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CLIMATE CHANGE AND THE RIGHT TO HEALTH: A THREAT MULTIPLIER.

American University International Law Review

Comment Option 1

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ABSTRACT

This comment argues that climate change threatens fundamental human rights recognized by the United Nations High Commissioner for Human Rights. Therefore, the United Nations should adopt the standards set forth in cases like Sacchi v. Argentina and Teitiota v. New Zealand to denote climate change as a threat to the right to health under Articles 11 and 12 of the 1966 International Covenant on Economic, Social, and Cultural Rights. Climate change is already having monumental impacts on access to food and access to clean water and sanitation, which this comment demonstrates by analyzing two country case studies: The Central African Republic and Papua New Guinea. In analyzing two different regions, this comment establishes climate change as a transnational threat, as was found by the Committee on the Rights of the Child in Sacchi.

Recent decisions such as Sacchi and Teitiota provide a path forward for addressing climate change litigation as it pertains to human rights. This Comment proposes that the United Nations redraft the Refugee Convention and its Protocol to include those fleeing as a result of climate change in the definition of a refugee, or alternatively that individual countries establish new 'climate change' resettlement categories and separate quota ceilings. Finally, this comment recommends that the United Nations should impose sanctions on Parties failing to sufficiently address the climate crisis.

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I. INTRODUCTION

The phrase climate change dates back to the 1950s and refers to long term shifts in temperatures and weather patterns.¹ Climate change has major impacts on human health, livelihood, and the attainment of various other rights.² Since the early 1990s the number of extreme weather events has doubled.³ Climate change interacts with poverty, resource depletion, and other factors that exacerbate food insecurity and loss of access to essential services, including water and sanitation.⁴ Poor people are disproportionately affected by

¹ See What is Climate Change, United Nations (<https://www.un.org/en/climatechange/what-is-climate-change>) (explaining that since the 1800s, human activities have been the main driver of climate change, primarily due to burning fossil fuels like coal, oil, and gas).

² Fact Sheet: Climate change and health, World Health Organization (Oct. 30, 2021) (<https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>).

³ UN Warns Climate Change Is Driving Global Hunger, United Nations Framework Convention on Climate Change, (Sept. 12, 2018) (<https://unfccc.int/news/un-warns-climate-change-is-driving-global-hunger>).

⁴ See e.g. Rep. of the Special Rapporteur on Hum. Rts., at 11, U.N. Doc. A/74/161 (Oct. 1, 2019) [hereinafter U.N. Doc.

climate impacts, and by 2030, projections show that an additional 100 million people will be pushed into extreme poverty.⁵

Climate change is an increasingly important contributor to displacement and migration, both within nations and across international borders.⁶ It is estimated that by 2050, 150 million people or more could be displaced by the impacts of climate change as a result of extreme weather, slow onset events such as rising sea levels and desertification, relocation from high risk areas, and conflicts over scarce

A/74/161] (concluding that a safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and wellbeing); see also Global Warming of 1.5°C, Special Report, **Intergovernmental Panel on Climate Change** (Oct. 2018) (<https://www.ipcc.ch/sr15/>) (warning about severe negative consequences that would result from the current rate of increasing global temperature).

⁵ Climate Change and the Developing World: A Disproportionate Impact, **United States Global Leadership Coalition** (Mar. 2021) (<https://www.usglc.org/blog/climate-change-and-the-developing-world-a-disproportionate-impact/>).

⁶ **John Podesta**, The climate crisis, migration, and refugees, **Brookings Institute** (July 25, 2019) (<https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/>).

resources.⁷ The Special Rapporteur on the right to food and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment have all warned that climate change threatens the full enjoyment of human rights and that climate actions must be developed and implemented in accordance with human rights laws and norms.⁸

This comment argues that climate change constitutes a severe threat to the ability to enjoy internationally recognized fundamental human rights, and therefore, the United Nations should adopt the jurisdictional standard set forth in cases like Sacchi v. Argentina and Teitiota v. New Zealand and denote climate change as a threat to Articles 11 and 12 of the 1966 International Covenant on Economic, Social, and Cultural Rights. Part II of this Comment discusses the International Covenant on Economic, Social, and Cultural Rights, focusing primarily on Articles 11 and 12 which establish the fundamental right to health.⁹ Additionally, part II discusses the Convention on the Rights of the Child as an international document that serves to protect the enforcement of the right to health.¹⁰ Part II also discusses the Refugee Convention and

⁷ U.N. Doc. A/74/161 at 11, supra note 4.

⁸ Id. at 27.

⁹ See infra Part II.A.

¹⁰ See infra Part II.B.

its Protocol as an international source that seeks to provide potential international solutions.¹¹ Part III of this Comment analyzes recent decisions from the Committee on the Rights of the Child and the United Nations Human Rights Committee and explores the impact these decisions could have on climate change litigation as it relates to human rights in the future.¹² Part III also seeks to demonstrate that climate change threatens the fulfillment of Articles 11 and 12 of the International Covenant on Economic, Social, and Cultural Rights, by analyzing two country case studies.¹³ Part IV of this Comment recommends that the United Nations redraft the definition of a refugee under the Refugee Convention, or conversely that individual countries establish new resettlement categories and separate quota ceilings.¹⁴ Additionally, Part IV recommends that the United Nations impose sanctions on Parties failing to sufficiently address the climate crisis.

¹¹ See infra Part II.C.

¹² See infra Part III.A.

¹³ See infra Part III.A.i-ii.

¹⁴ See infra Part IV.

II. BACKGROUND

A. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS AND THE RIGHT TO HEALTH

In 1966 the United Nations member States promised to uphold equal rights for all people under the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights.¹⁵ The International Covenant on Economic, Social, and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on December 16th 1966, and entered into force on January 3rd 1976 in accordance with Article 27 of the United Nations Charter.¹⁶ The International Covenant on Economic, Social, and Cultural Rights commits its Parties to work toward the grant of economic, social, and cultural rights to the Non-Self-Governing and Trust Territories and individuals, including labor rights, the right to education and the right to health.¹⁷

¹⁵ History of child rights, **United Nations Children's Fund** (<https://www.unicef.org/child-rights-convention/history-child-rights>).

¹⁶ International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 14531 [hereinafter International Covenant on Economic, Social, and Cultural Rights].

¹⁷ Id.

Although the right to health is recognized under the Universal Declaration of Human Rights as part of the right to an adequate standard of living,¹⁸ the International Covenant on Economic, Social, and Cultural Rights enshrines the right to health and requires that State actions to fulfil that right “shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene.”¹⁹ According to the Special Rapporteur, the right to health guarantees all people the enjoyment of the highest attainable standard of physical and mental health.²⁰ As of July 2020, the Covenant has been ratified by 171 Parties; and a further four countries, including the United States, have signed but not ratified it.²¹

¹⁸ U.N.G.A. RES. 217(III)A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948) [hereinafter Universal Declaration].

¹⁹ International Covenant on Economic, Social, and Cultural Rights, art. 12, supra note 16.

²⁰ The Right to Health, Fact Sheet No. 31, Office of the United Nations High Commissioner for Human Rights

(<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>).

²¹ International Covenant on Economic, Social, and Cultural Rights, supra note 16.

i. Article 11: The Right to Food

The International Covenant on Economic, Social, and Cultural Rights, which is part of the International Bill of Human Rights²², recognizes the right to adequate food under Article 11, as an essential part of the right to an adequate standard of living.²³ It also explicitly recognizes the fundamental right of everyone to be free from hunger.

