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HOW A UNIVERSAL DEFINITION MAY SHAPE THE LOOMING CLIMATE REFUGEE CRISIS

*by Alexandra Haris**

Climate change is an undeniable phenomenon threatening the existence of humanity.¹ Natural disasters and other environmental changes lead to lost homes and jobs, causing more people to be displaced.² International organizations with special legal status, as well as individual countries, are obligated to develop potential solutions. One such entity with particular responsibility is the United Nations High Commissioner for Refugees (UNHCR).³ The UNHCR aims to protect refugees and administer the 1951 Refugee Convention (“the Convention”), which lays out refugees’ rights and creates global legal obligations for refugees’ protection.⁴ The Convention’s definition of refugee fails to include persons internal-

ly and externally displaced by climate change,⁵ and thereby prevents individuals displaced by climate change from receiving refugee status and qualifying for protections under the Convention.⁶ This Article explores the weaknesses of the UNHCR’s current definition, illustrates the current definition’s deficiencies through the case of Ioane Teitiota of Kiribati, and shows how the definition must expand to ensure equitable treatment.⁷

The Convention currently protects individuals displaced by a fear of persecution due to race, religion, nationality, or political opinion.⁸ No mention of environmentally displaced refugees means this class falls outside of the Convention’s scope. Moreover, it is unclear if the UNHCR views the climate crisis as severe enough to warrant a definition that would protect refugees who are displaced by environmental disasters. In fact, just a decade ago, the UNHCR stated the inclusion of climate refugee terminology could “potentially undermine the international legal regime for the protection of refugees whose rights and obligations are quite clearly defined and understood.”⁹ However, the issue the UNHCR appears fearful of could be resolved if it clearly defined “climate refugee.”

To clearly define “climate refugee,” the Convention should provide a singular, universal definition to replace the various definitions that currently exist.¹⁰ A singular definition for climate refugees has been difficult to create because of competing ideas of who

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¹ Climate Change, AMNESTY INT’L, <https://www.amnesty.org/en/what-we-do/climate-change/> (last visited Mar. 1, 2021).

² Sci. for Env’t Pol’y, *Migration in Response to Environmental Change* 3, 7 (Eur. Comm’n 2015), https://ec.europa.eu/environment/integration/research/newsalert/pdf/migration_in_response_to_environmental_change_51si_en.pdf.

³ About Us, U.N. HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/about-us.html> (last visited Mar. 1, 2021).

⁴ Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention].

⁵ Joana Apap, *The Concept of “Climate Refugee” Towards a Possible Definition* 2 (Eur. Parliamentary Rsch. Serv. 2019), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI\(2018\)621893_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI(2018)621893_EN.pdf).

⁶ *Id.*

⁷ *Id.*

⁸ Apap, *supra* note 5, at 2.

⁹ Suong Vong, *Protecting Climate Refugees is Crucial for the Future*, HUMANITY IN ACTION (May 2017), https://www.humanityinaction.org/knowledge_detail/protecting-climate-refugees-is-crucial-for-the-future/.

¹⁰ *Id.*; Alex Randall, *Climate Refugees Definition: Can We Define a Climate Refugee?*, Climate & Migration Coal., <http://climatemigration.org.uk/climate-refugees-definition/> (last visited Mar. 1, 2021).

qualifies, ranging from narrow to broad definitions.¹¹ A narrow definition focuses on identifying those individuals who arguably need the most help because they have lost their home, for example, but it excludes individuals who suffer from lost livelihoods.¹² Conversely, a broad definition would guarantee coverage for every individual who has been displaced due to the consequences of climate change.¹³

I. IOANE TEITIOTA AND THE CASE FOR A BROAD DEFINITION

An example of the need for a broad definition of climate refugees is Ioane Teitiota. Teitiota is from the Republic of Kiribati, a Pacific island submerging under water due to rising sea levels caused by climate change.¹⁴ In 2015, two years after Teitiota applied for asylum based on forced displacement from climate change, the New Zealand High Court rejected his application, holding that he does not fall under the Refugee Convention's definition of "refugee."¹⁵ That same year, Teitiota's father filed a complaint with the UNHCR, which subsequently issued a statement that rising sea levels threaten life and necessitate a broadening of refugee law.¹⁶

To prevent the perils to Teitiota and others in similar positions, the universal definition of climate refugees should include a wider range of climate-related threats to livelihood. A potential broad definition of a climate refugee is a person who must leave their home, either temporarily or permanently, due to climate change disturbances that have either

destroyed their home or seriously impacted their quality of life.¹⁷

The first element may seem inconsequential, yet it would have a major impact on climate refugee classification. "A person who must leave their home," includes individuals who must migrate to stay alive or must migrate to retain their basic livelihood.¹⁸ This variance is essential and would be consistent with how other refugees are encapsulated within the Convention's definition.¹⁹ The Convention states that refugees can be protected if they have a "well-founded fear of being persecuted for reasons of . . . political opinion."²⁰ Including persecution for political opinion in the Convention's definition illustrates the breadth of issues that the Convention covers. While seeking refuge from political persecution could be a matter of life or death, it may include "well-founded" fears based on evidence of persecution.²¹ It is analogous to allow individuals displaced by climate change to qualify for basic protections under international law because they also have a well-founded fear of the ramifications the changing environment may have on their livelihood.

