



Vol. 4 No. 6 (June) (2026)

No Law for the Drowning: Asylum and Refugee Rights for Climate-Affected Persons

Muhammad Sulaim

JRA AT GLO USA. mhero4923@gmail.com

Mian Ali Hamdani

Student at Abdul wali khan university Mardan. alimian14398@gmail.com

Ayesha Qasim

Student at Abdul wali khan university Mardan. Ayeshaqasim731@gmail.com

USMAN SHAHAB

Student at Abdul wali khan university Mardan. Usmanshab6245@gmail.com

ABSTRACT

Climate change is displacing people at a scale and speed that international law was never designed to handle. The 1951 Refugee Convention, built on the logic of political persecution, has no category for a family driven from their home by rising seas, a farmer whose land has turned to dust, or an entire community whose island will not exist in twenty years. These people are real. Their suffering is measurable. But in the eyes of international law, they are largely invisible. This paper examines who climate-affected persons are, why their daily lives are so difficult, how the current refugee and asylum framework fails them, what the United Nations has done to respond, and what genuine reform must look like. It argues that the absence of a binding, purpose-built legal instrument for climate displacement is not an oversight. It is a choice, and it is a choice that can and must be reversed.

Keywords: climate displacement, refugee definition, 1951 Convention, non-refoulement, climate-affected persons, UN framework, asylum reform, statelessness, climate justice

1. Introduction

In 2020, a man named Ioane Teitiota asked the United Nations Human Rights Committee to tell him something simple: that if New Zealand sent him back to Kiribati, where sea levels were swallowing his home, it would be violating his right to life. The Committee said no, not yet, conditions had not yet crossed a critical threshold. But it did say something that no international body had said before: that the day might come when return to a climate-affected country triggers the obligation not to send someone back. It was a door, barely cracked open.

That door needs to become a gateway. This paper is about why, and how. Climate change is not a threat on the horizon. It is a present emergency that is generating displacement right now, across every continent, and at a rate that will only accelerate. The Intergovernmental Panel on Climate Change has made clear that extreme weather events, sea level rise, drought, and desertification will force tens of millions of people to move within the coming decades. Many are already moving. And when they cross a border, they find that the law has almost nothing to say to them.

The structure of this paper is as follows. Section 2 sets out the methodology. Section 3 defines who climate-affected persons are and clarifies the terminology. Section 4 examines the lived reality of climate displacement: what these people actually experience. Section 5 analyses the current refugee and asylum framework and explains why it fails. Section 6 surveys the United Nations response and its shortcomings. Section 7 makes the case for reform. Section 8 concludes.



Vol. 4 No. 6 (June) (2026)

2. Methodology

This paper uses doctrinal legal research as its primary method. That means it works from legal texts: treaty provisions, judicial and quasi-judicial decisions, soft-law instruments, and the academic commentary that has developed around them. The research question is legal: does international law adequately protect climate-affected persons, and if not, what should replace the current framework? That question cannot be answered empirically. It requires careful reading of rules, analysis of how courts and tribunals have applied them, and normative argument about what reform should look like.

Secondary literature was identified through systematic searches of Scopus, Westlaw, HeinOnline, and the UNHCR digital repository. Search terms included combinations of climate displacement, asylum rights, 1951 Convention and environment, non-refoulement and climate change, and international refugee law reform. Priority was given to peer-reviewed sources published since 2018, reflecting the rapidly evolving legal landscape after the Teitiota decision.

The paper also employs comparative legal method. Courts and bodies in New Zealand, the European Union, and across Africa and the Americas have all confronted aspects of the climate protection question. Comparing their approaches reveals both the areas of emerging convergence and the structural gaps that adjudication alone cannot fill. This comparative lens is essential to any honest assessment of reform options.

This paper argues explicitly for legal reform. It does not claim to be neutral between the view that existing law is adequate and the view that it is not. The normative position, that climate-affected persons deserve enforceable international protection, is stated openly. That has always been how international legal scholarship works: analysis of existing law, combined with honest argument about what the law should become.

