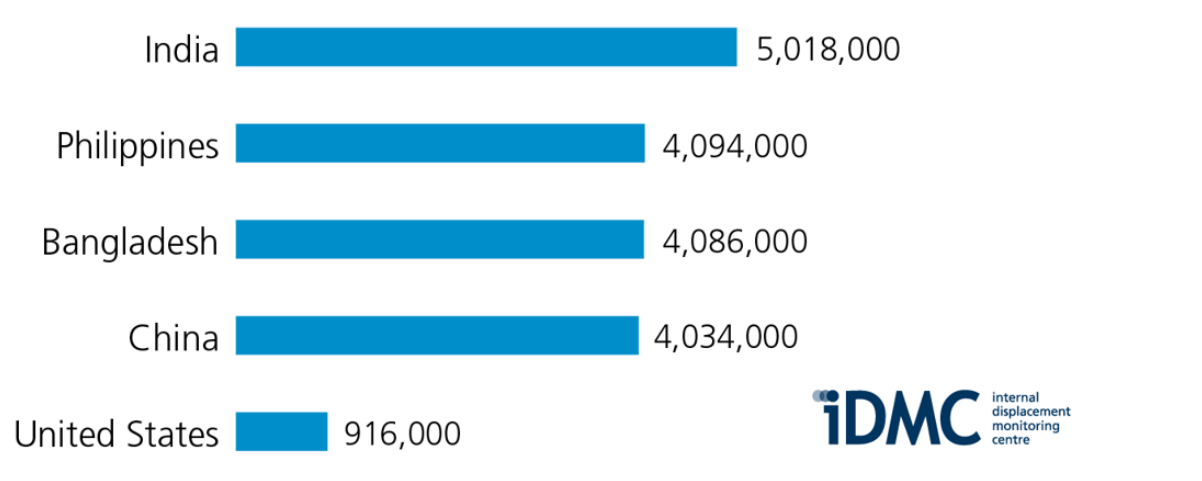


Figure 2: Top five countries for new disaster displacements in 2019 (millions of people) India, the Philippines, Bangladesh, and China each saw 4–5 million people displaced by floods, cyclones, or storms. These drivers are expected to intensify under global warming.

¹ Jane McAdam, ‘Evacuations: A Form of Disaster Displacement?’ (Forced Migration Review, 2022) <https://www.fmreview.org/climate-crisis/mcadam> accessed 17 June 2025

Climate displacement is thus a pressing global challenge. High-level policymakers now speak of a looming “population of climate refugees,” potentially numbering in the hundreds of millions in coming decades. UN Secretary-General Guterres has famously called the gap in protection a “legal void.” But what does law say about these individuals?

Human Impact and Case Study

The plight of climate-displaced persons has entered courtroom debates. A seminal example is the case of Ioane Teitiota, a national of Kiribati who applied for asylum in New Zealand. Teitiota argued that severe sea-level rise, land loss, fresh water salination and consequent violent land disputes in Kiribati endangered his life. He claimed that forcible removal back home would violate his rights under international law.²

The facts of Teitiota’s situation illustrate the broader phenomenon: Kiribati’s capital was gradually inundating; its croplands were dying under saltwater; tensions over scarce land were intensifying. Teitiota asserted that relocation was inevitable in the coming decade. However, both New Zealand’s courts and the UN Committee ultimately refused to grant relief. The New Zealand Supreme Court held that climate threats could not “create a pathway into the Refugee Convention” or other protected status. Similarly, the HRC acknowledged climate change as a grave threat, but found that Teitiota’s personal risk was not “imminent, real, and foreseeable” enough to trigger non-refoulement protections. In short, the Committee noted that while Kiribati faces an existential risk, Teitiota did not prove that he personally would face irreparable harm upon return in the immediate term.

This outcome typifies the legal facts: millions are displaced or in danger from climate change, but law requires a personal, near-term threat to enforce protection. Teitiota’s case did not recognize “climate refugee” status, but it is noteworthy as an “important step” in affirming that environmental harm is among the most serious threats facing life and human rights. It set a precedent that could inform future climate cases, albeit leaving victims largely without an independent remedy. As one analysis notes, Teitiota highlights both the urgent need and the current inability of refugee law to address climate loss.