A second important element of a broad definition is "temporarily or permanently." Climate change increases the frequency of mega-storms and rising sea levels that deplete natural resources and result in submerged cities, scorched forests, and arid towns.²² More frequent and intense rates of disasters, "might

¹¹ OLI BROWN, MIGRATION AND CLIMATE CHANGE 18 (2008); Elizabeth Keyes, *Environmental Refugees? Rethinking What's in a Name*, 44 N.C. J. INT'L L. 461 (2019).

¹² Apap, *supra* note 5, at 5-6.

¹³ Keyes, *supra* note 11, at 464.

¹⁴ *Id.*

¹⁵ *Teitiota v. Chief Exec. of Ministry of Bus., Innovation, and Emp.* [2013] NZIPT 800413, at 65 (N.Z.).

¹⁶ Bill Frelick, *It Is Time to Change the Definition of a Refugee*, AL JAZEERA (Jan. 26, 2020), <https://www.aljazeera.com/opinions/2020/1/26/it-is-time-to-change-the-definition-of-refugee>.

¹⁷ Apap, *supra* note 5, at 3; Bonnie Docherty & Tyler Giannini, *Symposium: Confronting a Rising Tide: A Proposal for a Climate Refugee Treaty*, 33 HARV. ENV'T L. REV. 349, 361-69 (2009).

¹⁸ Docherty & Giannini, *supra* note 17, at 369.

¹⁹ *Id.* at 2.

²⁰ Refugee Convention, *supra* note 4.

²¹ Refugee Convention, *supra* note 4; *see also* 1951 Convention, AMERA INT'L, <https://www.refugeelegalaidinformation.org/1951-convention>.

²² *How Can Climate Change Affect Natural Disasters?*, U.S. DEP'T OF INTERIOR, https://www.usgs.gov/faqs/how-can-climate-change-affect-natural-disasters-1?qt-news_science_products=0#qt-news_science_products (last visited Mar. 28, 2021); *Climate Change and Unnatural Disasters*, FOOD & WATER WATCH (Sep. 14, 2017), <https://www.foodandwaterwatch.org/insight/climate-change-and-unnatural-disasters>.

lead to both temporary and permanent decisions to migrate.”²³ While one environmental catastrophe may lead to permanent inhabitation of an area, another may create damage that only requires temporary leave.²⁴ Additionally, this adoption would be consistent to the protection offered to other refugees, such as protections against forcible returns to home countries while there is a threat of persecution.²⁵ Political refugees may have a well-founded fear of persecution based on their political opinions that may only be a temporary fear.²⁶ Therefore, to accompany climate refugees fleeing distinct disasters and remain consistent with its protection of other refugees, the Convention must include “temporarily or permanently.”

Lastly, the definition must include, “destroyed their home or seriously impacted their quality of life.” This is essential to ensuring the Convention allows individuals whose lives have been seriously impacted by climate change to satisfy the definition. Specifically, it includes those who may still have their homes but no longer have a source of income due to changes in the land or surrounding topography.

II. LOOKING TO THE FUTURE

As climate change progresses, the UNHCR must provide protection to the increasing number of individuals who are affected. The international legal framework provides a starting point to create a universal, broad definition of “refugee” to include individuals displaced by climate change. This

²³ Keyes, *supra* note 11.

²⁴ Denise Chow, *Three Islands Disappeared in the Past Year. Is Climate Change to Blame?*, NBC NEWS (June 9, 2019), <https://www.nbcnews.com/mach/science/three-islands-disappeared-past-year-climate-change-blame-ncna1015316>; Sarah Ruiz-Grossman & Lydia O'Connor, *There Were More Than 100 “Billion Dollar” Climate Disasters in the Past Decade*, MOTHER JONES (Dec. 31, 2019), <https://www.motherjones.com/environment/2019/12/there-were-more-than-100-billion-dollar-climate-disasters-in-the-past-decade/>.

²⁵ 1951 Convention, *supra* note 21; *Fact Sheet: International Refugee Protection System*, NAT’L IMMIGR. F. (Apr. 1, 2019), <https://immigrationforum.org/article/fact-sheet-international-refugee-protection-system/>.

²⁶ *Id.*

proposed definition would also provide agreed-upon terms that could be implemented in the 1951 Refugee Convention, the main determiner of who can have refugee status and protection.²⁷ With this, climate refugees would have the basic rights and protections that other individuals with refugee status have under international law.

While there are many hurdles to overcome regarding climate refugees’ lack of protection, including the UNHCR’s explicit refusal ten years ago to list persons displaced by climate change as refugees, mindsets appear to be changing as the crisis becomes more urgent.²⁸ However, until the international legal framework incorporates a singular, universal climate refugee definition, climate refugees will continue to lack basic protections.

²⁷ Apap, *supra* note 5, at 2.

²⁸ *Why UNHCR Is Taking Action on Climate Change Displacement*, U.N. HIGH COMM’R ON REFUGEES, <https://www.unhcr.org/innovation/why-unhcr-is-taking-action-on-climate-change-displacement/>.