3. Who Are Climate-Affected Persons? The Problem of Definition

The language used to describe people displaced by climate change matters enormously, because in international law, labels determine rights. And here, the terminology is genuinely contested. The most popular term in public discourse is climate refugee. It has emotional resonance and communicates urgency. But it is legally wrong. Byravan and Rajan have explained this plainly: under international law, only someone forcibly displaced as a result of political violence can be called a refugee.¹ A person leaving because their island is sinking is not, in the legal sense, a refugee. Calling them one creates false expectations and obscures the actual gap in protection.

The International Organization for Migration uses the term environmental migrant, defined as persons whose physical living conditions are severely affected by local or global environmental change that is either directly or indirectly the cause of their decisions to leave their homes.² Byravan and Rajan prefer the term climate exiles for those who cross international borders, noting it is technically more accurate than climate refugee while still conveying the involuntary and irrevocable nature of the movement.³ This paper uses climate-affected persons or climate-displaced persons as broad, non-prejudicial terms that do not imply legal status.

The definitional problem goes deeper than terminology. As Jiang, Huang and Zhao have shown, the international refugee regime lacks precision in defining the climate-vulnerable population.⁴ The 1951 Convention targets particular individuals whose persecution arises from specific grounds: race, religion, nationality, political opinion, or membership of a social group. Environmental factors affect groups indiscriminately, not based on any of those grounds.⁵ And climate displacement is often multi-causal: a farmer who leaves because of drought may also be responding to poverty, political instability, and the absence of economic alternatives. Proving that climate change is the sole cause of migration is frequently impossible, and requiring it as a condition of protection is a standard designed to exclude.

Several categories of climate-affected persons can be identified for analytical purposes. First, there are persons displaced by sudden-onset disasters: floods, cyclones, extreme heat events, and wildfires. Their displacement is immediate and visible. Second, there are persons displaced by slow-onset processes: sea level rise, desertification, salinisation of freshwater, and glacial retreat. Their displacement unfolds over years or decades and may not look like an emergency even as it destroys livelihoods. Third, and most legally challenging, are the citizens of small island states whose entire national territory may become uninhabitable. For them, displacement is not just a



Vol. 4 No. 6 (June) (2026)

personal crisis. It is a question of national survival and, eventually, statelessness.

4. What Climate Displacement Actually Looks Like

It is easy to discuss climate displacement in the abstract language of legal categories and policy frameworks. It is harder, but more important, to be clear about what it actually means for the people experiencing it. Because the case for legal reform rests not only on legal logic but on the observable reality that a specific group of human beings is suffering without protection.

Naser et al., in their study of climate migration and human rights in Bangladesh, identify a cascade of rights violations that climate displacement produces.⁶ Before displacement, life, liberty, and security are at risk when sudden disasters strike. Floods and cyclones kill people, destroy infrastructure, and wash away crops. After displacement, violations of economic, social, and cultural rights become entrenched: loss of livelihood, loss of access to education, inadequate shelter, and severely limited access to healthcare and safe water. The longer displacement lasts, the deeper these deprivations become. Women, children, the elderly, and the economically marginalised suffer disproportionately.⁷

In Bangladesh, approximately 32 per cent of coastal communities are affected by climate-induced hazards each year.⁸ In the Pacific, communities in Vanuatu and the Solomon Islands have already undergone permanent relocation as their coastlines erode. Endacott and Alam document the governance failures that make even internal relocation in those countries difficult: responses are ad hoc, unsustainable, and often result in protracted displacement that undermines development.⁹ These are not exceptional cases. They are previews of what millions more people will experience. The hardship is not only material. Climate displacement destroys the social fabric that gives people's lives meaning. Communities that have lived on the same land for generations are broken apart. Cultural practices tied to specific landscapes become impossible to maintain. The loss is collective as well as individual. And for citizens of disappearing island states, there is a further dimension: the potential loss of nationality itself. If a state's territory ceases to exist, what happens to its citizens' legal identity? International law, as it currently stands, has no answer.