Article 11 states:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through

²² See e.g. **Blaine Sloan**, The United Nations Charter as a Constitution, 1 **PACE Y.B. INT'L L.** 61 (1989) (defining the International Bill of Human Rights as four separate covenants: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights).

²³ International Covenant on Economic, Social, and Cultural Rights, art. 11(1), supra note 16.

international co-operation, the measures, including specific programmes, which are needed [...].²⁴

The Committee on Economic, Social and Cultural Rights stated that the right to adequate food is achieved when every man, woman and child, alone or in a community with others, has physical and economic access at all times to adequate food or means for its procurement.²⁵ Human rights are interdependent, indivisible, and interrelated.²⁶ This means that violating the right to food may impair the enjoyment of other related human rights, such as the right to other forms of health, as well as seemingly independent rights such as education or life, and vice versa.²⁷

ii. Article 12: The Right to Clean Water and Sanitation

The clearest definition of the human right to water was issued by the United Nations Economic and Social Council in

²⁴ International Covenant on Economic, Social, and Cultural Rights, art. 11, supra note 16.

²⁵ See The Right to Adequate Food, Fact Sheet N. 34, Office of the High Commissioner for Human Rights (Apr. 1, 2010) (<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>).

²⁶ See e.g. id. at 5 (demonstrating how impairing access to the right to health can threaten the enjoyment of various other fundamental rights).

²⁷ Id.

its General Comment 15, drafted in 2002.²⁸ Comment 15 was a non-binding interpretation stating that access to water was a condition for the enjoyment of the right to an adequate standard of living, inextricably related to the right to the highest attainable standard of health, and therefore a human right.²⁹ The Committee emphasized that the human right to water entitles every person to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.³⁰ Article I.1 of Comment 15 states that "[t]he human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the fulfillment of other human rights."³¹

Later on, in July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all other human rights.³² Article 12 of the International Covenant on Economic, Social, and Cultural

²⁸ U.N. ESCOR, 29th Sess., Comment 15, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

²⁹ Id.

³⁰ Id.

³¹ Id. at art. I.1.

³² U.N. GAOR, 64th Sess., 108th plen. mtg. at 2, U.N. Doc. A/RES/64/292 (July 28, 2010).

Rights recognizes the right of every person to the enjoyment of the highest attainable standard of physical and mental health.³³

Article 12 states:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.³⁴

Under the Covenant, health is understood not just as a right to be healthy, but as a right to control one's own health and body, and be free from interference such as torture or medical experimentation.³⁵ Under Article 12, States must protect this right by ensuring that every individual within their jurisdiction has access to the underlying determinants of health, such as clean water, sanitation, and housing,

³³ International Covenant on Economic, Social, and Cultural Rights, art. 12(1), supra note 16.

³⁴ International Covenant on Economic, Social, and Cultural Rights, art. 12, supra note 16.

³⁵ See e.g. U.N. ESCOR, 22nd Sess., Comment 14, E/C.12/2000/4 (Aug.11, 2000) [hereinafter CESCR General Comment 14].

through a comprehensive system of healthcare, which is available to everyone without discrimination, and economically accessible to all.³⁶

B. CONVENTION ON THE RIGHTS OF THE CHILD

In 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child on the 30th anniversary of its Declaration of the Rights of the Child.³⁷ The United Nations Convention on the Rights of the Child is one of nine core international human rights treaties currently in effect and the only one that focuses entirely on children.³⁸ The Convention is widely acclaimed as a landmark achievement for human rights, recognizing the roles of children as social, economic, political, civil, and cultural actors.³⁹ As of June

³⁶ Id.

³⁷ Convention on the Rights of the Child, Nov. 20, 1989, 27531. U.N.T.S. 1577 [hereinafter Convention on the Rights of the Child].

³⁸ **Gary Reinbold**, Effects of the Convention on the Rights of the Child on child mortality and vaccination rates: a synthetic control analysis, 19 **BMC Int'l Health Hum. Rts.** 24, 24(2019).

³⁹ See e.g. History of child rights, **UNICEF** (<https://www.unicef.org/child-rights-convention/history-child-rights>) (arguing that by recognizing these roles, the

20, 2022, 196 countries are party to it, including every member of the United Nations, except the United States.⁴⁰

With respect to health, Article 24 of the United Nations Convention on the Rights of the Child obligates Parties to take appropriate measures to diminish infant and child mortality, to provide necessary health care, to combat disease and malnutrition, and to develop preventive health care.⁴¹ The United Nations Convention on the Rights of the Child explicitly requires that States act in the best interests of the child and consider "the dangers and risks of environmental pollution."⁴² While the United Nations Convention on the Rights of the Child does not explicitly recognize the right to a healthy environment, it requires states to ensure children's rights to health by considering the dangers and risks of environmental pollution.⁴³ Thus, climate change poses significant threats to children's rights, challenging the

convention guarantees minimum standards for protecting the rights of children in all capacities).

⁴⁰ Convention on the Rights of the Child, supra note 37.

⁴¹ See Id. at art. 24 (stating that Parties recognize the right of a child to the enjoyment of the highest attainable standard of health).

⁴² Id. at art. 24.2.C.

⁴³ Id.

existing international legal framework under the United Nations Convention on the Rights of the Child.⁴⁴

In Sacchi v. Argentina,⁴⁵ a monumental case addressing a child's right to health in the face of climate change, which is further discussed later in the analysis, the Committee on the Rights of the Child made clear that climate change is a child rights crisis.⁴⁶ Overall, the decision, while a loss for the specific claimants, was a major win for future climate change complaints under the Optional Protocol to the Convention on the Rights of the Child, based on a Complaints

⁴⁴ See **Maria Antonia Tigre & Victoria Lichet**, The CRC Decision in Sacchi v. Argentina, 25 **A. Soc'y of Int'l L.** 1, 1 (2021).

⁴⁵ Sacchi v. Argentina, No. CRC/C/88/D/104/2019 (Oct. 8, 2021).

⁴⁶ See e.g. **Aoife Nolan**, Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in Sacchi v. Argentina, **EJIL Talk** (Oct. 20, 2021) (<https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/>) [hereinafter Pragmatism and Principle in Sacchi v. Argentina] (analyzing the various beneficial impacts of the decision on future climate litigation).

Procedure thanks to the Committee's expansive approach to the jurisdictional concern and causality analysis.⁴⁷

C. 1951 REFUGEE CONVENTION AND 1967 PROTOCOL

The 1951 Refugee Convention, which is another of the nine core international human rights treaties currently in effect, was originally established to handle the millions of people displaced in the aftermath of World War II.⁴⁸ The Convention, which was ratified by 145 State parties, defines the term "refugee" and outlines the rights of the displaced, as well as the legal obligations of nations and states to protect them.⁴⁹ The Refugee Convention builds on Article 14 of the 1948 Universal Declaration of Human Rights, which recognizes the right of persons to seek asylum from persecution.⁵⁰ Under the Refugee Convention, a refugee may enjoy rights and benefits in

⁴⁷ See id. (explaining that the Committee made clear that the Convention gives rise to extra-territorial obligations to address climate change).

⁴⁸ See e.g. The 1951 Refugee Convention, **Immigration History** (<https://immigrationhistory.org/item/the-1951-refugee-convention>) (providing background on the context of the Refugee Convention and its adoption).

⁴⁹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Refugee Convention].