² Amnesty International, ‘UN Landmark Case for People Displaced by Climate Change’ (20 January 2020) <https://www.amnesty.org/en/latest/news/2020/01/un-landmark-case-for-people-displaced-by-climate-change> accessed 1 July 2025

International Legal Framework

As it stands now, protection for displaced persons is not cohesive under contemporary international law. The principal international instrument is the 1951 Convention Relating to the Status of Refugees (along with its 1967 Protocol).³ The 1951 definition of a refugee remains as follows: (a refugee is defined as someone who is outside of the country of origin and has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or of political opinion). Climate change is not well inscribed. Thus, someone fleeing rising seas or failing harvests as such does not meet the definition of a “refugee” under 1951. (UNHCR also has expressly stated, 'climate refugees' is not a formal legal term).⁴

There are other international protections that exist but, in these instances, they are more limited. For example, human rights law imposes a non-refoulement obligation under the rights to life and humane treatment (Articles 6 and 7, ICCPR). If a person can show there is a real risk to their life if they are returned to a danger zone (even if climate-induced), then theoretically states could face obligations not to deport them. However, as was evidenced in the Teitiotia case, the Human Rights Committee has high threshold to meet; it has determined risks must be personal, imminent, and not speculative. Regional refugee instruments also have a more expansive approach. The 1969 OAU Convention (Africa) and the 1984 Cartagena Declaration (Latin America) provide protections for those fleeing “events seriously disturbing public order”, for example, which on their face could encompass climate disasters. However, they restrict protections to regionally recognized groups and have not otherwise been employed often in climate cases.

Even with the limitations mentioned above, UNHCR and others place some stock in existing law. In its guidance, UNHCR says that the 1951 Convention could be implicated when climate change has indirectly led to the commission of human rights abuses or armed conflict (e.g., ethnic violence stemming from water shortages). Furthermore, it states that generally speaking human rights obligations (to life and health) might prevent the return of someone to a disaster zone where there is a reasonable foreseeability of death or torture. In practice, however,

³ US Citizenship and Immigration Services, ‘Refugees and Asylum’ (USCIS) <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees> accessed 5 July 2025

⁴ UNHCR, ‘Legal and Policy Guidance on Relocation and Displacement: UNHCR Note on Protection and Solutions’ (1999) <https://www.refworld.org/policy/legalguidance/unhcr/1999/en/10366> accessed 29 June 2025

prospects for making use of these provisions are limited, and no international court has proclaimed a new "climate asylum" right outside of what we see in Teitiotia.

Crucially, international law presently draws **no firm line between migrants and refugees** when climate is the driver. The 1951 Convention focuses on persecution, not on the external cause of flight. As a result, climate-displaced people – especially those who move internally – are largely left to domestic and regional policies. Many will remain “internally displaced” within their own countries, meaning they receive only the weak protections of the 1998 Guiding Principles on Internal Displacement (which are non-binding). Those who cross borders risk being categorized simply as migrants without asylum rights. UNHCR emphasises that, because 98–99% of climate displacement is internal, any gap in refugee law has very limited scope for most victims.

The Legal Gap: Unprotected and Overlooked

The result is a significant protection gap. Climate-displaced persons are often called “forgotten victims” of climate change. They are not “refugees” under the main treaties, and states resist creating new categories that might obligate costly resettlements. UNHCR emphasizes that while language like “climate refugee” raises awareness, it lacks legal meaning. In fact, the Convention's expert body has repeatedly refused to extend its definition to climate harms beyond extreme harassment.

Several factors underlie this gap. First, a refugee must cross a border, whereas most climate movers do not. Domestic relocation is excluded from 1951. Second, climate disasters often do not target identifiable groups; they are general, like earthquakes or drought. This makes meeting the “persecution” criteria difficult. Third, as courts emphasize, the risk in climate cases is often seen as general or future-oriented – not the kind of individualized, imminent harm required for Article 6 ICCPR claims.

