

**Exploring States' International Human Rights Law Obligations to Protect
Vulnerable Populations from Climate-Induced Displacement**

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1.0 Introduction

1.1 Background: Approaching climate-induced displacement

While globalisation continues to facilitate economic growth, globalisation and globalisation-related factors are increasing the vulnerability of more regions to climate change. For populated areas, this is concerning as climate change and natural hazards or disasters triggered by climate change might increase the risk of displacement (Askland et al., 2022). Similarly, and as happened in countries like Ethiopia during the construction of the Grand Renaissance Dam and Kenya in the Turkana wind energy project, development projects designed to increase resilience to climate change by providing clean energy for just transitions might end up displacing communities (Cormack & Kurewa, 2018). Similar to climate-induced displacements, migrations triggered by development project can be internal or they can lead to cross-border movements (Atapattu, 2020). In itself, such displacements especially if done without compensation amount to violation of human and community rights. Still, disasters that trigger migrations simultaneously affect multiple human rights raising the need to look into how human rights regime can mitigate violations of rights in the context of climate change induced displacement (CCID).

More concerning is how hazards such as temperatures, sea levels, floods, storms and wildfire rise are leading to large-scale human displacement yet there is currently no specific or adequate framework for international law to address potential rights violations associated with cross-border migration due to climate-induced displacement (McAdam, 2012). According to Hartnett (2023) and McAdam (2012), displacement linked to climate change is not a future hypothetical but a current reality. Indeed, the Internal Displacement Monitoring Centre (2017) estimates that since 2008 more than 20 million people have been forcibly displaced by climate change and environmental disasters. Highly worrying is that Small Island States (SIS) like Tuvalu are currently shrinking and might end up sinking due to climate change (McAdam, 2012). For example, one of the islands in Tuvalu sank into the sea in 1997 and other Pacific island countries are at risk of coastal flooding and submergence due to global warming which contributes to a rise in sea levels (McAdam, 2012). Still, other island countries are losing their lands to coastal erosion and this sinking island phenomenon

is triggering cross-border migrations of people (McAdam, 2012). Against this backdrop, the terms environmental refugees and climate change refugees will sometimes be used interchangeably in reference to communities or individuals displaced by natural disasters and climate change. Conventionally, refugees are people fleeing political persecution and wars, but not people migrating because of climate change or environmental issues (Van der Vliet, 2018). As such, the terms environmental and climate refugees remain contested and they create ambiguity around the human rights obligations owed to people and communities who are migrating internally or internationally after being displaced by climate change events and natural disasters and hazards.

1.2 Research Questions.

The central research question underpinning this dissertation is to explore the extent to which international human rights treaties impose legal obligations on states to mitigate the risks of climate-induced displacement. In so doing, it also identifies the salient features, if any, in climate and human rights governance that might be contributing to the continued lack of clear and enforceable legal and non-legal mechanisms to protect and uphold human rights as well as redress human rights violations in climate-induced displacement and broader climate change contexts. Notably, this research focus is consistent with the study's hypothesis. The working hypothesis is that human rights law contains general obligations to prevent foreseeable harm, but no clear and enforceable mechanisms that specifically address climate-induced displacement.

As to which international human rights treaties should create legal obligations for states to accord equal rights to persons or communities displaced by climate and extreme weather events and how these obligations should be enforced, this study will explore the same by analysing the relationship between human rights and climate change governance. Further, it will analyse how international treaties create state obligations, and the ways in which it sanctions non-compliance. As part of this analysis, it will distinguish binding obligations and non-binding commitments by looking at state practice in the interpretation and enforcement of different international human rights legal instruments in the context of climate change and climate-induced displacement.

The second portion of the research question will specifically focus on human rights giving rise to state obligations in the context of climate change. It will look at the legacies and legal frameworks that courts have drawn on and used in various climate litigation matters that have found states to have legal obligations to uphold and protect human rights in climate contexts. An illustrative approach is the interpretation of human rights obligations to foreign nationals by the New Zealand courts and the UN Human Rights Committee in the famous *Ioane Teitiota* case which explored state obligations under international law to persons affected by climate-induced displacement.

While most climate litigation matters have been handled by domestic courts, the analysis will identify the application of international human rights laws in domestic and international litigation. The close analysis will further look into specific litigation on the phenomenon of climate or environmental refugees. Loosely defined, climate refugees are people who have been displaced by climate change events and natural hazards or disasters from their home countries and settled in the territories of other states (McAdam, 2012). Jurisprudence on climate refugees from New Zealand in the *Ioane Teitiota* case concerning New Zealand's human rights obligations to a Kiribati national living in New Zealand who had been displaced from Kiribati by climate change has drawn parallels between international human rights of refugees and human rights of persons displaced to foreign countries by climate change. While appreciating that cross-border movement in both contexts is forced and necessary for the continued enjoyment of human rights, the New Zealand Court together with the UN Human Rights Committee have refused to extend equal protection rights enjoyed by conventional refugees and asylum seekers to persons displaced by climate events and climate change.