⁵⁰ Universal Declaration, supra note 18.

a host State in addition to those provided for in the Convention.⁵¹

The Convention provided long lasting contributions to the international legal system on refugee rights, including a single universal definition of the term "refugee" as well as the core principles of non-discrimination, non-penalization and non-refoulement.⁵² Under the Convention and its Protocol, a refugee is defined as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."⁵³ Furthermore, through the principle of non-refoulement, the agreement holds that no state can expel or return a refugee to a territory where their life or freedom would be threatened.⁵⁴

⁵¹ 1951 Refugee Convention, supra note 49.

⁵² See e.g. What is the 1951 Refugee Convention—and How Does It Support Human Rights?, **Asylum Access** (July 24, 2021)

(<https://asylumaccess.org/what-is-the-1951-refugee-convention-and-how-does-it-support-human-rights/>) (outlining how the refugee convention specified what it means to respect refugees' human rights).

⁵³ 1951 Refugee Convention, supra note 49.

⁵⁴ The principle of non-refoulement under international human rights law, **United Nations High Commissioner for Refugees**

In 1967 the Protocol Relating to the Status of Refugees reformed the 1951 Convention so that it applied globally by removing some of the original temporal and geographic restrictions.⁵⁵ Article 1 of the Protocol states that countries that ratify it agree to abide by the Refugee Convention as well, even if they are not a party to it.⁵⁶ For instance, the United States has not ratified the Refugee Convention but it has ratified the 1967 Protocol, and is thus nonetheless bound to apply the Convention's provisions.⁵⁷ However, to this day,

(<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>) (defining non-refoulement as the practice of not forcing refugees or asylum seekers to return to a country in which there are substantial grounds for believing that the person would be at risk of irreparable harm upon return).

⁵⁵ Protocol Relating to the Status of Refugees, Jan. 31 1967, 606 U.N.T.S. 267 (expanding the Convention to apply to events that took place anywhere in the world before and after January 1, 1951).

⁵⁶ Id. at art. 1.

⁵⁷ The 1967 Protocol, **The University of New South Wales (UNSW) Sydney** (Mar. 31, 2018) (<https://www.kaldorcentre.unsw.edu.au/publication/1967-protocol>).

the requirements relating to persecution, as well as the specific basis for the persecution, remain critical determinants for receiving refugee status and the accompanying legal and humanitarian benefits.⁵⁸ The signatories to these two instruments have distinguished “refugee” flows from other types of cross-border mobility, characterizing the latter as a form of economic or voluntary migration, and thus, not deserving of the heightened protection offered to refugees.⁵⁹ The current framing of a refugee under the Convention and its Protocol in terms of political prosecution grants no protection to individuals displaced by slow onset environmental disasters, such as rising sea levels, drought, and desertification.⁶⁰

⁵⁸ See **Jayesh Rathod**, Legal Protections for Environmental Migrants: Expanding Possibilities and Redefining Success, 29 **Ctr. for Latino and Latin Stud.** 1, 8 (Sept. 2020) [hereinafter Legal Protections for Environmental Migrants] (analyzing various factors that contribute to the lack of protection for environmental migrants).

⁵⁹ Id.

⁶⁰ **Elizabeth Keyes**, Environmental Refugees: Rethinking What's In a Name, 44 **N.C.J. Int'l. L.** 1, 7 (2019) (arguing that although migration from slow onset events maybe be temporary or cyclical, recurring and ongoing events can also cause permanent displacement).

III. ANALYSIS

A. PAVING THE WAY FOR FUTURE CLIMATE CHANGE LITIGATION:

SACCHI v. ARGENTINA & TEITIOTA v. NEW ZEALAND

The existential threat of climate change has spurred creative litigation strategies in countries and forums around the world.⁶¹ In Sacchi v. Argentina⁶² the Committee on the Rights of the Child made clear that climate change is a child rights crisis and created monumental precedence in addressing access to health in the face of climate change.⁶³ Although this case dealt specifically with children's access to their right to health under the United Nations Convention on the Rights of the Child, the United Nations could expand the decision from Sacchi. Thus, establishing climate change as a transnational problem that threatens everyone's fundamental right to health recognized under Articles 11 and 12 of the

⁶¹ See e.g. **Subodh Mishra**, The Rise of Climate Change Litigation, **Harv. L. Sch. F. on Corp. Governance** (Mar. 3, 2022) (<https://corpgov.law.harvard.edu/2022/03/03/the-rise-of-climate-litigation/>).

⁶² Sacchi v. Argentina, No. CRC/C/88/D/104/2019 (Oct. 8, 2021) (holding that states have extraterritorial jurisdiction over harms caused by carbon emissions).

⁶³ **Aoife Nolan**, Pragmatism and Principle in Sacchi v. Argentina, supra note 46.

International Covenant on Economic, Social, and Cultural Rights.

In September 2019, 16 children and youth filed five petitions with the Committee on the Rights of the Child alleging that Argentina, Brazil, France, Germany, and Turkey (respondent states) violated their rights under the United Nations Convention on the Rights of the Child by failing to sufficiently address the climate crisis.⁶⁴ In October 2021, the Committee on the Rights of the Child rejected the petitions for failure to exhaust domestic remedies; however, the Committee's findings and legal reasoning make significant advances to international climate litigation.⁶⁵

Notwithstanding the Committee on the Rights of the Child's dismissal of the case for failure to exhaust domestic remedies, the decision provides valuable guidance on protecting children's rights in the context of climate change and opens the door to future climate related cases.⁶⁶ These

⁶⁴ No. CRC/C/88/D/104/2019.

⁶⁵ **Aoife Nolan**, Pragmatism and Principle in Sacchi v. Argentina, supra note 46.

⁶⁶ See e.g. **Maria Antonia Tigre**, The CRC Decision in Sacchi v. Argentina, 25 **A. Soc'y of Int'l L.** 1, 3 (Dec. 13, 2021) (referring to the Committee on the Rights of the Child's findings with respect to jurisdiction and extraterritorial responsibility).

advances are grounded on the Committee on the Rights of the Child's specific findings with respect to jurisdiction and extraterritorial responsibility.⁶⁷ Regarding the existence of a sufficient causal link between the harm alleged by the petitioners and the states' acts or omissions, the Committee on the Rights of the Child concluded that to establish jurisdiction, the petitioners had (i) sufficiently justified that the violation of their rights under the United Nations Convention on the Rights of the Child as a result of the states' carbon emissions was reasonably foreseeable, and (ii) justified their victim status by establishing that they have personally experienced significant harm.⁶⁸

The standard test for determining extraterritorial jurisdiction requires State control over the petitioners, but the Committee on the Rights of the Child diverged from that framework and instead relied on the petitioners' proposed causality-based test set out in the Inter-American Commission on Human Rights' Advisory Opinion.⁶⁹ Following the causality-based test approach, the Committee on the Rights of the Child declared that victims of transboundary environmental damage, including damage caused by climate change, were within the

⁶⁷ Id.

⁶⁸ Id. at 4.

