





# Issues Not Addressed in the Paris Agreement: Climate Change Refugees

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**T**he Paris Agreement for the first time brings all parties, developed and developing countries, together to undertake ambitious efforts to combat climate change and adapt to its effects by requiring that they: (1) submit nationally determined contributions (NDCs) every five years; (2) report regularly on their emissions; and (3) communicate their implementation efforts.<sup>1</sup> The agreement ultimately aims to make sure the global temperature rise stays well below the 2°C mark, while also pursuing efforts to limit the temperature rise to 1.5°C mark by creating a new technology framework and an enhanced capacity building framework that would support action by developing countries that is in line with their own objectives.<sup>2</sup>

The (almost) unanimous adoption of the Paris Agreement has indeed proven that countries are now aware of climate change issues and the efforts that need to be taken to counterattack, reduce, and mitigate the dangerous effects of this phenomenon. However, the United States has chosen to withdraw from the agreement until it can identify terms that are more favorable to it, its businesses, its workers, its people, and its taxpayers.<sup>3</sup>

## A Global Issue

The Paris Agreement takes a significant departure from previous international environmental instruments, most notably from the Kyoto Protocol, in that it does not distinguish between developed and developing countries, but rather focuses on their “common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” and a so-called collective will, while acknowledging that this is truly a global issue.<sup>4</sup> Hence, although the Paris Agreement calls for all countries to make ambitious emission reduction pledges and to create a transparency framework to monitor such pledges, the agreement differentiates between the obligations of developed and developing country governments with respect to achieving such pledges.<sup>5</sup>

However, in efforts to balance the diplomatic relationship between the parties and develop a comprehensive and effective legal framework that tackles climate change, many issues were left unattended or rather consulted with the parties. These issues are highly controversial since they expose the real problem with climate change: poor developing countries, island nations, and minorities will be affected the most. Many legal scholars are now analyzing the effects of the Paris Agreement, but we will have to wait to see what other problems arise.

## Unequal Impact

The term “climate change refugees” refers to those that must leave their country because of the adverse effects of climate change. The Intergovernmental Panel on Climate Change (IPCC) asserts that climate change is likely to raise the risk of humanitarian emergencies and trigger population movements due to increasingly intense weather

events, sea level rise, and accelerated environmental degradation, including coastal erosion and desertification.<sup>6</sup> The IPCC also concluded that low-lying small island states or island nations are among the countries in the world most vulnerable right now to the adverse effects of this phenomenon, including such threats as sea levels rising, food and water insecurity, and extreme weather events.<sup>7</sup> Their increased vulnerability is a function of both their limited capacity to adapt and their high exposure to the adverse effects of climate change.<sup>8</sup> Aside from geographical conditions, the situation is aggravated by high population density and a high concentration of population and physical infrastructure at the coasts.<sup>9</sup> Experts believe that this will trigger a migration crisis on island nations—such as the Republic of the Maldives, Kiribati, and Tuvalu—that over time may become entirely uninhabitable.<sup>10</sup>

Many questions arise, such as what happens to a group of nationals who no longer have a physical home; does the submerged nation still have a seat at the United Nations; where will its people go; what will their citizenship be; and do they have any legal rights against greenhouse gas emitters or nations?<sup>11</sup> None of these were addressed in the Paris Agreement. Michael Gerrard, director of the Sabin Center for Climate Change Law at Columbia Law School, fears that the current situation in Syria and Africa, where thousands of people have been displaced by political and economic situations, is an indication of what is to come, and worse, if the world does not adequately prepare for such phenomena.<sup>12</sup>

### Who's a Refugee?

While island nations are trying to address this problem however they possibly can, most countries are not talking about the issue. No international agreement exists that would address the climate change refugee situation effectively, including the newly adopted Paris Agreement.<sup>13</sup> Furthermore, no international instrument specifically and explicitly defines environmental migration, environmental migrants, or climate change refugees; includes a provision for cross-border movements induced by the environment; or provides for the protection of people who move due to degrading environmental factors.<sup>14</sup> The international law that exists relevant to the movement of people deals primarily with the treatment of foreign nationals once they are in a foreign country.<sup>15</sup>