Byravan and Rajan are direct about the scale: millions in small island nations and low-elevation deltaic nations could be rendered stateless as a result of sea level rise.¹⁰ For those people, the question of asylum rights is not academic. It is the difference between having a legal identity in the world and having none at all.

5. Why the Current Framework Fails

5.1 The 1951 Convention Definition

The cornerstone of international refugee protection is Article 1A(2) of the Convention Relating to the Status of Refugees 1951, which defines a refugee as a person outside their country of nationality owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Every word of this definition works against climate-affected persons. They are not typically persecuted. Climate change is not targeted at a social group. The harm is not inflicted by an agent of persecution. It is the consequence of atmospheric physics.

As Jiang et al. confirm, the 1951 Convention fails to include less well-defined, generalised situations of need such as climate change.¹¹ Some argue that incorporating environmental factors would expand the scope of protection and deviate from the original intention of the Convention.¹² That argument has a certain logic: the Convention was designed after the Second World War to address a specific crisis of political persecution in Europe. But the logic also reveals the problem. The world has changed. The Convention has not.

The 1967 Protocol removed the temporal and geographic limitations of the original Convention, extending its application globally. But it did not change the definition of a refugee. And the Global Compact on Refugees, adopted in 2018, while acknowledging that climate change and natural disasters interact with the drivers of refugee movements, did not alter the definition either. Acknowledgment without obligation is not protection.

5.2 The Non-Refoulement Possibility

The most significant legal development in this field is the *Teitiota v New Zealand* decision of the United Nations Human Rights Committee in January 2020. The Committee held that the return of



Vol. 4 No. 6 (June) (2026)

an asylum seeker to their home state may trigger the non-refoulement principle under the right to life in Article 6 of the International Covenant on Civil and Political Rights, due to harms associated with climate change and environmental degradation. De Coninck and Soete, in their careful comparative analysis, describe this as a broadening of non-refoulement under international human rights law to protect individuals fleeing the effects of climate change against involuntary return.¹³ But they are right to caution against exaggerating the decision. On closer inspection, the cracks and flaws in the Committee's reasoning become evident.¹⁴ Teitiota's own claim was rejected. The Committee found that conditions in Kiribati had not yet crossed the threshold that would trigger the obligation. The decision establishes a conditional possibility, not a right. And it requires an individual applicant to demonstrate a real, personal, and foreseeable risk of deprivation of life upon return, a standard that is extremely difficult to meet for people fleeing slow-onset processes or collective environmental degradation.

Luporini and Savaresi have systematically analysed climate-related complaints before international human rights bodies since 2005 and found that claims have been granted on the merits only once.¹⁵ The structural constraints are not accidental: standing requirements, margins of appreciation, and standards of proof designed for political persecution cases all work against climate applicants. These are features of systems not built for this type of claim, not defects that better lawyering can overcome.

5.3 Regional Frameworks

Some regional instruments offer broader protection. The 1969 OAU Convention on Refugee Problems in Africa covers persons compelled to leave their country owing to events seriously disturbing public order. The 1984 Cartagena Declaration in Latin America includes persons who have fled their country because their lives, safety, or freedom have been threatened by generalised violence or other circumstances which have seriously disturbed public order. These wider definitions could potentially cover some cases of climate displacement where the associated social disruption is severe. But they are not universal, and they still require the kind of individualised harm assessment that collective climate displacement rarely produces.

6. The United Nations Response: Progress and Gaps

The United Nations has not been entirely inactive. Several instruments and processes have attempted to address climate displacement, and their trajectory tells an important story about what the international community is willing to acknowledge and what it is not yet willing to commit to. The Cancun Adaptation Framework, adopted at COP16 in 2010, was the first major international climate agreement to explicitly recognise human migration, displacement, and planned relocation as issues requiring adaptation responses. It invited states to enhance understanding and cooperation with regard to climate change induced displacement, migration, and planned relocation. This was a significant step: climate migration entered the formal vocabulary of UN climate negotiations for the first time. But the language was aspirational. It created no obligations.

