



Climate Migration and the Protection Gap in International Law: An Unresolved Crisis

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Abstract

This blog argues that the international legal protection gap faced by climate-displaced persons is not merely the result of outdated refugee definitions but instead reflects a deeper structural bias within international protection regimes towards individualized, imminent, and attributable harm. This blog will further examine the limitations of the 1951 Refugee Convention, looking specifically at the persecution, nexus, and individualized risk requirements under Article 1A (2), and will analyze the UN Human Rights Committee's decision in *Teitiotia v New Zealand*, effectively demonstrating that both refugee law and human rights law struggle to accommodate slow onset, collective, and environmentally driven forms of harm. Generally, it is argued that climate displacement exposes a fundamental misalignment between the way international law conceptualizes harm and the lived realities of climate affected communities, urging for protection to be developed beyond the refugee framework rather than through narrow reinterpretation.

Keywords: Climate Migration, International Refugee Law, Protection Gap, Climate-Displaced Persons, Human Rights Law, *Teitiotia v New Zealand*

Introduction

For communities living on low lying islands, along eroding coastlines or in drought-stricken regions, climate change is not an abstract environmental threat but instead a daily reality. It disrupts access to water, food, housing, and basic safety, gradually making ordinary life unviable. Rising sea levels, intensified droughts, and recurrent extreme weather events are



increasingly influencing and compelling individuals and families to leave their homes, often with no clear prospect of legal protection once they cross borders. Despite this reality, displaced individuals continue to lack a coherent legal status under international law.¹

The traditional legal frameworks for protecting displaced persons, which are rooted primarily in the 1951 Refugee Convention, were not designed to address displacement driven by environmental and climatic factors and, as such, do not readily accommodate individuals displaced by climate-related harm. This disconnect raises urgent questions for the international community: is the protection gap mainly the result of the Convention's narrow definition of persecution, or does it reflect a deeper structural difficulty within international law in recognizing slow onset, collective and environmentally driven forms of harm².

Recent legal developments, including the UN Human Rights Committee's decision in *Teitiota v New Zealand*, whose significance lies not only in its outcome, but in how it reveals the way international law conceptualizes risk and harm in the context of climate-related displacement, suggests that existing international legal frameworks may offer limited avenues for protection. However, these developments have not resolved the broader protection gap faced by climate-displaced individuals, particularly so in cases of slow onset environmental degradation and collective harm.

The limitations of international refugee law

¹ Amnesty International, *When people are displaced by climate change, what rights do they have?* (Amnesty International, 8 October 2025) <https://www.amnesty.org/en/latest/campaigns/2025/10/when-people-are-displaced-by-climate-change-what-rights-do-they-have/>

² 'New EMN Inform Explores Displacement and Migration Related to Disasters, Climate Change and Environmental Degradation' (*Migration and Home Affairs*, 8 May 2023) <https://home-affairs.ec.europa.eu/news/new-emn-inform-explores-displacement-and-migration-related-disasters-climate-change-and-2023-05-08_en> accessed 18 May 2026



The 1951 Refugee Convention is a UN treaty that defines who a refugee is, what their rights are, the legal obligations that arise for states to protect them; It remains the foundation of This doctrinal framing systematically excludes climate displaced individuals, as environmental degradation and climate change do not align with the Convention's protected grounds.³⁴⁵

By requiring persecution to involve identifiable human agency, the Convention inherently precludes most climate-related displacement.⁶ Climate-related harms affect large groups of people rather than targeting specific individuals, happen slowly over time, and are caused by widespread environmental changes rather than deliberate actions by a persecutor, making it impossible to link harm to specific persecutory conduct. This, thereby, illustrates a fundamental tension: the Convention's structure is coherent in the historical context of post war displacement but perhaps ill-suited to the realities of 21st century environmental crises.⁷

More regional tools such as the 1984 Cartagena Declaration attempt to broaden protection to include "other circumstances that have seriously disturbed public order," but this expansion remains legally non-binding. Efforts to reinterpret refugee status to include climate impacts have consistently failed. In *Teitiota v New Zealand*, all judicial levels, including the Immigration and Protection Tribunal, High Court, Court of Appeal, and Supreme Court, held that environmental degradation in Kiribati did not constitute persecution under the Convention, because the harm affected the population generally and was not linked to a protected ground.⁸ This case therefore demonstrates the practical consequences of the Convention's restrictive scope where even existential environmental threats do not meet the threshold for refugee protection.⁹

³ United Nations, Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137. (UNHCR)

⁴ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, as amended by the 1967 Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) <https://www.unhcr.org/sites/default/files/2025-02/1951-refugee-convention-1967-protocol.pdf>