As chapters 1 and 2 will illustrate, a socio-legal approach to the question as to whether persons displaced by climate change should enjoy the rights and protection entitled to refugees under international law turns on legal and political questions. Taken together, there are legal and political ramifications for bringing persons displaced by climate change under the protection of international human rights and refugee laws. These issues will be tied together in chapter 3 which will situate the issue of state human rights obligations in climate change in its proper socio-legal context. This will be accomplished by a doctrinal analysis of the 2023 request for an

advisory opinion to the International Court of Justice by the United Nations General Assembly. The analysis of the request for advisory opinion will be supplemented by an analytical analysis of submissions by different states and non-state actors to the ICJ on the advisory opinion. Legal pluralism as identified by the analysis of submissions by different states together with COP negotiations on the concept of climate refugees and their rights as well as state obligations to climate refugees will be a key contribution of this research study and it will assist in answering the guiding research question.

1.4 Methodological Approach

In line with the stated research question and research objectives, this study will strategically use close textual reading and doctrinal analysis to engage with literature and case laws on state human rights obligations in the context of climate change, and specifically persons displaced by climate change and extreme disaster events. The close reading and analysis will assist in placing laws on human rights and human rights protection of persons displaced by climate and disaster events in their proper legal and socio-political contexts. For instance, states with strong human rights record have resisted extending the term refugees to persons or communities forcibly displaced to foreign countries by climate and disaster as this might threaten their national security and probably trigger resource conflicts as an influx of climate refugees would create a strain on critical resources such as water, food, shelter, and public goods like health resources. Accordingly, embedding the analysis with political and social contracts will greatly support the study and enhance an understanding of the opposition to states having enforceable human rights obligations in climate change contexts.

1.4 Structure of this study

Based on above research question and hypothesis, this study is structured into three main chapters. Chapter 1 will introduce the topic. The second chapter will critically examine the concept of CCID and establish a linkage between CCID and human rights. Next, chapter 3 will examine how international law obligations of states can strengthen rights of displaced persons in the context of CCID. A key feature of climate-induced displacement is that it mainly leads to internal displacement within national borders. In the context of this research which seeks to explore how international law can uphold or strengthen the rights of people displaced by climate or

environment related factors, internally displaced people are beyond the scope of this research as IDPs and their rights fall within the regulatory scope of domestic laws as provided for by the Guiding Principles on Internal Displacement. Notably, state sovereignty means that states predominantly rely on domestic laws but not international laws thus international law cannot be applied to climate-induced internal displacement.

The analysis of the advisory opinion on state human rights obligations and their enforceability before the ICJ together with the accompanying state submissions in chapter 3 is unique in both its comprehensiveness and incompleteness. It is comprehensive because it analyses multiple approaches of states to their human rights obligations and sources of these obligations as anchored in international law. Notably, there is a binary approach to sources of human rights obligations in climate change contexts with some states contending that the proper source of human rights obligations in climate change contexts is the Paris Agreement. On the other hand, other states oppose this narrow approach and call for reference to the use of the Paris Agreement and exhaustion of international human rights treaties and norms when constructing and enforcing human rights obligations in the context of climate change. What makes this analysis incomplete is that the ICJ is yet to render its decision on whether states should use a unitary approach that only considers the Paris Agreement or they should take a more inclusionary approach that uses the Paris Agreement and other treaties and standards on human rights to establish state obligations in climate change contexts. Nonetheless, the analysis in chapter 3 will assist in understanding the legal and non-legal factors responsible for the dichotomy in developing state human rights obligations in climate change contexts.

1.5 Conclusion

This research will provide a strong background reference for future studies on state human rights obligations and climate litigation. In particular, the research question and analysis will assist in identifying practical barriers to holding states responsible for failing to protect human rights in climate change contexts. The methodological approach is appropriate for this study and it aligns with the research aims. The structural arrangement of this dissertation is designed to guide the reader in understanding the context of human rights in climate change discourse as it first establishes a typology of climate-induced displacement, identifies key human rights

threatened by climate-induced displacement, and uses the linkages between climate-induced displacement and human rights to explore the omission of international human rights obligations in climate change contexts.

2.0 Chapter 1: Introduction – Climate-Induced Displacement and Vulnerability

2.1 Introduction

This chapter describes the phenomenon of climate-induced displacement and explains the impact of socio-economic conditions on vulnerability to climate disasters. The nature of displacement varies depending on the type of climate event - whether it is a slow-onset disaster such as drought or sea level rise, or a sudden-onset event such as hurricanes and forest fires -but certain human rights obligations remain unchanged. These obligations enshrined in international human rights law, including inter alia the duty to protect the right to life (Article 6 of the International Covenant on Civil and Political Rights), to provide adequate housing and means of subsistence (Article 11 of the International Covenant on Civil and Political Rights) and to prevent arbitrary displacement (as recognised in case law and soft law documents such as the Guiding Principles on Internal Displacement), are universally applicable regardless of the climate event in question. This chapter will establish the groundwork for the minor dissertation by presenting climate displacement as a human rights issue and detailing the research question: To what extent do international human rights treaties impose legal obligations on states to mitigate the risks of climate-induced displacement? The working hypothesis is that human rights law contains general obligations to prevent foreseeable harm, but no clear and enforceable mechanisms that specifically address climate-induced displacement.