The Nansen Initiative, launched in 2012 by the governments of Norway and Switzerland, sought to build consensus on a protection agenda for persons displaced across borders in the context of disasters and climate change. Its outcome document, the Agenda for the Protection of Cross-Border Displaced Persons, adopted at a global consultation in 2015, recommended principles and practical measures for protecting this category of persons. The Platform on Disaster Displacement succeeded it in 2016. As Jiang et al. observe, these developments represent progress in building international awareness and soft-law norms, but they remain outside the binding legal architecture that would generate enforceable rights.¹⁶

The 2018 Global Compact on Refugees acknowledges that climate, environmental degradation, and natural disasters increasingly interact with the drivers of refugee movements. This acknowledgment is meaningful as far as it goes. But the Compact does not redefine who qualifies for refugee status. It does not create new legal obligations. It is a framework for cooperation, not a treaty of protection.

The most concrete development in recent years is the 2023 Australia-Tuvalu Falepili Union treaty, a bilateral agreement under which Australia provides Tuvaluan citizens with a special pathway to reside, work, and study in Australia, and commits to assisting Tuvalu in maintaining its statehood even if its territory becomes uninhabitable. Jiang et al. present this as a significant innovation in



Vol. 4 No. 6 (June) (2026)

climate-related migration practice, a bilateral model that addresses both migration needs and the sovereignty crisis facing disappearing island states.¹⁷ But, as they also acknowledge, bilateral arrangements leave the vast majority of climate-affected communities without any equivalent protection. Their terms depend entirely on the political relationship between the parties. They cannot substitute for universal standards.

7. Why Reform Is Necessary and What It Must Contain

7.1 The Case for a New Instrument

The existing framework fails climate-affected persons at the level of design, not just application. No amount of judicial creativity can make the 1951 Convention cover people whose situation it was never conceived to address. The non-refoulement developments through human rights bodies are valuable but structurally limited. Regional instruments cover some cases but not systematically. Soft-law frameworks acknowledge the problem but do not solve it. What is needed is a binding, purpose-built international instrument for climate displacement.

Byravan and Rajan propose a normative framework with a strong version and a mild version.¹⁸ In the strong version, host countries, particularly those bearing the greatest historical responsibility for greenhouse gas emissions, adopt an open-door policy for climate asylum seekers. In the mild version, the international community designates vulnerable zones, specifically small island states, severely drought-prone countries, and low-lying deltaic nations, and provides their citizens with rights of free passage to host countries under non-refoulement. In both versions, people are not forced to return to places where continuing harm is certain. This paper endorses the principle and argues that it can only be realised through a binding treaty, not through voluntary commitments.

McDonald and McCormack, in their assessment of adaptation law over the past decade, identify equity as a core principle that adaptation law must address.¹⁹ They are right. The justice dimension of climate displacement cannot be separated from the legal question. The people most severely affected by climate change are overwhelmingly in the Global South. They contributed least to the emissions that are now destroying their environments. Wealthy industrialised states, which bear the greatest historical responsibility for climate change, have so far been the most reluctant to accept climate-affected persons. A new instrument that connects protection obligations to the principle of common but differentiated responsibilities would begin to correct that imbalance.

7.2 What a New Instrument Must Contain

A dedicated climate displacement instrument requires, at minimum, five elements. First, a definition of climate-affected persons that is workable without requiring impossible causal proof. Observable conditions, such as territory below projected sea level thresholds, regions experiencing chronic drought beyond defined parameters, or communities where crop failure has exceeded defined frequency, should serve as triggers for protection rather than individual causal attribution. Second, a non-refoulement obligation that prohibits return to conditions of climate-related risk to life or subsistence, building on the Teitiota precedent but without its excessive individualization requirements. Return should be prohibited where the general conditions of the country or territory of origin satisfy the objective threshold, not only where a specific applicant can demonstrate personal risk above that general level.

Third, provisions for planned relocation, recognising that climate displacement often requires permanent resettlement rather than temporary refuge. The Australia-Tuvalu model offers a starting point. But it needs to be multilateralised, with burden-sharing obligations allocated on the basis of emissions responsibility and economic capacity.