⁶⁹ **Fons Coomans & Menno T. Kamminga**, Extraterritorial Application of Human Rights Treaties, **Intersentia** 1, 4 (2004).

human rights jurisdiction of States emitting greenhouse gases if the petitioners' harms were caused by the act or omission of that state and were "reasonably foreseeable" consequences of the emissions allowed by those states' policies.⁷⁰ The Committee on the Rights of the Child then concluded that it was "generally accepted" that greenhouse gas emissions contribute to climate change and that "climate change has an adverse effect" on individuals beyond any emitter's territory.⁷¹

This decision is part of an important trend of climate claims before the United Nations Human Rights Treaty Bodies, which are increasingly being asked to address the effects of the climate crisis on human rights.⁷² In 2020 another monumental case was decided when the United Nations Human Rights Committee ruled on Ioane Teitiota's deportation to his

⁷⁰ No. CRC/C/88/D/104/2019, ¶¶ 10.5–.7.

⁷¹ Id. ¶ 10.9.

⁷² See e.g. **Mariam Ibrahim, Sacchi et al. v. Argentina And Four Similar Cases: The Impact Of Climate Change On Children's Rights, Human Rights Pulse** (Jan. 12, 2022)

(<https://www.humanrightspulse.com/mastercontentblog/sacchi-et-al-v-argentina-and-four-similar-cases-the-impact-of-climate-change-on-childrens-rights>) (assessing the impact that four recent decisions will have on future climate change litigation as it pertains to protecting human rights).

home nation of the Republic of Kiribati.⁷³ Teitiota applied for refugee status in New Zealand based on sea level rise associated with climate change.⁷⁴ While the Committee ultimately dismissed the claims in Teitiota, as the Committee on the Rights of the Child did in Sacchi, their reasoning offers a valuable starting point for future climate change related asylum claims.⁷⁵ The Human Rights Committee recognized that environmental degradation and climate change constitute severe threats to the ability of present and future generations to enjoy the right to life, and further indicated legal pathways to establishing refugee status for climate

⁷³ Human Rights Comm., Ioane Teitiota v. New Zealand, Comm. No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (Oct. 24, 2019) (providing two possible legal pathways through which climate migrants may find legal standing and protection).

⁷⁴ Id. at 2.

⁷⁵ See e.g. Historic UN Human Rights case opens door to climate change asylum claims, United Nations High Commissioner for Human Rights (Jan. 21, 2020) (<https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims>) (stating that the Committee in Teitiota clarified that individuals seeking asylum are not required to prove that they would face imminent harm if returned).

migrants.⁷⁶ In its first ruling regarding someone seeking asylum because of climate change, the Human Rights Committee said that in the future, countries “may not deport individuals who face climate change induced conditions that violate the right to life” however, the rulings of the committee are not internationally binding.⁷⁷

Following Sacchi and Teitiota, the Committee on Economic, Social, and Cultural Rights may apply the holdings from these cases to recognize climate change as a transnational violation of the right to health, for not only children but all people, and impose duties upon parties to the International Covenant on Economic, Social, and Cultural Rights who have recognized and promised to protect the right to health under Articles 11 and 12.

⁷⁶ See Simon Behrman, The Teitiota Case and the limitations of the human rights framework, 75 **Questions of Int’l L.** 25, 26 (Nov. 30, 2020).

⁷⁷ See e.g. Moira Lavelle, By 2050, 200 Million Climate Refugees May Have Fled Their Homes. But International Laws Offer Them Little Protection, **Inside Climate News** (Nov. 2, 2021) (<https://insideclimatenews.org/news/02112021/climate-refugees-international-law-cop26>) (arguing that international law has no clear mechanism to process, address or facilitate climate migration).

- i. In the Central African Republic, climate change threatens the enjoyment of the right to food under Article 11

The Central Africa Republic ratified the International Covenant on Civil and Political Rights in 1981.⁷⁸ Under Article 11 of the Covenant, State parties recognize the right to an adequate standard of living, including adequate food, as well as the fundamental right to be free from hunger.⁷⁹ However, climate models predict higher average temperatures in most land and ocean regions, hotter extremes in many inhabited regions, and both heavy precipitation and an increasing probability of drought in some areas, which will impact food production and global hunger.⁸⁰ A report by five United Nations agencies in July 2021 found a spike in global hunger, with 2.3 billion people lacking year-round access to adequate food.⁸¹

⁷⁸ Status of Ratification, **Office of the United Nations High Commissioner for Human Rights** (<https://indicators.ohchr.org/>).

⁷⁹ International Covenant on Economic, Social, and Cultural Rights, art. 11, supra note 16.

⁸⁰ See How Climate Change Increases Hunger – And Why We’re All At Risk, **Concern Worldwide US** (May 23, 2022) (<https://www.concernusa.org/story/climate-change-and-hunger/>).

⁸¹ See UN report: Pandemic year marked by spike in world hunger, **World Health Organization** (July 12, 2021) (<https://www.who.int/news/item/12-07-2021-un-report-pandemic-year-marked-by-spike-in-world-hunger>) (defining adequate food

The Central African Republic illustrates a regional case study where Article 11 of the Covenant is being violated as a result of climate change; with half of the country's population already suffering from high and surging acute food insecurity.⁸² Food security is the measure of the availability of food and an individuals' ability to access it in a reliable and consistent way.⁸³ In April 2021, the World Bank estimated that the number of severely food insecure people in the Central African Republic was almost two million, which is more than 40 percent of the countries population.⁸⁴ The chronic

as the availability of food in a quantity and quality sufficient to satisfy dietary needs).

⁸² Half of the population in the Central African Republic in the grip of dire food insecurity emergency, UN warns, **World Food Program** (May 19, 2021) (<https://www.wfp.org/news/half-population-central-african-republic-grip-dire-food-insecurity-emergency-un-warns>).

⁸³ Food Security, **International Food Policy Institute** (<https://www.ifpri.org/topic/food-security>).

⁸⁴ The Central African Republic: The World Bank is Stepping Up the Fight Against Food and Nutrition Insecurity, **The World Bank** (June 29, 2021) (<https://www.worldbank.org/en/news/press-release/2021/06/29/republique-centrafricaine-la-banque-mondiale-renforce-la-lutte-contre-insecurite-alimentaire-et-nutritionnelle>).

malnutrition rate is also extremely high and exceeds the 30 percent global average.⁸⁵ Furthermore, agriculture is one of the significant economic activities in the Central African Republic, making the country extremely vulnerable under Article 11, especially as it pertains to hunger.⁸⁶

Forecasts project a rise in temperatures and an increase in the frequency of intense and destructive rainy periods.⁸⁷ This is one reason why the Central African Republic ranks at 179 out of 181 countries, on the Notre Dame Global Adaptation Initiative (“ND-GAIN”) Country Index, which summarizes a country’s vulnerability to climate change and other global challenges in combination with its readiness to improve resilience.⁸⁸ The country’s extremely low ND-GAIN ranking indicates that the Central African Republic has high

⁸⁵ Id.

⁸⁶ Central African Republic, **International Commission of the Red Cross Climate Center** (https://www.climatecentre.org/wp-content/uploads/RCCC-ICRC-Country-profiles-Central_African_Republic.pdf)

⁸⁷ Climate change in the Central African Republic: what threats?, **International Commission of the Red Cross** (Feb. 1, 2021) (<https://www.icrc.org/en/document/climate-change-central-african-republic-what-threats>).