2.2 Climate-induced displacement

Climate-induced displacement involves either internal or cross-border movement after exposure to extreme weather events and natural disasters. While some researchers like Askland et al. (2022) have attempted to develop a classification of climate change induced displacement (CCID) by looking at the causes, this study will not. Per Askland et al. (2022), geographical distribution of disasters and inequities greatly contribute to highly adverse climate change impacts, including CCID. In their attempt to clarify CCID based on causative factors, Askland et al. (2022) distinguish CCID caused by on-set natural disasters that have happened or are unfolding and CCID as a product of pressure to migrate that comes from living in an environment that is susceptible to natural disasters. This approach is consistent with the treatment of CCID or environmental-induced migration as any voluntary or involuntary,

temporary or permanent, cross-border or internal movements that may take place in the wake of or in anticipation of natural disasters (Docherty & Giannini, 2009; Giacalone, 2024).

Per the United Nations, a disaster is a “serious disruption of the functioning of a community or a society involving widespread human, material, economic, or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources” (IPCC, 2022). Drawing on this definition of natural disasters advanced by the UN, natural disasters fall into two distinct categories: slow-onset natural disasters and sudden-onset natural disasters. The two categories are the result of exposure to natural hazards in this context. Among other things, mudslides, typhoons, hurricanes, coastal floods, earthquakes, and volcanic eruptions are examples of unforeseen meteorological, hydrological, and geophysical hazards that cause sudden-onset disasters. Such displacement is instant as people escape for survival and to save their lives. It is mainly within national borders and does not often involve cross-border movements.

The second, on the other hand, covers hazards that develop gradually, like rising sea levels, warming temperatures, retreating glaciers, biodiversity loss, soil and water salinisation and degradation, and degradation of forests and land. Because they force people to leave their familiar places of residence in quest of survival and a better life, frequently with no chance of return, both kinds of disasters contribute to CCID or environmental-induced migration (Ayeb-Karlsson et al., 2022).

In the context of this research, it might not be necessary to explore classification of CCID (Askland et al., 2022). However, it is essential to highlight that distinguishing the causes of CCID might generate actionable insights that would support in constructing an international responsibility to protect (R2P) right and related obligations to assist individuals and communities already displaced by CCID as well as fragile communities yet-to-be displaced but are highly vulnerable to CCID. Notably, obligations to displaced populations are more immediate and they assume an emergency shape as opposed to the aspirational nature of human rights obligations when it comes to communities which are likely to be displaced but are yet to be displaced.

In the context of CCID, climate change is not isolated and it interacts with and shapes political and socioeconomic circumstances, which typically lead state

governments to enact laws intended to restrict movement and the right to relocate. The UNHCR states that the first category of climate-related movements includes geophysical hazards like earthquakes, tsunamis, and volcanic eruptions, as well as meteorological hazards like typhoons, hurricanes, blizzards, tropical tornadoes, and cyclones. The second category includes sea-level rise, oceanic acidification, land and forest degradation, rising temperatures, glacial retreat, biodiversity loss, and desertification (Kälin, 2010). People are frequently compelled to leave their familiar locations in reaction to these phenomena because they are placed in a highly vulnerable situation. Furthermore, most people lack the necessary resilience to endure the significant change. Thus, it is evident that displacements resulting from disasters are distinct from those resulting from simple migration. In actuality, one could argue that vulnerability and exposure to potential natural hazards combine to cause climate-induced displacements but highly resilient persons and communities have a higher adaptive capacity thus they can mitigate the risk of displacement.

Closely related to CCID associated with natural disasters is environmental related migration due to sinking islands. Kälin (2010) argues that small island states are at risk of sinking because of global warming that has contributed to sea level rise. The risk is higher for low lying islands and the gradual increase in sea levels displace people in sinking islands by causing the islands to become inhabitable as most of their territories get submerged (Kälin, 2010). In his classification of how climate induced displacement develops, Kälin (2010) identifies state actions displacing people in areas prohibited from habitation as the fourth class for induced displacement. Such displacement is justified by state obligations to protect individuals and communities from environmental harms (Kälin, 2010). The fifth scenario under which climate change induces displacement is in conflict contexts (Kälin, 2010). Prolonged violence and armed conflicts contribute to resource conflicts over essential resources like water and food for humans and animals (Kälin, 2010). Such resource conflicts are equally pronounced in pastoral communities where low availability of pasture and water causes communities and individuals to fight and even migrate in search of pasture and water.