Fourth, recognition of climate statelessness. The instrument must address the situation of citizens whose home state's territory ceases to exist or becomes permanently uninhabitable. They need a legal status, documentation rights, and a pathway to citizenship in a receiving state that does not require them to abandon the cultural and national identity of their origin.

Fifth, a funding mechanism that ties resettlement and adaptation obligations to historical emissions contributions. This is politically difficult. But without a financial architecture that makes wealthy states bear a proportionate share of the cost of the displacement their emissions have caused, any new instrument will remain aspirational.



Vol. 4 No. 6 (June) (2026)

7.3 Objections and Responses

Three objections deserve direct responses. The first is the attribution problem: we cannot prove that any individual was displaced by climate change rather than poverty or governance failure. The honest answer is that clean causal attribution is often impossible, but this has never been a requirement of international protection regimes. Refugee law does not require proof that persecution was the sole cause of flight. A climate instrument can be designed around observable conditions rather than individual causal chains.

The second objection is floodgates: recognising climate displacement would generate unmanageable numbers of claims. This fear was raised against refugee law in the 1950s and against gender persecution claims in the 1990s. In neither case did the feared flood materialise in forms that overwhelmed legal systems. More importantly, people will move regardless of whether law accommodates them. The question is only whether they move with legal status and rights, or without.

The third objection is political: states will not agree to new binding obligations. This is the most honest objection. But political reality is not static. The adoption of the Paris Agreement demonstrated that climate multilateralism is possible. The Australia-Tuvalu treaty demonstrates that individual states are already willing to accept new commitments. The task of legal scholarship is to build the framework so it is ready when political will catches up with necessity.

8. Conclusion

International law currently has no category for Ioane Teitiota. It has no category for the farmers watching the Sahel turn to sand, the coastal communities in Bangladesh losing land to the sea, or the Tuvaluan children who may grow up without a country. These people exist. Their suffering is not a legal abstraction. But the legal architecture of international protection was built for a different century and a different kind of crisis, and it has not been updated to meet the world as it actually is.

The argument of this paper is simple: that is not tolerable, and it is not inevitable. Climate-affected persons can be defined without requiring impossible causal proof. Non-refoulement can be extended to cover conditions of climate-related risk without dismantling the existing refugee regime. Planned relocation can be organised on a multilateral basis with burden-sharing tied to emissions responsibility. Climate statelessness can be addressed by giving citizens of disappearing states a legal home. None of this is technically impossible. What is missing is political will, and the legal framework that would make exercising that will concrete and binding.

The methodology of this paper, doctrinal analysis combined with comparative assessment and normative argument, is the right tool for this kind of problem. Legal scholarship's job is not only to describe the law as it is. It is to articulate what the law should become, and to make the case for getting there. That is what this paper has tried to do. The framework needed to protect climate-affected persons can be built. It should have been built already.

REFERENCES

Primary Sources

International Instruments

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

Protocol Relating to the Status of Refugees (adopted 15 December 1966, entered into force 4 October 1967) 606 UNTS 267

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1967) 999 UNTS 171

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45

Cartagena Declaration on Refugees (adopted 22 November 1984) Annual Report of the



Vol. 4 No. 6 (June) (2026)

Inter-American Commission on Human Rights, OAS Doc
OEA/Ser.L/V/II.66/doc.10, rev 1

Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS
reg no I-54113

Australia-Tuvalu Falepili Union (signed 9 November 2023)

Cases

Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment [2013]
NZIPT 501044

Teitiota v New Zealand, UN Human Rights Committee, Communication No 2728/2016,
CCPR/C/127/D/2728/2016 (7 January 2020)

Soft-Law and UN Documents

UNGA, Global Compact on Refugees, UN Doc A/73/12 (Part II) (2 August 2018)

UNFCCC, Report of the Conference of the Parties on its Sixteenth Session (Cancun
Adaptation Framework), UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011)