⁸⁸ Country Index, **Notre Dame Global Adaptation Initiative** (<https://gain.nd.edu/our-work/country-index/>).

levels of vulnerability and low levels of readiness to adapt to climate change.⁸⁹ Over time, the temperature in the Central African Republic has increased by about 1°C in the last 100 years.⁹⁰ Extreme temperatures are expected to continue to rise in the Central African Republic over the coming century; and by the end of 2100, the hottest day of the year could be two to eight degrees Celsius hotter than it is now, assuming unmitigated climate change.⁹¹ Additionally, there have already been substantial ups and downs in rainfall over the last decade and the intensity of rainfall events is expected to increase as climate change worsens.⁹² Rising temperatures and changes in precipitation will directly disrupt agricultural activities by changing the local seasonal calendar for preparing fields, sowing seeds, and planting and harvesting

⁸⁹ See e.g. Climate change in the Central African Republic: what threats?, **International Commission of the Red Cross**, supra note 87 (emphasizing the inevitable and dire situation the Central African Republic is facing as climate change continues to worsen).

⁹⁰ Climate Change Knowledge Portal. Central African Republic - Vulnerability, **World Bank** (<https://climateknowledgeportal.worldbank.org/country/central-african-republic/vulnerability>).

⁹¹ Id.

⁹² Id.

crops.⁹³ This will lead to the loss of crops and failing agricultural production; as a result, the changing climate will seriously impact the livelihoods of rural communities.⁹⁴ In addition, high-intensity rainfall will likely cause damage to harvested plants and lead to increased food insecurity in the region.⁹⁵

Coffee is one of the few agricultural products that the country exports; and unfortunately, the production of coffee will likely be negatively affected in a severe way by climate change.⁹⁶ Rising temperatures will change soil fertility, while

⁹³ See e.g. Peach Brown et al., Institutional perceptions, adaptive capacity and climate change response in a post-conflict country: A case study from Central African Republic in Climate and Development, 5 **Climate and Development** 206, 216 (2013) (analyzing the impacts that climate change will have in a country that is already struggling post-conflict).

⁹⁴ Id.

⁹⁵ See e.g. Soulé Baoro et al., Impacts of climate change in the Central African Republic, 5 **J. of Env't Sci. and Eng'g Tech.** 52, 63 (2017) (explaining the devastating effects of climate change in a country with a heavy reliance on agriculture).

⁹⁶ Central Africa regional program for the environment (CARPE) regional development cooperation strategy (RDCS) 2011-2020, **USAID** (Mar. 13, 2019)

increasing rainfall levels will multiply pests and pathogens in the soil.⁹⁷ Flood incidents are likely to cause soil erosion and agricultural land loss throughout the Central African Republic.⁹⁸ Longer dry spells and droughts, coupled with increased high intensity rainfall or floods, will disrupt river transportation systems which may hinder the supply of goods and affect community livelihoods.⁹⁹ Furthermore, the projected climate risks will more likely than not weaken the road infrastructure, impeding access to markets, and furthering the impact of climate change on access to nutrition in rural areas.¹⁰⁰

Consequently, health is one of the critical sectors vulnerable to climate change impacts in the Central African

(<https://www.usaid.gov/central-africa-regional/cdcs>).

⁹⁷ Id.

⁹⁸ See e.g. id. (explaining that more than 80 million people depend on Central Africa's rich forests and associated natural resources for their livelihood whose survival is at risk from climate change).

⁹⁹ Id.

¹⁰⁰ See e.g. id. (demonstrating the chain of events and array of impacts climate change will have, causing food insecurity through lack of access).

Republic.¹⁰¹ A low crop yield, due to rising temperatures and changes in rainfall patterns, will affect the country's food security and pose additional health risks.¹⁰² The agricultural practices, the country's exports, and the nutritional quality of food will also be affected by climate change.¹⁰³

Additionally, the Central African Republic's population is expected to grow by 77% by the year 2050, compared to the average expected global growth of 32%, which will put a greater strain on agriculture in the Central African Republic and lead to increased famine in the region.¹⁰⁴ Research has

¹⁰¹ See e.g. **Soulé Baoro et al.**, Impacts of climate change in Central African Republic, supra note 95 (addressing the different ways in which climate change affects public health).

¹⁰² See e.g. id. (explaining that food insecurity is associated with increased risks of birth defects, anemia, lower nutrient intake, cognitive problems, and aggression and anxiety).

¹⁰³ **Cyriaque-Rufin Nguimalet**, Comparison of community-based adaptation strategies for droughts and floods in Kenya and the Central African Republic, 43 **Water Int'l** 183, 204 (Jan 22, 2018).

¹⁰⁴ See e.g. **Ciara Nugent**, The 10 Countries Most Vulnerable to Climate Change Will Experience Population Booms in the Coming Decades, **Time** (July 11, 2019)

(<https://time.com/5621885/climate-change-population-growth/>) (explaining that countries experiencing the world's

found that not only is the country's population increasing, but crop production is already decreasing due to the erratic climate.¹⁰⁵ Last year, the United Nations warned that half of the population is "in the grip of dire food insecurity emergency."¹⁰⁶ To grow crops, farmers rely heavily on regular rainy seasons, however, increasingly erratic and extreme weather changes, such as recent flooding, have exacerbated several underlying humanitarian problems.¹⁰⁷ As climate change

most rapid population growth over the coming decades will also be on the front lines of climate change).

¹⁰⁵ See e.g. Mahamane Nasser Rabiou Almadjir, GIEWS Special Report - FAO/WFP Crop and Food Security Assessment to the Central African Republic, Food and Agriculture Organization of the United Nations (Mar. 21, 2019)

(<http://www.fao.org/3/ca3926en/ca3926en.pdf>) (finding a three percent decrease in crop production the Central African Republic between 2017 and 2018).

¹⁰⁶ Half of the population in the Central African Republic in the grip of dire food insecurity emergency, UN warns, World Food Program (May 19, 2021) (<https://www.wfp.org/news/half-population-central-african-republic-grip-dire-food-insecurity-emergency-un-warns>).

¹⁰⁷ See Suyin Haynes, 'No Safety Net.' How Climate Change and Unprecedented Flooding Is Destroying Communities in the

continues to intensify volatility in the Central African Republic and food insecurity worsens, the number of people fleeing the country will increase.¹⁰⁸

Although climate change is only one, amongst a combination of factors leading to high levels of food insecurity, as temperatures continue to rise and weather patterns become more erratic, the number of people without access to food and proper nutrition will continue to increase. Following the decisions in Sacchi and Teitiota, establishing climate change as a transnational threat to the right to health and life, all Parties to the International Covenant on Economic, Social, and Cultural Rights have a duty to protect the right to health and food under Article 11 of all people as climate change continues to threaten its enjoyment across regions. Thus, by failing to abide by the International Covenant on Economic, Social, and Cultural Rights when it comes to the Central African Republic, Parties of the

Central African Republic, **Time** (Dec. 24, 2019)

(<https://time.com/5753900/flooding-central-african-republic/>).

¹⁰⁸ See e.g. Climate change in the Central African Republic: what threats?, **International Commission of the Red Cross**, supra note 87 (explaining that although seasonal migration is not a new phenomenon, as the climate becomes more volatile, migration will increase, leading to increased tension between farmers and livestock herders).

Covenants are violating their duty to protect and uphold the right to health and food of all people under Article 11.

- ii. In Papua New Guinea climate change threatens Article 12 by infringing on the right to clean water and sanitation

Papua New Guinea ratified the International Covenant on Civil and Political Rights in 2008.¹⁰⁹ A determining factor to the right to health outlined in the International Covenant on Economic, Social, and Cultural Rights under Article 12 that is being threatened by climate change in the region is the right to clean water and sanitation.¹¹⁰ Under Article 12 of the Covenant, State parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which includes all aspects of access to clean water and sanitation, as well as protection from epidemic,

¹⁰⁹ Status of Ratification, **Office of the United Nations High Commissioner for Human Rights** (<https://indicators.ohchr.org/>).