On how socioeconomic conditions increase the vulnerability of persons and communities to induced displacement, it is further crucial to examine small island states. The economies of small islands are sensitive to climate change as the main

economic activities in these islands are tourism and fisheries. Global warming affects sea levels and this impacts fisheries by endangering fish populations. Still, climate change affects terrestrial biodiversity and this might reduce available foods on the islands. At the same time, loss of territory to the rising sea levels reduces the appeal of the islands to tourists. Cumulatively, these factors induce migration out of the islands. However, climate change is not the sole cause factor of these displacements. Rather, it is a catalyst and it interacts with other factors to induce displacement and influence decisions to relocate. People in the small island states thus migrate out of necessity since the rising sea levels make it necessary to migrate. As such, the migration from small islands states that are at risk of sinking due to global warming and whose economic sectors are performing poorly because of climate related factors is not voluntary.

Based on how economic activities in small island states are performing poorly because of climate change, vulnerabilities that reflect the distinct socio-economic and environmental challenges in societies can be used to differentiate societies that are located in a particular geographic area and have the same degree of exposure to natural hazards (Piguet, 2011). This means that in the aftermath of a natural disaster, the most vulnerable individuals have the fewest chances to migrate away from risks, which frequently amounts to a last resort, and to adapt locally. The relocation factor is another crucial one to take into account. Displaced people may not get the assistance they require in the destination area because their local knowledge may not always be suitable for the new location where they migrate when environments become inhospitable and people are forced to leave. Furthermore, overexploitation of natural resources may be a major issue for those displaced in places where inadequate infrastructure directly causes their survival to depend on the environment. Overexploitation of natural resources may result in pollution, possible epidemics, conflicts, deforestation, inadequate supplies of drinkable water, and soil degradation. In these situations, migrants may cause additional ecological stress and trigger unintended consequences like new environmental disasters.

Finally, GHG emissions by increasing the risk of sea level rising, flooding and desertification contribute to complex climate crisis issues that manifest as famines, water scarcity, heat waves, and systemic poverty. The scarcity of food and water trigger resource conflicts over food and water, thus threatening peace and increasing

the risk of displacement. These problems are more pronounced in the Global South due to their heavy dependence on natural resources and weather for sustenance. The vulnerability of communities in these regions reduce their resilience and lower their adaptive capacity. Notably, the climate crisis exacerbates existing inequalities and undermines human dignity by affecting access to food and water, and lowering the enjoyment of rights like life and housing.

2.3 Legal frameworks and human rights

From a rights-based approach, climate change contributes to the violation of multiple fundamental rights. One of these rights is the right to life which is a foundational right under international and municipal laws. At the international level, climate change by undermining the right to life offends Articles 3 and 6 of the Universal Declaration of Human Rights and ICCPR which provide for the inviolable and universal right to life. A relevant example is how global warming by leading to the submergence of Pacific island countries threatens the right to life as sinking islands are inhabitable and coastal erosion affects the availability of food in the islands. An example is how elevated sea levels have reduced fish stocks in small island states like Tuvalu. Climate change further degrades land and leads to significant loss of fertility. In turn, this reduces the productive capacity of lands and lowers availability of food leading to food insecurity.

Still, a rise in sea level increases the risk of diseases, and this affects the right to health and the right to live in a clean and healthy environment. The right to health is interwoven with food and water availability, with poor nutrition increasing the risk of starvation and lifestyle diseases. Extreme weather events like heat waves also affect health and might increase the risk of mortality. Generally, climate change undermines the right to adequate living standards, and gradually this induces displacement as mobility allows people to settle in areas where they can lead dignified lives with enhanced access to adequate standards of living.

The right to water is a key concern and it may induce cross-border displacement. In small island states like Kiribati, increase in sea levels has contributed to high salinisation of drinking water and the resulting water stress affects the habitability of the island. In the *Vasilka Kiribati* case which is widely known as the *Ioane Teitiota* case, New Zealand refused to grant Teitiota a refugee status but acknowledged that lack of access to safe drinking water was an imminent threat to life

Other weather events like desertification and flooding increase the scarcity of water and areas experiencing drought are likely to breed conflicts as people fight over available water resources for survival. In turn, people might relocate in search of water or new environments where they would have access to water and enhanced standards of living.

In looking at the linkages between CCID and human rights, a review of past responses indicate that protection extended to individuals affected by natural disasters are mainly driven by humanitarian considerations instead of the need to uphold and protect universal and fundamental human rights. The emergency or humanitarian considerations are brought out by various incidences where states like the US have provided protection after natural disasters have occurred (McAdam, 2012). Such emergency or humanitarian protection has tended to be discretionary and unpredictable as opposed to human rights approaches to protecting displaced populations which would tend to be more certain.

The United States is one of the nations that has provided emergency protection to foreign nationals after disasters. Under the Immigration and Nationality Act, the US may provide Temporary Protected Status (TPS) to nationals of designated countries who have been affected by conflicts or environmental disasters that substantially but temporarily disrupts their living conditions (Wasem & Ester, 2010). For example, the US in 2010 designated Haiti for TPS after Haiti suffered devastating earthquakes resulting in extensive destruction and displacement. Since TPS targets designated countries, it applies with respect to a country's conditions after a natural disaster but not the specific circumstances of individuals (Wasem & Ester, 2010). Another feature of the TPS is that it only applies to the nationals of the affected country currently in the US at the time of designating TPS (Wasem & Ester, 2010). In the case of Haiti, the TPS designation applied to Haitians in the US unlawfully and lawfully (McAdam, 2012). However, it did not extend permanent legal residency. In this case, TPS is an emergency protection instead of a pre-emptive act to protect the human rights of individuals affected by environmental disasters.