⁵ Leiden Law Blog, *Recognition without regulation: The protection of 'climate refugees'* (20 Nov 2023). (leidenlawblog.nl)

⁶ Vienna Law Review, Carina Karnicar, *Climate Change Induced Migration in International Law and the Human Right to a Sustainable Environment* (2023). (viennalawreview.com)

⁷ Climate Justice and Migration (Boell Foundation report). (za.boell.org)

⁸ Climate Litigation Database, *AF (Kiribati) / Teitiota v The Chief Executive...* (2013). (climatecasechart.com)

⁹ Columbia Climate School, U.N. Human Rights Committee Issues Landmark Climate Migration Decision (23 Jan 2020). (news.climate.columbia.edu)



Human rights law and the right to life

Given the limitations of refugee law, international human rights law has emerged as an alternative avenue for protection. Human rights obligations, unlike refugee law, are universal and do not require persecution on a Convention ground.¹⁰ In *Teitiota v New Zealand*, the Human Rights Committee considered whether New Zealand violated Article 6 by deporting Ioane Teitiota, a citizen of Kiribati, to a country increasingly threatened by sea-level rise, climate impacts, and environmental degradation. The Committee acknowledged for the first time that environmental degradation resulting from climate change could constitute a threat to life that triggers obligations; cruel, or degrading treatment or punishment and other irreparable harm.¹¹¹² However, it ultimately found that Teitiota did not prove a personal, imminent risk to his life upon return, noting that his situation was not materially different from other residents of Kiribati at the time.¹⁴ This shows that it underestimated the cumulative impact of climate change on human life and dignity, further exemplifying the evolving nature of this jurisprudence.¹⁵

Beyond the immediate outcome of this case, it illustrates how international human rights law remains reactive rather than protective and continues to conceptualize harm through an individualized and temporally immediate lens. The Committee's reasoning treated climate change induced harm as legally relevant only once it becomes sufficiently acute and directly life threatening for a particular individual, rather than as a cumulative process that affects entire communities over time. As a result, this approach reproduces the same logic found in refugee

¹⁰ Ibid. (news.climate.columbia.edu)

¹¹ Columbia Climate School, U.N. Human Rights Committee Issues Landmark Climate Migration Decision (23 Jan 2020). (news.climate.columbia.edu)

¹² (the principle of non-refoulement under International Human Rights Law) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>> accessed 10 February 2026

¹³ Ibid. (news.climate.columbia.edu) Ibid. (news.climate.columbia.edu); Lawless Zones, *Forc'd Migrants...* (Cambridge). ([Cambridge University Press & Assessment](https://www.cambridge.org/9781107061211))

¹⁵ Columbia Journal of International Affairs, *Non-Refoulement: Human Rights Perspective* (Teitiota analysis). ([cja.sipa.columbia.edu](https://www.cjia.columbia.edu))



law: protection depends on distinguishing the applicant's situation from that of the broader population, even when the harm itself is inherently collective.

Furthermore, the emphasis on imminence of harm reflects a limited temporal understanding of risk. Salinization of land, loss of fresh water or progressive housing insecurity, and other slow onset environmental degradation, does not easily satisfy the threshold of immediacy, despite its foreseeable and potentially irreversible consequences.

This legal framing leaves climate displaced persons in a prolonged state of insecurity. Individuals who move across borders due to flooding, loss of livelihoods or uninhabitable living conditions are typically urged into ordinary migration systems, where they may be denied residence permits, access to social services, and long-term stability. Because protection is only legally conceivable once an applicant can demonstrate imminent and individualized harm, many people are forced either to remain in degrading and unsafe conditions or to migrate irregularly, exposing them to the possibility of detention, return procedures, and exploitation.¹⁶

Conclusion

This analysis has demonstrated that climate change presents a significant challenge for international law. While the 1951 Refugee Convention remains vital for victims of targeted prosecution, its structure is fundamentally ill suited to address displacement driven by slow onset, collective and environmentally driven contexts and processes. Furthermore, the attempt to stretch the Convention through interpretive strategies risks obscuring its original purpose without delivering meaningful protection to climate-displaced persons.

Rather than relying on an incremental expansion of refugee or human rights legislation, this blog argues that protection for climate displaced persons should be developed through a dedicated international framework that recognizes climate related displacement as sufficient ground for

¹⁶ United Nations, *Global Compact for Safe, Orderly and Regular Migration* (UN General Assembly, adopted 19 Dec 2018) <https://www.un.org/en/migration2022/global-compact-for-migration>; UN General Assembly, *Report on Climate Change and Migration Guidance* (2023). (documents.un.org)



protection. This would allow international law to respond adequately to the collective realities of climate-induced harm by effectively moving beyond legal doctrines which solely prioritize individual attribution and immediacy of harm.

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