¹¹⁰ International Covenant on Economic, Social, and Cultural Rights, art. 12, supra note 16; see also Climate Change and the Human Rights to Water and Sanitation, **Office of the United Nations High Commissioner for Human Rights** (https://www2.ohchr.org/english/issues/water/iexpert/docs/climatechange_hrtws.pdf).

endemic, occupational and other diseases.¹¹¹ In May 2022, the United Nations warned that climate change is set to increase pressure significantly on people's access to clean water and sanitation.¹¹² Whether directly or indirectly, climate change will affect peoples' enjoyment of the right to clean water and sanitation by making water less available, affordable, and accessible, and by lowering its quality.¹¹³

Climate change poses an additional transnational threat that impacts access to clean water and sanitation in the Central African Republic as well as around the rest of the world; analyzing the impacts of climate change on clean water and sanitation in a different region, namely Papua New Guinea, demonstrates that the right to health is being violated on a global level. Under Article 12, States recognize the right to both physical and mental health and additionally commit to the

¹¹¹ International Covenant on Economic, Social, and Cultural Rights, art. 12, supra note 16.

¹¹² Climate change threatening access to water and sanitation, **United Nations News** (May 20, 2022) (<https://news.un.org/en/story/2022/05/1118722>).

¹¹³ See e.g. Climate Change and the Human Rights to Water and Sanitation, supra note 110 (arguing that water is a key medium through which climate change impacts human populations, particularly due to predicted changes in its quality and quantity).

reduction of the stillbirth rates and infant mortality,¹¹⁴; however, in Papua New Guinea the greatest threat to the realization of Article 12 is the impact of climate change on clean water and sanitation.

Papua New Guinea has the poorest access to clean water in the world, with 60 percent of the population living without a safe water supply.¹¹⁵ In 2016, more than 4.6 million people had no access to safe drinking water and improved sanitation.¹¹⁶ For over two decades since 1990, the increase in access to safe drinking water has been minuscule (six percent) while improved sanitation coverage even dropped by one percent in 2015.¹¹⁷ Water borne diseases, such as diarrhea and acute respiratory infections, are among the principal causes of

¹¹⁴ International Covenant on Economic, Social, and Cultural Rights, art. 12, supra note 16.

¹¹⁵ **Carla Kweifio-Okai**, Papua New Guinea has world's worst access to clean water, says WaterAid, **The Guardian** (Mar. 21, 2016) (<https://www.theguardian.com/global-development/2016/mar/22/papua-new-guinea-worst-access-clean-water-wateraid>).

¹¹⁶ Water, Sanitation and Hygiene, **UNICEF** (<https://www.unicef.org/png/what-we-do/water-sanitation-and-hygiene>).

¹¹⁷ Id.

death in children under five years.¹¹⁸ Papua New Guinea currently ranks at the bottom of all Pacific countries for all water, sanitation, and hygiene (WASH) related health statistics, with over 6,000 diarrhea deaths per year.¹¹⁹ Over 60 percent of the population uses unimproved water supplies and less than 20 percent use improved sanitation facilities, leading to widespread open defecation in rural communities.¹²⁰

Climate change poses a significant threat to the right to health under Article 12 by compounding common challenges associated with clean water and sanitation services.¹²¹ Increased temperatures are causing more frequent and extreme events like droughts and floods, rainfall variability, and sea level rise, which all affect freshwater resources for drinking and sanitation, agriculture and irrigation, and industrial

¹¹⁸ See id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ See e.g. Water, sanitation and hygiene (WASH) and climate change, UNICEF (<https://www.unicef.org/wash/climate>)

(explaining that increased demand for water from low rainfall can cause water sources to run dry, and conversely, heavy rainfall can damage water sources and sanitation facilities, carrying runoff and waste into streams and lakes, contaminating water supplies).

necessities.¹²² Storms and floods, made more intense by climate change, overwhelm drains, wastewater treatment plants, and latrine pits, resulting in stagnant, contaminated water that puts the health and well-being of millions of people at risk.¹²³ Prolonged droughts mean lakes and streams dry up and water tables drop, and in some coastal areas, rising sea levels are making well water salty and unusable for drinking, agriculture, and industrial use.¹²⁴

Papua New Guinea is one of 43 nations on the Climate Vulnerability Forum¹²⁵ due to rising sea levels and devastating King Tides wiping out crops, inundating water sources, and destroying homes across the country.¹²⁶ Rising sea levels and

¹²² See Clean Water and Sanitation, **Climate Links**

(<https://www.climatelinks.org/sector/water-and-sanitation>) (assessing the effects of weather patterns on access to clean water and sanitation).

¹²³ Id.

¹²⁴ Id.

¹²⁵ The Climate Vulnerability Forum (<https://thecvf.org/>) (a forum addressing the negative effects of climate change as a result of heightened socioeconomic and environmental vulnerabilities).

¹²⁶ See e.g. Papua New Guinea, **United Nations Climate Change Conference** (<https://cop23.com.fj/papuanewguinea>) (addressing

destructive weather events have a serious impact, on land and at sea.¹²⁷ The country's surrounding sea levels have risen by seven millimeters (0.28 inches) per year since 1993, more than double the global average.¹²⁸ Cyclones are predicted to grow in intensity, albeit lessen in frequency; to date, the nation averages 15 cyclones every ten years.¹²⁹ Wind speed will increase by up to 11 percent, with rainfall that will intensify by about 20 percent by the end of the 21st century.¹³⁰ At the same time, the country will continue to experience coastal and inland floods caused by the 61 rivers maze through the East Sepik; where a severe flood in the province could engulf up to ten percent of the land, jeopardizing the lives and health of the more than 430,000 residents.¹³¹ These extreme weather events will lead to the loss of the country's wetlands, destroy the country's fisheries, pollute clean water sources, and heighten the risk and spread of water-borne diseases.¹³²

the impact of destructive weather patterns that have occurred and are forecast to increase due to climate change).

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id.

¹³² See id.

For residents of Carteret Islands, Papua New Guinea's six low-lying atolls, the shift in weather patterns presents an even greater threat: rising sea levels threaten the very existence of the islands.¹³³ Some 1,700 residents of Carteret Island's total 2,500 inhabitants are already being considered the world's first environmental refugees.¹³⁴

As has been described above, in 2016 more than 4.6 million people in Papua New Guinea had no access to safe drinking water and improved sanitation,¹³⁵ and since then climate change has continued to make matters worse. Erratic weather patterns combined with rising sea levels exponentially violate the country's population's right to health under Article 12 of the International Covenant on Economic, Social,

¹³³ See e.g. **Sarah M. Munoz**, Understanding the Human Side of Climate Change Relocation, **The Conversation** (June 11, 2019) (<https://theconversation.com/understanding-the-human-side-of-climate-change-relocation-115887>) (arguing that in the Carteret Islands, climate change has caused intense environmental degradation, through coastal erosion, as well as food and water insecurity).

¹³⁴ **Randy Astaiza**, 11 Islands That Will Vanish When Sea Levels Rise, **Business Insider** (Oct. 12, 2012) (<https://www.businessinsider.com/islands-threatened-by-climate-change-2012-10>).