For example, the United Nations Convention Relating to the Status of Refugees, which was adopted in 1952, deals with protection from prosecution and defines a refugee as a person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.”<sup>16</sup> While the refugee convention has protected many people, this definition of “refugee” would not apply to climate-displaced people for various reasons. For instance, the exposure to climate change adverse effects may not be considered “persecution” within the meaning of the refugee convention since persecution exists only when there are serious violations of human rights perpetuated by a state agent through the deliberate policy or practice of a government.<sup>17</sup> Moreover, climate impacts do not discriminate—they affect everyone. Thus it is contrary to what the convention states as causes for discrimination, such as a person’s race, religion, nationality, membership in a particular social group, or political opinion.<sup>18</sup> These definitions would have to be stretched so much that many courts of law are reluctant to and have thus avoided doing so.

### Current Findings

A New Zealand case involving an application for refugee status based on the adverse impacts of climate change in the island nation of Kiribati brought this argument.<sup>19</sup> Kiribati is an island nation composed of a group of atolls dispersed over a 1.3-million-square-mile patch in the Pacific Ocean.<sup>20</sup> The appellant and his wife moved to New Zealand from Kiribati in 2007, where they subsequently had three children.<sup>21</sup> The appellant claimed he was entitled to be recognized as a refugee on grounds of climate displacement and the inadequate actions (or none at all) taken by his government against climate change and sea level rising.<sup>22</sup> The Immigration & Protection Tribunal (IPT) noted that while Kiribati’s capacity to carry its population is being significantly compromised by the effects of population growth, urbanization, and limited infrastructure development, exacerbated by the effects of both sudden-onset environmental events and slow-onset processes, the appellant’s decision to migrate could not be seen as *forced*.<sup>23</sup> In relation to the refugee convention, the IPT expressed that while Kiribati undoubtedly faces environmental degradation challenges, the appellant does not, if returned, face serious harm and there is no evidence that the government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it can.<sup>24</sup> Hence, the IPT did not find that the appellant was a refugee within the meaning of the refugee convention.<sup>25</sup> Subsequently, the appellant applied to the Supreme Court of New Zealand for leave to appeal against the decision.<sup>26</sup> The Supreme Court ultimately confirmed the lower court’s reasoning and stated that the appellant does not face serious harm and that there is no evidence that the government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it can.<sup>27</sup>

In a similar case, the Australian Refugee Review Tribunal affirmed a decision to decline a refugee visa to an applicant from Kiribati, finding that there is no doubt that the circumstances the applicant faces are serious and deserving of significant governmental consideration and attention, but they are not matters against which the refugee convention entertains.<sup>28</sup>

As we can see, the Paris Agreement does not provide effective remedies for this matter. It does further develop the principle of “common but differentiated responsibilities and respective capabilities in the light of different national circumstances.” But neither this framework, nor the refugee instruments, guarantee the protection of people displaced because of the adverse effects of climate change.

### Conclusion

While the Paris Agreement won’t solve climate change, it situates us much closer to effectively implementing a climate change legal framework than before. The agreement and its decision have further set up the legal regime through which states can work toward meeting the below-2°C temperature goal. Nonetheless, several critical issues at the international level are still unaddressed. The next conference of the parties must develop other important policies and guidelines, including among other things, the climate change refugee situation; loss and damage due to climate change and who is responsible for it; and developing legal measures to ensure that parties comply with their NDCs and that they are doing the best they can to reduce their emissions. Until these next steps are taken, it will be difficult to assess the success or failure of the Paris Agreement framework. ©



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### Endnotes

<sup>1</sup>See *The Paris Agreement*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php) (last visited Jan. 4, 2018).

<sup>2</sup>See *id.*

<sup>3</sup>Press Release, U.S. Dep't of State, Communication Regarding Intent to Withdraw From Paris Agreement (Aug. 4 2017), <https://www.state.gov/r/pa/prs/ps/2017/08/273050.htm>.