Closely related to the TPS emergency protection in the US is the EU Temporary Protection Directive. Article 2(c) of the EU Temporary Protection Directive requires member states to assist people displaced by protracted violence cycles, armed conflicts, and extensive human rights violations but does not mention

environmental disasters. However, McAdam (2012) argues that the list under Article 2(c) of the EU Temporary Protection Directive is not exhaustive and can be used to protect persons displaced by climate events. Notably, the legislative history of the Directive shows that some member states like Finland had proposed the inclusion of a clause to protect persons affected by natural disasters but this clause was not incorporated into the Directive (McAdam, 2012).

Nonetheless, protection after climate change events can be imputed into the Directive as Article 188R or the solidarity clause of the Lisbon Treaty mandates member states to provide assistance to member states affected by natural disasters. It is unlikely that climate-induced displacement would occasion a mass influx of people from a member state that would lead to temporary protection (McAdam, 2012). Nonetheless, it can be argued that Article 10A of the Lisbon Treaty requires member states to assist foreign nationals affected by natural disasters.

Due to the contested meaning of the concept of refugees, international conventions on refugee rights are inadequate in assessing the plight of climate refugees or persons displaced by climate change and related factors. Similarly, it might be difficult to expand the meaning of refugees to encapsulate persons forcibly displaced by climate and environmental factors. A key challenge would likely lie in amending international conventions on refugee rights as some states that are already overwhelmed by refugees would likely use such an opportunity to limit refugee rights and restrict the application of legal principles like non-refoulment. Media panics surrounding the involvement of immigrants and refugees in crimes have created a negative perception about refugees and this might drive some states to push for less refugee rights in a bid to secure their national security and other strategic interests. Similarly, and has been highlighted elsewhere, the issue of responsibility would likely cripple the protection of persons displaced by climate change. Under leading international human rights laws like ICCPR article 2(1), the obligation of states to uphold human rights only applies within their territories. Since states lack jurisdiction and do not have human rights obligations in other states, states are likely to refuse an obligation to protect persons based in other countries who have been displaced by climate factors.

Pursuant to the Paris Agreement's preamble, states have different human rights obligations. While these obligations are not specific to climate-induced

displacement, the wording of the preamble as it creates human rights duties of states suggests that they may be extended to displacement or migration induced by climate change. In particular, the preamble states, ‘Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.’ Drawing on the wording of the preambular words of the Paris Agreement, it follows that key human rights obligations of states in climate-induced contexts might be bundled but this bundle of rights can be separated into stand-alone human rights obligations which can be used against states when seeking protection for climate-induced displacement. In this case, the preamble recognises that climate change and degradation affect the general enjoyment of human rights. Individual entitlements to rights affected by climate-related factors like displacement include the right to health and the right to development.

At a collective level, the Paris Agreement’s preamble creates a presumption of constructive rights in relation to indigenous peoples and vulnerable communities. The effect of this is that individuals as community members can have legal claims if their communal way of living has been significantly disrupted by climate change rendering it difficult to enjoy general human rights and individual rights like right to life and right to life in a manner that induces displacement. An illustrative case of how individual interests are tied up with communal or collective rights is demonstrated by the Athabaskan People petition who lodged a claim against the Canadian government at the Inter-American Commission of Human Rights (IACHR). They argued that Canada owed them a duty to mitigate climate change as melting glaciers were affecting their right to culture in that they relied on hunting for subsistence food and as a way of life. Consequently, global warming in the Arctic region where they lived was driving some animals to extinction and this threatened their rights to culture and right to food. While this case does not touch on climate-induced displacement, it shows that the Paris Agreement can be used to construct arguments that the duty to mitigate climate change and reduce GHG emissions as espoused by the Paris Agreement creates a state obligation to protect the collective interests of vulnerable groups affected by climate change factors, including induced displacement. Moreover,

human rights obligations under the Paris Agreement require states to take into account intergenerational equity and gender empowerment when securing these rights and related interests that accrue together with these rights and entitlements.

At first glance, it might seem as if the Paris Agreement obliges states to protect and advance the human rights of individual and collective rights of groups affected by climate change and related factors like induced displacement. Yet, this is not entirely the case as global climate change cannot be attributed to any single state. Rather, climate change is a wicked problem facing the entire world and states have a collective obligation to mitigate climate change (IPCC, 2022). This shared obligation to mitigate climate change is based on the concepts of fairness and equity where states have shared but differentiated responsibilities to mitigate climate change through voluntary commitments to reduce their GHG emissions and transition to net-zero (Sultana, 2022). Arguably, shared but differentiated responsibilities do not create a duty to receive individuals or communities displaced by weather and climate events (Walelign & Lujala, 2022). Still, it can be argued that the voluntary nature of declaring GHG emissions is in itself an expression of the perception that climate change is a shared responsibility and the international commitment to mitigate climate change does not elevate climate change factors over other internal domestic interests that allow states to refuse or return persons displaced by climate events and natural disasters. As a result, states might recognise that climate change might affect human rights but this acknowledgment does not rise to the threshold of creating obligations to receive persons displaced by climate change or natural disasters. Indeed, this position can be imputed from the 2020 *Ioane Teitiota* case at the UN Human Rights Committee.