Moreover, states are wary of opening floodgates. The Teitiotia decision signalled a broad reluctance: even the High Commissioner for Refugees stated that amending the Refugee Convention to include environmental factors “would be a risky step backwards.” There is also a political dimension: concerns about burdens, sovereignty, and distinguishing voluntary climate migrants from those fleeing war. Thus, the current system yields a “legal void” where climate-related protection rests on a patchwork of non-binding guidelines and ad hoc domestic

policies. For example, a handful of countries (like Chile, Finland, New Zealand, and Canada) have experimented with “humanitarian visas” or temporary protected status for climate-impacted individuals, but these are unilateral and limited steps.

In summary, the basic problem is that international refugee law was never created for the purpose of non-persecutory displacement. As one commentator notes, refugees in the 1951 regime enjoy more rights than any migrants, so states party to the conventions reject (on a functional level) defining climate migrants as “refugees.” Meanwhile, treaties such as the UNFCCC acknowledge displacement as a concern, but do not create any legal rights for displaced persons that choose to move. The amount of stress is accelerating because experts believe that increasing climate-induced extreme weather events will lead to billions more displaced in decades, and the “expanding definitional boundaries” of past experiences will become increasingly unattainable.

Bridging the Gap: Toward Recognition and Reform

Given this gap, scholars and advocates propose several reforms at national, regional, and international levels:

- **Expand the refugee definition:** Amending the 1951 Convention (or its interpretation) to cover climate factors is a frequently cited solution. For instance, models exist in regional law: the OAU Convention and Cartagena Declaration already include “events seriously disturbing public order” which could be read to encompass disasters. Some experts suggest adding explicit references to environmental crises in a new protocol or protocol amendment. Others propose a stand-alone treaty on climate displacement, creating a parallel regime for climate refugees. These are ambitious ideas; any amendment would require state consensus, which is politically difficult. Nevertheless, comparative law shows it is feasible: the Haitian immigration system and the proposed EU “Climate Refugee Directive” (not yet adopted) have flirted with broader criteria.
- **Utilize human rights law strategically:** Strengthening non-refoulement under international human rights treaties may offer incremental protection. This could involve lowering the threshold for what constitutes a “real risk” in climate contexts or clarifying that foreseeable environmental catastrophe is a form of inhuman treatment or threat to life. UN bodies and national courts can interpret treaties dynamically, as suggested by

the UN Committee's statement that climate degradation is among the most "pressing threats" to life. However, judges remain cautious, as seen in Teitiotia's narrow outcome.

- **Regional frameworks:** Building on the existing refugee law in Africa and Latin America, which already has somewhat broader definitions, could be promising. For example, African courts might recognize climate disturbance as a threat under the OAU Refugee Convention. The Kampala Convention on internal displacement, while binding, does not specifically address climate-driven exile. Strengthening such regional treaties to explicitly mention climate dislocation (as the African Union has discussed) could create meaningful change for those regions most affected.
- **New multilateral arrangements:** Besides the Refugee Convention, two UN compacts were adopted in 2018 that relate to migration: the Global Compact on Refugees, and the Global Compact on Migration. The Refugee Compact mentions climate only as a contributing factor. The Migration Compact goes one step further by suggesting "planned relocation and visa options" for people forced from their homes as a result of climate change that causes slow onsets. These compacts are not legally binding, but they may pave the way for cooperation on quotas for migration, early warning systems, and assistance for adaptation.
- **Domestic and visa reforms:** Many countries are exploring flexible immigration tools. For example, climate-specific humanitarian visas (sometimes called "climate visas") would allow entry for individuals displaced by disasters in their home country. The Biden administration (USA) has signalled interest in such pathways, and Canada has created temporary resident permits for some climate-impacted Haitians. Another option is using existing categories: Temporary Protected Status (TPS) in the US has been applied to countries hit by disasters and could be explicitly used for climate cases. These domestic solutions, while limited in scope, at least provide immediate relief and set precedents. They often involve collaboration with climate-vulnerable communities to define criteria.
- **Adaptation and development investment:** Some experts stress that legal fixes must go together with mitigation. If people do not need to move (because they can adapt in place), the legal problem recedes. Thus, major climate finance and adaptation programs (green infrastructures, resilience projects) can be seen as part of a migration strategy.