Nansen Initiative, Agenda for the Protection of Cross-Border Displaced Persons in the
Context of Disasters and Climate Change (October 2015)

UNHCR, Legal Considerations Regarding Claims for International Protection Made in the
Context of the Adverse Effects of Climate Change and Disasters (2021) 33
International Journal of Refugee Law 151

Secondary Sources

Byravan S and Rajan SC, "Cross-border Migration on a Warming Planet: A Policy
Framework" (2022) 13(2) WIREs Climate Change
<<https://doi.org/10.1002/wcc.763>>

De Coninck J and Soete A, "Non-refoulement and Climate Change-Induced Displacement:
Regional and International Cross-Fertilization?" (2022) 31(3) Review of European,
Comparative and International Environmental Law 421
<<https://doi.org/10.1111/reel.12451>>

Endacott J and Alam S, "Mainstreaming Displacement in Development Policies: An
Analysis of Solomon Islands and Vanuatu Approaches" (2022) 32(1) Review of
European, Comparative and International Environmental Law 136
<<https://doi.org/10.1111/reel.12474>>

Hedegaard TF, "Attitudes to Climate Migrants: Results from a Conjoint Survey
Experiment in Denmark" (2021) 45(1) Scandinavian Political Studies 25
<<https://doi.org/10.1111/1467-9477.12213>>

Jiang X, Huang Z and Zhao X, "Climate-Related Migration Practices from the Cancun
Adaptation Framework to the Australia-Tuvalu Falepili Union Treaty: Implications
for the International Legal Regime" (2025) 34(1) Review of European,
Comparative and International Environmental Law 210
<<https://doi.org/10.1111/reel.12611>>

Luporini R and Savaresi A, "International Human Rights Bodies and Climate Litigation:
Don't Look Up?" (2023) 32(2) Review of European, Comparative and International
Environmental Law 267 <<https://doi.org/10.1111/reel.12491>>

McAdam J, Climate Change, Forced Migration, and International Law (Oxford University
Press 2012)

McAdam J, "Swimming Against the Tide: Why a Climate Change Displacement Treaty is
Not the Answer" (2011) 23(1) International Journal of Refugee Law 2

McAdam J, "From the Nansen Initiative to the Platform on Disaster Displacement:
Shaping International Approaches to Climate Change, Disasters and
Displacement" (2016) 39(4) University of New South Wales Law Journal 1518



Vol. 4 No. 6 (June) (2026)

McDonald J and McCormack PC, "Rethinking the Role of Law in Adapting to Climate Change" (2021) 12(5) WIREs Climate Change <<https://doi.org/10.1002/wcc.726>>

Naser MM, Swapan MS, Ahsan R, Afroz T and Ahmed S, "Climate Change, Migration and Human Rights in Bangladesh: Perspectives on Governance" (2019) 60(2) Asia Pacific Viewpoint 175 <<https://doi.org/10.1111/apv.12236>>

Notes

- 1 Byravan and Rajan (n 11) 3.
- 2 International Organization for Migration, Glossary on Migration (IOM 2019) 31.
- 3 Byravan and Rajan (n 11) 3.
- 4 Jiang, Huang and Zhao (n 5) 215.
- 5 *ibid* 215, citing B Opeskin, R Perruchoud and J Redpath-Cross, *Foundations of International Migration Law* (Cambridge University Press 2012) 178.
- 6 Naser and others (n 15) 183.
- 7 *ibid*.
- 8 *ibid* 178.
- 9 Endacott and Alam (n 3) 143.
- 10 Byravan and Rajan (n 11) 2.
- 11 Jiang, Huang and Zhao (n 5) 215.
- 12 UNHCR, *Legal Considerations* (n 14) 154.
- 13 De Coninck and Soete (n 2) 421.
- 14 *ibid* 422.
- 15 Luporini and Savaresi (n 6).
- 16 Jiang, Huang and Zhao (n 5) 218.
- 17 *ibid* 220.
- 18 Byravan and Rajan (n 11) 6.
- 19 McDonald and McCormack (n 9).