In its decision, the UN Human Rights Committee acknowledged that migration could be a climate change adaptation strategy (Aleksandrova et al., 2020). However, the receiving state would not be in breach of the non-refoulment principle if it returned a person seeking climate refugee status provided that the receiving state had considered whether there was an imminent danger to the life of the person (Aleksandrova et al., 2020). This petition was an appeal of a decision rendered by the New Zealand Court of Appeal (Aleksandrova et al., 2020).. An inhabitant of Kiribati which is a Pacific island country, Teitiota sought climate refugee status in New

Zealand arguing that Kiribati was at risk of submergence because of an increase in sea levels and this created an imminent danger to his right to life.

Similar to the UN Human Rights Committee, the New Zealand court took judicial notice of the dangers of climate change and threats to fundamental rights it posed. Additionally, it acknowledged the importance of mitigation and adaptation efforts, and found out that Kiribati had taken robust measures to address climate change and the risk of disappearing (Aleksandrova et al., 2020). As such, there was no imminent risk to the right of life. Highly relevant in this petition was the pronouncement that the 1951 Convention Relating to the Status of Refugees was not applicable as climate change and related factors did not fall under the scope of persecuting agents within the meaning of persons entitled to refugee status (Aleksandrova et al., 2020). Based on the combined reasoning of the UN Human Rights Committee and the New Zealand court in the *Ioane Teitiota* case, the Paris Agreement can be used to impute a state obligation to mitigate climate change and protect human rights where persons are at imminent danger because of climate change and environmental-related factors. However, there is no convergence between the protection of rights for people affected by climate change under the Paris Agreement and the rights of people being persecuted within the grounds enumerated by the Geneva Refugee Convention. In particular, climate change is not a ground for awarding refugee status and it is difficult to establish a definitive causal link between forced displacement and climate change as climate change is only a catalyst in the climate-induced displacement phenomenon.

2.4 Current legal concerns and climate-induced displacement

Irrespective of the nature of displacement, some human rights are inviolable. Among these include the right to life, adequate housing and state duty to prevent arbitrary displacement. Yet this is not the case in climate change contexts and climate-induced displacement where some states like New Zealand have returned an immigrant to his home state where he is vulnerable to climate-induced displacement. According to non-refoulment principle in international human rights law, people cannot be subjected to torture or inhuman or degrading treatment if they are extradited, expelled, or deported to third country. Therefore, it is evident that under human rights law, a person is protected from being deported as long as there are risks associated with their return, regardless of whether they meet the criteria for refugee

status. Applying this to the current situation, displaced people due to climate change must demonstrate that living in their home countries would be inhumane or degrading due to the extreme environmental conditions that have been reached (Kolmannskog & Trebbi, 2010). It is important to note, though, that the negative consequences of climate change do not happen suddenly. Rather, environmental deterioration builds over time, ranging from uninhabitability at one extreme to poor environmental quality at the other. In the more severe situation of uninhabitability, it is simpler to prove inhuman or degrading treatment. The European Court of Human Rights (ECtHR) ruled that the United Kingdom had subjected the applicants to inhuman treatment by sending them back to Iraq, where they were facing charges that could result in their death. Similarly, one could argue that putting residents back in an uninhabitable environment is equivalent to putting them to death, which would be cruel treatment or even a violation of their right to life (ICCPR, 1966, article 6).

Using the phrase ‘naturally occurring’ climate change as used by the ECtHR, this high threshold is also adopted in this CCID context. Although Kiribati is undoubtedly facing environmental challenges as a result of climate change, the Supreme Court of New Zealand recently ruled that returning the applicant there does not constitute a violation of inhuman or degrading treatment (Ioane Teitiota case, 2015, para. (12). According to McAdam (2012), this suggests that the state of the environment must be so bad that people can't survive on less than the bare necessities of life. On the one hand, protection against refoulement can be invoked for non-political harm. However, given that they are already experiencing the effects of climate change that they have contributed the least to, it is unfair that these individuals are expected to put up with the poor quality of the environment until it reaches a point of destitution. Today, vulnerable communities are experiencing the effects of climate change, including more frequent and severe storms, drought, extreme weather events, accelerating sea level rise, and other deadly consequences (AOSIS Declaration, 2014, para. 17).