The UNFCCC Loss and Damage Fund and the Global Compact's resilience pledges, while not direct legal protection, aim to reduce the drivers of displacement.

These proposals vary in scope and feasibility. Critics of expanding 1951 argue that amending the convention could dilute its original purpose and trigger more refugee movements than states are willing to accept. Still, proponents point out that the growing body of "climate mobility" research and evolving norms might eventually shift the legal landscape. Recent developments – such as the UNHCR Guidance Notes on climate claims and the inclusion of displacement in the Paris Agreement's "Loss and Damage" discussions – reflect a nascent recognition of the issue. Whether through law reform, innovative policy, or a new instrument, the consensus among scholars is that action is needed *before* tens of millions more are left stateless or stranded.

In sum, bridging the gap requires creative legal thinking. One promising path is to reinterpret existing provisions more generously. For instance, if a drought-induced famine leads to civil war, then the victims could be refugees under persecution grounds. This avoids rewriting treaties but acknowledges the reality of "overlapping crises." Another approach is to leverage human rights and environmental law together – for example, treating forced displacement due to climate as a human rights violation, which some courts have hinted might eventually happen. Few believe that expanding the 1951 Convention is *the only* solution. But as one commentary concludes, "*the strongest potential solution*" is indeed a broadened refugee definition (perhaps via an amended protocol), supplemented by bilateral and multilateral measures. Until then, creative use of all available legal tools remains essential.⁵

Author's Opinion

The process of climate-induced displacement illuminates a glaring gap in international refugee law. As the authors of this article, we argue that current legal frameworks, especially the 1951 Refugee Convention, are not adequately suited to apply to the fact that millions of people are displaced not due to conflict, or persecution, but rather floods, droughts, and rising seas. The Teitiota case exemplifies how some of the most serious climate-related threats fall outside the very limited confines of protection available under international law.

⁵ Maryland People's Law Library, 'Legal Overview of Child Support' (Maryland People's Law Library, n.d.) <https://www.peoples-law.org/legal-overview-child-support> accessed 25 June 2025

In assessing the current state of play, we have come to the conclusion that legal reform is necessary, and long overdue. Some argue that extending the definition of refugees is going to dilute the origins and legitimacy of the idea of refugees, but we believe that the real danger lies in continuing to rely on dated legal definitions when facing the rapidity of climate change. The answer may not be as straightforward as one treaty amendment; rather, a multifaceted approach, which includes not only dynamic interpretation or "reading" of human rights treaties, but also regional protocols and domestic processes that offer ways of adapting to circumstances—such as climate visas.

We do not subscribe to the idea that climate displaced people are "economic migrants" without legal standing. The reasons for climate displacement are based on environmentally influenced forms of systematic harm before displacement ever occurred, which is subject to individual and global histories of inequality. The world must respond with legal innovation grounded in political will and that time is coming now. If we stop acting as global warming accelerates, we risk generating a class of individuals who are stateless and without rights - climate refugees by any other name. In short, International Law must respond to the most significant challenge of our time.

Conclusion: The Urgent Need for Change

Migration driven by climate change represents one of the great humanitarian and legal challenges of our time. The evidence is unassailable: rising sea levels, increasingly powerful storms, and encroaching deserts are already displacing massive numbers of people. But international law is lagging well behind the scope of reality. The 1951 Refugee Convention, while significant in the history of protecting the persecuted, does not speak to environmental dislocation. Climate-displaced persons are therefore at risk of falling between the gaps without an automatic right of entry to another country or even to remain in their own country when conditions become life-threatening.

This article has traced how existing rules apply (and largely fail to apply) to climate migrants. The Teitiota case exemplifies the problem: even the remote prospect of drowning islands did not compel legal protection for an individual. It underscores how protection of climate-displaced people today depends on ad-hoc factors – domestic policies, temporary visas or, in rare cases, humanitarian grants of asylum. On the positive side, the growing recognition of “loss and damage” in international forums means that the human consequences of climate

change are no longer ignored. UNHCR and other bodies are urging states to anticipate climate mobility in their planning and law.