<sup>4</sup>See Decision 1/CP.21, U.N. Doc. FCCC/CP/2015/10/Add.1 (Jan. 29, 2016).

<sup>5</sup>See *id.*

<sup>6</sup>See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, IPCC FOURTH ASSESSMENT REPORT (AR4): CLIMATE CHANGE 2007 (2007), available at [https://ipcc.ch/publications\\_and\\_data/publications\\_ipcc\\_fourth\\_assessment\\_report\\_synthesis\\_report.htm](https://ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_synthesis_report.htm).

<sup>7</sup>See L.A. NURSE ET AL., *Small Island States*, IPCC THIRD ASSESSMENT REPORT (TAR) 845, 865 (2001).

<sup>8</sup>See *id.*

<sup>9</sup>See *id.* at 867.

<sup>10</sup>See, Republic of the Marshall Islands Env'tl. Prot. Auth., *Initial Communication Under the United Nations Framework Convention on Climate Change* 49 (2000), <http://unfccc.int/resource/docs/natc/marncl.pdf>. See also, Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 LAW & POL'Y 502-529 (2008).

<sup>11</sup>See Murari Lal et al, *Future Climate Change and Its Impacts Over Small Island States*, 19 CLIMATE RES. 179, 188 (2002). See also, Patrick D. Nunn, *Responding to the Challenges of Climate*

*Change in the Pacific Islands: Management and Technological Imperatives*, 40 CLIMATE RES. 211, 214 (2009).

<sup>12</sup>See Rachel Nuwer, *What Happens When the Sea Swallows a Country?*, BRITISH BROAD. CORP. (June 15, 2015), <http://www.bbc.com/future/story/20150616-what-happens-when-the-sea-swallows-a-country>. See also, Coral Davenport, *The Marshall Islands Are Disappearing*, N.Y. TIMES (Dec. 2, 2015), <https://www.nytimes.com/interactive/2015/12/02/world/The-Marshall-Islands-Are-Disappearing.html>.

<sup>13</sup>See Michele Klein Solomon & Koko Warner, *Protection of Persons Displaced as a Result of Climate Change: Existing Tools and Emerging Frameworks*, THREATENED ISLAND NATIONS 409 (Michael B. Gerrard & Gregory E. Wannier eds., 2013).

<sup>14</sup>See *id.* at 249.

<sup>15</sup>See *id.* at 255.

<sup>16</sup>See Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S 150, Art. 1.A.2. on 256.

<sup>17</sup>See *id.*

<sup>18</sup>See *id.*

<sup>19</sup>See, New Zealand Immgr & Prot. Trib., [2013] NZIPT 800413 2 (June 25, 2013), [https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref\\_20130625\\_800413.pdf](https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref_20130625_800413.pdf). See also, *Teitiota v. Chief Exec. of the Ministry of Bus., Innovation & Emp't*, [2015] N.Z.S.C. 107 (July 20, 2015), [https://www.courtsofnz.govt.nz/cases/ioane-teitiotoa-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/at\\_download/fileDecision](https://www.courtsofnz.govt.nz/cases/ioane-teitiotoa-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/at_download/fileDecision).

<sup>20</sup>See *id.*

<sup>21</sup>See *id.*

<sup>22</sup>See New Zealand: "Climate Change Refugee" Case Overview, LIBRARY OF CONGRESS (last updated July 29, 2015), <https://www.loc.gov/law/help/climate-change-refugee/new-zealand.php> (last visited Nov 14, 2017).

<sup>23</sup>See *supra* note 19.

<sup>24</sup>See *id.* at 16, 23.

<sup>25</sup>See *id.*

<sup>26</sup>See *Teitiota, supra* note 19.

<sup>27</sup>See *id.* at 12.

<sup>28</sup>See Refugee Rev. Trib. of Australia, 0907346 [2009] RRTA 1168 (10 December 2009), at 54, <http://www.refworld.org/pdfid/4b8fdd952.pdf>.

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