¹³⁵ Water, Sanitation and Hygiene, **UNICEF**, supra note 116.

and Cultural Rights by increasingly impeding access to clean water and sanitation across Papua New Guinea. Therefore, by failing to protect individuals access to clean water and sanitation under the International Covenant on Economic, Social, and Cultural Rights when it comes to Papua New Guinea, Parties are violating their duty to uphold the right to health of all people under Article 12. Additionally, Papua New Guinea serves as a dire case study where climate change and rising sea levels are already forcing people to migrate despite international law providing no protection for them.

B. CLIMATE CHANGE MIGRANTS HAVE NO PROTECTION UNDER THE CURRENT REFUGEE FRAMEWORK

The 1951 Refugee Convention has been signed by most countries in the world.¹³⁶ It defines a refugee as someone “who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”¹³⁷ Hurricanes, floods, droughts, and the inability to grow crops and feed oneself do

¹³⁶ States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, **United Nations High Commissioner for Refugees**

(<https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>).

¹³⁷ 1951 Refugee Convention, supra note 49.

not fit neatly within this definition.¹³⁸ Consecutive United Nations climate conferences and migration treaties have stressed the need for legal protections for people displaced due to climate change and laid out principles for these protections, however, they have stopped short of agreeing on any concrete or binding measures to address climate migration.¹³⁹

Modeling the effects of climate change related weather events such as heat stress, extreme weather events, and the loss of habitable land, the World Bank predicts "climate change ... could force 216 million people ... to move by 2050."¹⁴⁰ While some of these displaced individuals may migrate to safer regions within their home countries, many will choose, or be forced, to move to countries less economically

¹³⁸ See e.g. **Moira Lavelle**, By 2050, 200 Million Climate Refugees May Have Fled Their Homes. But International Laws Offer Them Little Protection, supra note 77 (arguing that climate migration is far from being a future concern and is already taking place).

¹³⁹ Id. (referencing the Nansen Initiative and the Paris Agreement).

¹⁴⁰ **Clement et. al.**, Groundswell Part 2 : Acting on Internal Climate Migration, **World Bank** (Sept. 14, 2021) (<http://hdl.handle.net/10986/36248>).

and geographically affected by climate change.¹⁴¹ Ensuring that these future migrants receive government support is necessary to guarantee that they can secure a livelihood and find a community in their new homes.¹⁴²

The principle of non-refoulement, under the 1951 Refugee Convention, prohibits States receiving refugees from returning them to a territory where their life or freedom may be unlawfully threatened.¹⁴³ Non-refoulement, now considered customary international law, has since been expanded to provide protection to persons on the move beyond just those who fall under the definition of refugee.¹⁴⁴ However, non-refoulement currently does not universally apply to those fleeing as a result of climate change.¹⁴⁵ As a result of the decisions in Sacchi and Teitiota, the international community

¹⁴¹ **John Podesta**, The Climate Crisis, Migration, and Refugees, supra note 6.

¹⁴² Id.

¹⁴³ See supra note 54.

¹⁴⁴ **Shaindl Keshen**, Non-Refoulement: A Human Rights Perspective on Environmental Migration from Small Island Developing States, Colum. J. of Int'l Aff. (Apr. 13, 2022) (<https://jia.sipa.columbia.edu/online-articles/non-refoulement-human-rights-perspective-environmental-migration-small-island>).

¹⁴⁵ Id.

has finally recognized climate change as a transnational threat to life, health, and other fundamental human rights.¹⁴⁶ Thus, returning individuals seeking asylum to countries like the Central African Republic and Papua New Guinea where they have no access to their right to health under Articles 11 and 12 should constitute a violation of international law under the principle of non-refoulement. The problem is that non-refoulement cases require substantial grounds to establish that a real risk of irreparable harm exists, with imminence of any anticipated harm influencing this assessment, which poses a unique challenge for climate change cases due to the difficulty in determining the point at which general environmental conditions constitute a threat to a person's right to life.¹⁴⁷

¹⁴⁶ **Jefferi Hamzah Sendut**, Climate Change as a Trigger of Non-Refoulement Obligations Under International Human Rights Law, **EJIL Talk** (Feb. 6, 2020) (<https://www.ejiltalk.org/climate-change-as-a-trigger-of-non-refoulement-obligations-under-international-human-rights-law/>) (discussing the possible role of non-refoulement in shaping climate refugee law following the Human Rights Committee's decision in Teitiota).

¹⁴⁷ **Shaindl Keshen**, Non-Refoulement: A Human Rights Perspective on Environmental Migration from Small Island Developing States, supra note 144.

Moreover, individuals fleeing as a result of climate change have not yet been invariably recognized as forming part of a particular social group.¹⁴⁸ A particular social group has generally been understood to be a group of persons who share a common characteristic, other than their risk of being persecuted, that is so fundamental to their individual identities that the members cannot, or should not, be expected to change it, or alternately, as individuals who are perceived as a group by their "relevant society".¹⁴⁹ Climate migrants could potentially be considered members of a particular social group if they are able to succeed in making a compelling case to an asylum officer and/or an immigration judge that the

¹⁴⁸ See e.g. **Erol Yayboke**, A New Framework for U.S. Leadership on Climate Migration, **Center for Strategies and International Studies** (Oct. 23, 2020) (<https://www.csis.org/analysis/new-framework-us-leadership-climate-migration>).

¹⁴⁹ **Dagmar R. Myslinska**, What a "Particular Social Group" Means for Asylum Purposes, **NOLO Legal Encyclopedia** (<https://www.nolo.com/legal-encyclopedia/what-particular-social-group-means-asylum-purposes.html>); But see BIA requires asylum seekers to identify particular social group, **Clinic Legal** (<https://cliniclegal.org/resources/humanitarian-relief/asylum-and-refugee-law/bia-requires-asylum-seekers-identify>) (emphasizing the sophisticated nature of delineating a particular social group).

government in their home country cannot, or will not, protect them if they are returned.¹⁵⁰ For example, in Papua New Guinea, residents of Carteret Islands, where the shift in weather patterns threaten the very existence of the islands, could form a particular social group due to their shared characteristic of being displaced by rising sea level and therefore, should enjoy protection under international law.¹⁵¹ However, in many countries, including the United States, too much discretion is given to immigration judges in determining who fits into a particular social group due to inconsistencies in what is considered to constitute “particularity” and “social distinction”, as well as various issues that arise from the nexus requirement in terms of persecution.¹⁵² As a result, relying too heavily on highly subjective particular social group classification as a form of protection can lead

¹⁵⁰ **Erol Yayboke**, A New Framework for U.S. Leadership on Climate Migration, supra note 148.

¹⁵¹ **Sarah M. Munoz**, Understanding the Human Side of Climate Change Relocation, supra note 133.

¹⁵² Particular Social Group Practice Advisory: Applying for Asylum Based on Membership in a Particular Social Group, practice advisory, **National Immigrant Justice Center** (July 2021) (<https://immigrantjustice.org/for-attorneys/legal-resources/file/practice-advisory-applying-asylum-based-membership-particular>).

to dangerous discrepancies and injustice regarding a very delicate and urgent issue.

IV. RECOMMENDATIONS

A. CREATING A NEW REFUGEE FRAMEWORK THAT ENCOMPASSES CLIMATE MIGRANTS

There is currently no legally binding or widely accepted international agreement granting refugee status to those displaced by slow onset environmental disasters.¹⁵³

Furthermore, as demonstrated above, the existing refugee framework, which is worded in terms of political persecution, fails to serve those displaced by climate change. As such, international law should be amended or expanded to explicitly grant refugee status to those affected by long term, environmental harms.