As it moves forward, the global community will likely engage with a number of strategies concurrently. The incremental steps (compact agreements, human rights litigation, special visas) are underway; at the same time, there may be pressure to develop a more comprehensive regime (new treaty, broadened definition of refugee status) in light of peak in displacement faces. Regional frameworks (OAU/CARICOM) could also emerge and establish precedents. Regardless of the solution, the core principle to any solution is non-refoulement: no one would be sent back into danger, even if that danger was a climate-based disaster.⁶

Thus, while researchers and policymakers must utilize the law as it currently exists and is applied while simultaneously pushing for its amendment, they also need to mobilize refugee lawyers, judges, and officials to take or support climate claims. And, where relevant, hold states to their humanitarian commitments beyond treaties. Ultimately, the main challenge in protecting "climate refugees" is solidarity: to ensure that the displaced people of today and even more tomorrow do not become stateless or invisible victims. As the UNHCR has noted, climate change is already accelerating, and it is necessary to adapt our laws and compassion, in order to prevent an outright human problem of displacement.

Suggestions

To respond to the emerging problem of climate-induced displacement, international law must change by both structural reform and imaginative reinterpretation. First, while it seems politically challenging to adjust the definitions in the 1951 Refugee Convention to explicitly include climate-induced displacement, states can explore more creative options such as either an additional protocol or a separate legal instrument on environmental migration. There are also regional (e.g., OAU Convention, Cartagena Declaration, etc.) that offer more inclusive definitions that recognize that some people have been "seriously disturbed public order" and are forced to leave their countries due to climate disasters.

In the interim, states can enhance human rights law by recognizing that certain foreseeable environmental harm can amount to threats to life (or inhuman treatment) (such as in the

⁶ Haitian Bridge Alliance, 'Haitian Bridge Alliance Congratulates Jamaican Prime Minister Andrew Holness on Assumption of CARICOM Chairmanship' (Press Release, 2 July 2025)

ICCPR). Countries can also establish flexible migration policies such as humanitarian visas, temporary protection status, and specific asylum provisions for climate migrants. Strengthening domestic disaster response laws and making displacement a component of national climate planning are important steps for States.

Finally, legal reforms should be bolstered with investment into adaptation and resilience so that communities at risk can remain in place safely. The global community must envision a rights-based approach to climate mobility, and one that reflects the severity of the crisis and the dignity of the individuals who are being affected.

References:

1. UNHCR, *Global Trends: Forced Displacement in 2024* (UNHCR 2024)
2. Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2024* (IDMC 2024)
3. Caitlan M Sussman, 'A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?' (2023) 24 *Chicago Journal of International Law*
4. UN Human Rights Committee, *Teitiota v New Zealand* (7 January 2020) Communication No 2728/2016, UN Doc CCPR/C/127/D/2728/2016
5. UNHCR (United States), 'Law and Policy for Protection and Climate Action' <https://www.unhcr.org/us/climate-change-and-displacement> accessed 5 July 2025
6. UNHCR, 'Climate Change and Displacement: Myths and Facts' (15 November 2023) <https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts> accessed 5 July 2025

Websites referred:

1. Earth Refuge, 'Protecting Climate Migrants: A Gap in International Asylum Law' (Earth Refuge) <https://earthrefuge.org/protecting-climate-migrants-a-gap-in-international-asylum-law/> accessed 25 June 2025.
2. 'Climate Refugees: International Law and Suggestions' (Academia.edu) https://www.academia.edu/8916697/Climate_refugees_international_law_and_suggestions accessed 27 June 2025.
3. Juris Centre, 'Transforming Asylum: Exploring the Legal Framework for Climate Refugees in International Law' (20 January 2024) <https://juriscentre.com/2024/01/20/transforming-asylum-exploring-the-legal-framework-for-climate-refugees-in-international-law/> accessed 27 June 2025.
4. SCIEPublish, 'Construction of a Comprehensive International Legal Protection

Mechanism for Climate Refugees' <https://www.sciepublish.com/article/pii/175>
accessed 28 June 2025.

5. Raoul Wallenberg Institute, 'Climate Refugees: Towards Recognition of Their Legal Status' (RWI) <https://rwi.lu.se/blog/climate-refugees-towards-recognition-of-their-legal-status/> accessed 2 July 2025.