While environmental laws can be used to make a case for a rights-based approach towards protecting persons displaced by climate and environmental factors, such an approach can be criticised because of the lack of a binding international law or rule that makes it an offence to emit green house gases. The Paris Agreement which limits GHG emissions does not create offences or sanctions for nations that

increase their GHG emissions or fail to lower GHG emissions. However, the Corfu Channel case and the environmental law principle of no-harm can be used to argue that states have an international obligation to avoid the use of the territories for acts or conduct that can harm other states and their territories. Extending this argument means that a human rights obligation can be constructed and enforced against states for GHG emissions that harm other states by inducing displacement.

There has been a tendency to treat immigrants from CCID as climate refugees. However, this limits the help that people displaced by climate events can get. In particular, it is important to remember the term's original meaning before delving into the implications of the term 'refugee' in relation to migration caused by environmental factors. The 1951 Convention Related to the Status of Refugees and the 1967 Protocol to the Convention describe refugee as any person who is outside of their country of origin and is unable or unwilling to return it or to avail themselves of its protection because of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion. These grounds are exhaustive and do not evince necessity of protection from climate change or environmental factors like natural disasters. To this end, the term refugee has limited application in protecting people adversely affected and ultimately dispatched by natural hazards associated with climate change.

Equally important, the designation 'refugee' encompasses the right of return, yet this is impractical in the context of irrevocable natural disasters such as volcanic eruptions, tsunamis, sea-level rise, and their kind (McAdam, 2012). Consequently, the usage of this term may warp the essence of the occurrence itself in that the utilization of the term refugee may diminish the protective standards extended to victims of disasters, which appear to function at a lower level than those associated with refugees safeguarded under the Refugee Convention (Nishmura, 2015). Furthermore, beyond the legal domain, it has been suggested that the adoption of the term 'refugee' engenders diplomatic implications between the 'originating' and the 'receiving' nation. In reality, the concept would foster a negative perception regarding the departing country, generating awkwardness when two states maintain positive and stable relations.

The negative connotation that the term 'refugee' carries, which ultimately turns into a stigma for those who are most affected, is another crucial issue that needs

to be addressed (McAdam, 2012; Praveen, 2022),. Migrants in general have been viewed as a threat to the idea of a nation-state and national security, particularly when they are referred to as refugees which entails the duty of international protection and invokes the principle of non-refoulement (McAdam, 2012). These factors make it necessary for vulnerable communities to migrate in order to preserve what little dignity they still have. Furthermore, the term refugee leaves the main problem of responsibility to the displaced communities unresolved even though it makes them the victims of the displacement.

Accepting the term refugee is further problematic as it means that states will have to acknowledge the plight of those who have been displaced by natural disasters and in so doing it will mean that the concept of environmental justice and global responsibility are being implemented. States are reluctant to accept a global responsibility for environmentally displaced people and communities as accepting them as refugees will activate the principle of non-refoulment which obligates them to accept migrants from CCID. Lastly, a further challenge to the use of the term refugee is the opposition to expanding its meaning. Despite the approaching unprecedented humanitarian crisis, there is a legal conflict between an individual's right to refugee status and their right to live in a healthy, balanced environment. The term refugee is still inappropriate for the broad category of people displaced by environmental hazards, even though international recognition of this right has been acknowledged by certain regional and national systems that understand the most affected areas.

Another difficulty might also emerge in terms of responsibility. Some analysts have contended that because GHG emissions are cumulative, it is practically impossible to link a specific climate change impact to a state's emissions because every state has contributed at some point (McAdam, 2012). In other words, even though the developed world and the international community may be the main contributors, the developing countries themselves are responsible for the impacts of climate change. Although multiple states bear responsibility, each state's responsibility may be invoked independently. As such, it is possible to have state obligations under international law for violating international human rights and climate law provisions (ICJ, 2024; Piguet et al., 2011). As a result, even though this worry is mostly valid, it does not dispute that the international community has some responsibility.

Nonetheless, state obligations remain highly contested and there is ambiguity on the proper sources of these obligations. As will be later reiterated in the next chapters, the current discourse on using climate change litigation to press the negative duty to reduce GHG emissions has laid the foundation for arguing that state obligations in the context of climate change mitigation and adaptation provide a basis for human rights enforcement. In line with the need to increase legal certainty on state obligations under international law regarding climate change and consequences of breaching these obligations leading to harm on the environment and people, the United Nations General Assembly (UNGA) requested for an advisory opinion from the International Court of Justice (ICJ) through UNGA Resolution 77/276 of 2023. Pursuant to Article 65(1) ICJ Statute and Article 96 of the UN Charter, the ICJ can issue advisory opinions on legal questions. Accordingly, there is a need to disentangle this argument by focusing on ICJ advisory proceedings on climate change and state obligations.

In the 1996 advisory opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict, the ICJ posited that advisory opinions play a great role in interpreting legal rules and norms by specifying their existence and scope of their content (Kulick, 2025; Wewerinke-Singh et al., 2023). However, advisory opinions are not a source of laws and the ICJ as a judicial body does not legislate (Kulick, 2025; Wewerinke-Singh et al., 2023). In light of ICJ noting that its advisory opinions do not form laws, it follows that ICJ advisory proceedings on climate change and state obligations are not a definitive source of law and will not be binding on states (Kulick, 2025; Wewerinke-Singh et al., 2023). Rather, the opinions have a persuasive effect on how states should approach their international obligations in relation to climate change, and the consequences for causing harm on environment and people after breaching their obligations in the context of climate change.