Despite the 1951 Refugee Convention's historical contributions to global refugee protection, a growing movement of governments, scholars and NGOs has called into question the appropriateness of a Euro-centric, World War II-era convention for today's new and changing displacement situations, such as

¹⁵³ **John Podesta**, The Climate Crisis, Migration, and Refugees, supra note 6 (defining a slow onset disaster as one that emerges gradually over time, such drought, desertification, and sea-level rise).

Latin American economic migrants.¹⁵⁴ There are various reasons for rethinking and expanding upon the existing agreement; for example, the Convention's definition of the term "refugee" does not accommodate a growing population of people who have experienced displacement, including those displaced due to climate change, food insecurity or non-state terrorism or those who are displaced internally.¹⁵⁵

The United Nations should either clearly establish climate change as one of the categories for asylum by including fleeing as a result of climate change in the definition of a refugee, or create a new document altogether that addresses climate change migration and access to fundamental human rights. Alternatively, the United Nations High Commissioner for Refugees can uphold the Human Rights Committee's holding in Teitiota that in the future host countries "may not deport individuals who face climate change induced conditions that violate the right to life" and thus establish internationally binding precedence when it comes to climate change and the principle of non-refoulement.

¹⁵⁴ What is the 1951 Refugee Convention—and How Does It Support Human Rights?, **Asylum Access** (July 24, 2021)

(<https://asylumaccess.org/what-is-the-1951-refugee-convention-and-how-does-it-support-human-rights/>).

¹⁵⁵ Id.

B. ESTABLISHING COUNTRY SPECIFIC QUOTAS AND RESETTLEMENT CATEGORIES

Another solution for dealing with the number of people who will be displaced as a result of climate change is for Population and Migration government agencies to work with resettlement referral partners to establish new climate change resettlement categories for refugees who cannot return to their country of origin and who lack alternative durable solutions.¹⁵⁶ One beneficial effect of establishing these climate resettlement categories and quotas is that they would serve as a vehicle for international recognition of a severely in need group. The first step to providing protection for these displaced individuals is to provide recognition, and once recognition is accomplished, further solutions can be explored and pursued.

Countries leadership's should establish a separate number of persons or refugee ceilings to be resettled globally under this category, from the already established refugee ceiling so as to not detract from other equally

¹⁵⁶ **Amali Tower**, Climate Refugees Policy Recommendations to US Government Agencies on Climate Displacement, **Climate Refugees** (June 14, 2021) (<https://www.climate-refugees.org/reports/usagency-policybrief-climatedisplacement>).

vulnerable refugees in need of resettlement.¹⁵⁷ If international protection and assistance were to be offered by States in the future, the basis for such intervention needs to clearly and openly determine to what extent those uprooted by environmental disasters, whether temporarily or permanently, would have rights in host countries.¹⁵⁸

For instance, the United States does not currently have a formal way of resettling climate migrants or providing long-term refugee like status for the forcibly displaced among them.¹⁵⁹ Under the Immigration and Nationality Act, a refugee is defined as a person who is unable or unwilling to return home due to a well-founded fear of persecution on account of their race, religion, nationality, membership in

¹⁵⁷ Id.

¹⁵⁸ **Richard Black**, Environmental refugees: myth or reality?, Working Paper, **United Nations High Commissioner for Refugees** (Mar. 2001) (<https://www.unhcr.org/3ae6a0d00.pdf>) (questioning the value of international policy-makers focusing on 'environmental refugees' as a significant group of migrants, deserving of the world's attention).

¹⁵⁹ See e.g. Erol Yayboke, A New Framework for U.S. Leadership on Climate Migration, supra note 148 (arguing for the need for new frameworks to address climate related challenges).

a particular social group, or political opinion.¹⁶⁰ There are a few statutory provisions, such as Temporary Protective Status, through which the United States has a clearer pathway to provide assistance to climate migrants, however, these programs offer temporary options to only a few qualified people.¹⁶¹ Therefore, countries like the United States must expand their current immigration policies to provide assistance and resettlement to the broader category of climate refugees by creating a system of complementary protection in parallel with the United States Refugee Admissions Program. Moreover, due to the urgency of climate change migration, these new quotas must be created in a way in which individuals are not forced to wait multiple years before they can qualify for protection, as is currently the

¹⁶⁰ U.S. Congress. United States Code: Immigration and Nationality Act, 8 U.S.C. §§ -1401 Suppl. 2 1964 .

¹⁶¹ Id. (referencing the Temporary Protected Status, which offers protection following temporary conditions in the home country such as ongoing armed conflict, environmental disaster, epidemic, or another extraordinary and temporary condition).

issue with many of the immigrant quotas in the United States.¹⁶²

C. IMPOSING UNITED NATIONS SANCTIONS

Under the International Covenant on Economic, Social, and Cultural Rights, States have an obligation to take steps to protect recognized rights, including the right to food, independently as well as through international assistance and cooperation.¹⁶³ Article 11 of the International Covenant on Economic, Social, and Cultural Rights specifically obliges State parties to take measures, through international cooperation, to improve methods of production, conservation, and distribution of food and to ensure an equitable distribution of world food supplies.¹⁶⁴

¹⁶² **David J. Bier**, Immigration Wait Times from Quotas Have Doubled: Green Card Backlogs Are Long, Growing, and Inequitable, **CATO Institute** (June 18, 2019) (<https://www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long>).

¹⁶³ International Covenant on Economic, Social, and Cultural Rights, art. 2, supra note 16.

¹⁶⁴ International Covenant on Economic, Social, and Cultural Rights, art. 11(2), supra note 16.

Despite the standard that a State is primarily responsible for respecting, protecting, and fulfilling the right to food of people within its borders,¹⁶⁵ if the United Nations adopts the standard set forth in Sacchi and Teitiota and recognizes climate as a transnational problem, States will also be responsible for respecting and upholding the right to food outside of their own borders. Once the United Nations has established this new standard, they can impose sanctions on Parties failing to sufficiently address the climate crisis, which by extension contributes to the violation of fundamental rights, including the right to health, globally.

Moreover, by recognizing climate change as a human rights crisis, the United Nations will make it easier for those that have been forced to flee to argue and demonstrate that they are part of a particular social group as discussed above and thus, be able to enjoy protection through resettlement.¹⁶⁶ This new standard will also enable and encourage the international community to work alongside local governments to protect the environment and encourage support for various avenues that

¹⁶⁵ The Right to Adequate Food, Fact Sheet N. 34, Office of the High Commissioner for Human Rights at 22

(<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>).

¹⁶⁶ See Dagmar R. Myslinska, What a "Particular Social Group" Means for Asylum Purposes, supra Note 149.

would protect the right to health, such as increased trade to support agricultural production.

V. CONCLUSION

Climate change threatens the fundamental right to health established in the International Covenant on Economic, Social, and Cultural Rights under Articles 11 and 12. However, current refugee laws and frameworks provide no protection for the influx of individuals who will be forced to flee as a result of climate change infringing on their fundamental rights. Therefore, the United Nations should expand the Committee on the Rights of the Child's decision in Sacchi and the Human Rights Committee's decision in Teitiota to denote climate change as a threat to internationally recognized fundamental human rights and implement the various recommendations and changes needed to protect individuals whose right to health is being violated as a result of climate change.