Regarding the first question, it is instructive to note that it identifies diverse sources of international law and different legal principles that the ICJ was to consider when developing its advisory opinion (ICJ, 2024). Among these sources of law include the UN Charter, general international law, and treaties pertaining to human rights and the environment. The question specifically requests that the entirety of international law be taken into consideration, rather than limiting the ICJ's analysis to a specific legal framework. By requesting that the ICJ consult a variety of sources and

base its ruling on them, it promotes the use of a comprehensive approach when evaluating how international law relates to states' pertinent actions.

UNGA through the first question asks the ICJ to specify the duties that States have under international law that regulate a particular behaviour, namely actions and inactions that have seriously harmed the climate system and other environmental components (Wewerinke-Singh et al., 2023). When read in conjunction with the chapeau or the accompanying introductory language of the UNGA resolution to request for the advisory opinion, the question asks the ICJ to specify and elucidate duties under the full body of international law. Interestingly, the submissions to ICJ by different states reveal divergent opinions on the scope of international law that the ICJ should consider when rendering its opinion. Some states are pushing for a narrow construction of state obligations under international law on climate change by requesting the ICJ to limit itself to the UNFCCC and the Paris Agreement as these are the two chief international laws on climate change governance (ICJ, 2024). Among these states include the US, Germany, Nordic countries, Russia, and Kuwait (ICJ, 2024). For example, Russia has submitted that the UNFCCC is the decisive international legal instrument for regulation and the Paris Agreement is the *lex specialis* for establishing state obligations in relation to climate change (ICJ, 2024).

However, other states such as Vanuatu, Bolivia, and Samoa are pushing for the treatment of other treaties and conventions as relevant sources of law (ICJ, 2024). A key argument behind their position is that climate treaties serve to limit accountability and avoid obligations. Arguing against the *lex specialis* treatment of the Paris Agreement, Samoa in its submission to the ICJ observed that human rights law and international treaties should be integrated when constructing state obligations as states have been causing environmental harm even in the presence of climate treaties (ICJ, 2024). Based on the text of the request for the advisory opinion and submissions against *lex specialis*, it is likely that the ICJ may conclude that it is required by applicable international treaties as well as by customary international law to prevent serious harm to the climate system and other environment components.

Secondly, the phrase “climate system” as used in the advisory opinion refers to the different interrelated elements that make up the Earth system (Wewerinke-Singh et al., 2023). The deliberate use of the term climate system is crucial as it acknowledged the long-term, expensive, and sometimes irreversible adverse ecological impacts of

GHG emissions on current and future generations. More importantly, the advisory opinion calls for the ICJ to identify the rights of future generations that should be protected from adverse climate change actions (ICJ, 2024; Wewerinke-Singh et al., 2023). In this case, it might be relevant for the ICJ to consider international laws and customary international laws that recognise intergenerational rights. Among these include the Maastricht Principles on the Human Rights of Future Generations. Adopted in 2023, the Maastricht Principles recognise that human rights do not have time horizons or limitations and that they apply to future generations (OHCHR, 2023). In the context of this research, the Maastricht Principles are relevant as they include intergenerational rights like sustainability and environmental rights.

With the first question seeking to identify and clarify the specific obligations of States, the second question requests that the ICJ to ascertain the legal ramifications of conduct violating the international obligations which has led to considerable harm on the floor environment, climate systems, and people (ICJ, 2024). There are several notable issues in the second question. Among these include the acknowledgment that state omissions can co-exist with compliant conduct but thus does not absolve a state of its omissions or actions that caused harm (ICJ, 2024). Another key issue is that the second question as submitted to the ICJ recognises that small island states are specially affected and more vulnerable to climate change negative impacts (ICJ, 2024). Since they shoulder disparate burdens due to their high susceptibility, they should have legal rights or claims or entitlements against other states that have failed to honour their international climate law obligations (ICJ, 2024). Equally important, the second question in the second clause introduces persons as a class that is highly affected by negative climate change impacts (ICJ, 2024). In so doing, it recognises that people affected by climate change can have right of claim against other states.

2.6 Conclusion

This chapter has provided a definitive overview of climate-induced displacement. Additionally, it has established linkages between human rights and climate change. In establishing the nexus between human rights and climate change, it has demonstrated that climate-induced displacement is a human rights issue. It has laid the basis for the next chapters by showing that the international legal framework recognises climate-induced displacement but is partly effective in creating rights and obligations for states to enable the migration and cross-border mobility of most

vulnerable communities and persons displaced by climate change events. In so doing, this study has approached migration or cross-border movement of persons as a tool for climate change adaptation. Notably, this approach is distinct from legal protection offered under refugee and asylum laws. It also recognises that climate-induced migration need not occur after disaster events as it can be anticipatory and undertaken as a precautionary move to support adaptation.

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