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## **Climate Change Based-Displacement: The Global Challenge That's Getting More Difficult to Ignore**

In 2015 the high court in New Zealand ruled against Ioane Teitiota, a farmer and fisherman from the island nation of Kirabati who was seeking protection and refugee status for himself and his family. Tabiteuea atoll, one of 33 small islands belonging to the Republic of Kirabati and Teitiota's place of birth, exists six feet above sea level and has experienced a significant decline in fresh groundwater sources. With the projected three feet rise in sea-levels due to glacial melt, in addition to the warming and consequent expansion of sea water, Kirabati will suffer from further flooding and erosion. More than half the population of Kirabati already lives in the capital island of Tarawa. Many people have moved from smaller outer islands that have already experienced a deprivation of resources, land, and consequent economic hardship caused by more extreme weather events and changes to the physical environment.

After first internally migrating to Tarawa, Teitiota moved across international borders to New Zealand and eventually made his case for protection against these threats. Teitiota's lawyers argued that he and his family would suffer harms and inevitable danger if protection was not secured. However, in September of 2015, Teitiota was deported after the New Zealand Supreme Court justified its decision to deny Teitiota protection and asylum on the grounds that an appeal to refugee status on the basis of climate-based displacement is not made available by the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol. The court ruling stated that, "although the Court has every sympathy with the people of Kirabati, Mr. Teitiota's claim for recognition as a refugee is fundamentally misconceived [and] it attempts to stand the Convention on its head."<sup>1</sup>

Since the term 'refugee' is a legal term of art, the rights entailed by one's refugee status is narrowly defined by the 1951 Refugee Convention. According to the Convention, a refugee is someone who is owed protection on the basis of (i) their status as individuals persecuted for reasons of membership to some social group and (ii) their being located outside their country of nationality. Such individuals fear continued persecution if they were to be sent back to their "home" country because of the failure to be protected by their country of nationality.

In the various opinions that emerged over the course of the four years of Teitiota's legal battle, New Zealand legal authorities maintained that the effects of climate change do not constitute "persecution" that would otherwise warrant protected refugee status under the Convention. This is because the impacts of climate change are indiscriminate; they do not

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<sup>1</sup> Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment, [2015] NZSC 107, New Zealand: Supreme Court, 20 July 2015, [http://www.refworld.org/cases,NZL\\_SC,55c8675d4.html](http://www.refworld.org/cases,NZL_SC,55c8675d4.html).

target specific individuals for particular reasons. Furthermore, justices argued that granting asylum in Teitiota's case would establish a problematic international precedent that would permit "millions of people" facing hardships or deprivations caused by climate change to pursue asylum protection claims.

A recent study published in the spring of 2018 predicts that thousands of islands across the planet will be uninhabitable much sooner than originally predicted due to routine flooding and freshwater contamination.<sup>2</sup> Since close to 750,000 people reside on atoll islands, a significant number of people are at risk of becoming displaced in the next few decades from these territories alone. Additionally, low-lying islands are not the only territories at risk of becoming uninhabitable and citizens of island nations are not the only people at risk of climate change-induced displacement.<sup>3</sup> Researchers recently released a study which predicts that temperatures in the Middle East and North Africa (where over 500 million people live) will rise to the extent that habitability in the region will be compromised regardless of whether we can slow the increase in global surface temperatures by reducing green-house gas emissions.<sup>4</sup> Recently, Central American migrants have been making the dangerous journey to the U.S. border with Mexico in part due to intense and lasting drought that has severely impacted crop growth in the region.<sup>5</sup>

According to research conducted for the United Nations High Commissioner for Refugees (UNHCR), there are several subcategories of people who will find their territories uninhabitable due to the effects of climate change. There are people who will need to move from areas prone to "sudden-onset" natural disasters. The intensity and severity of these "natural disasters" (such as flooding) has increased as a result of climate change. Additionally, people's livelihoods may be threatened by "slow-onset" effects of climate change. Such effects include sea level rise and the resulting salinization of freshwater sources and an increased frequency of droughts.

In light of these various types of displacement, uninhabitability may be considered on a continuum and may be the result of a multitude of intersecting factors that include climate change. While in some cases uninhabitability will be easy to determine, as in the case of disappearing island nations, in other cases it may be more difficult to identify. This may be due to difficulties in determining whether patterned changes to an environment are due to climate change. Additionally, the uninhabitability of a region may only effect some but not all members of a state. Furthermore, given the rate of deterioration of a region, the liveability of a region may decline prior to the physical disappearance of the territory. Due to the difficulty in evaluating reasons for movement, estimates forecasting the number of climate change migrants vary between 140 million to as many as 1 billion people by 2050.

While there have already been a number of proposed strategies to address the challenges faced by those displaced by climate change, there is no body of jurisprudence nor is there an authoritative international institution responsible for governing climate-related movement

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<sup>2</sup> Curt D. Storlazzi, Stephen B. Gingerich, Ap van Dongeren, Olivia M. Cheriton, Peter W. Swarzenski, Ellen Quataert, "Most atolls will be uninhabitable by the mid -21st century because of sea-level rise exacerbating wave-driven flooding," *Science Advances* 4, no. 4 (2018): 5-6.

<sup>3</sup> Jackie Flynn Mogensen, "Climate Change Will Make Thousands of Islands Uninhabitable. A New Study Says It Will Happen Sooner Than We Thought," *Mother Jones*, April 25, <https://www.motherjones.com/environment/2018/04/climate-change-will-make-thousands-of-islands-uninhabitable-a-new-study-says-itll-happen-sooner-than-we-thought/>

<sup>4</sup> J. Lelieveld, Y. Proestos, P. Hadjinicolaou, M. Tanarhte, and E. Tyrlis, G. Zittis, "Strongly increasing heat extremes in the Middle East and North Africa (MENA) in the 21st Century," *Climatic Change* 137, no.1-2 (2016): 245-260.

<sup>5</sup> Jeff Ernst, "You can't make a living here anymore": The Honduran climate-movers" <https://story.californiasunday.com/honduras-climate-movers>

and addressing this increasingly urgent challenge. Due to the limited scope of international legal conceptions of refugee rights, current cases of climate displacement rely on inadequate legal resources and insufficient ad hoc humanitarian schemes. For example, some of the limited protection efforts have been based on legal resources for environmental disasters or non- anthropogenic environmental change. Swedish asylum law is a model for this type of approach as it provides a national provision to protect people unable to return to their country of origin due to some environmental disaster. However, it is unclear as to whether this protection extends to those displaced by climate change in particular.

In addition to the absence of an international institution tasked with addressing the intersection of climate change and migration, and the lack of both national and international jurisprudence to address climate change-based displacement, the White House's rejection of collective climate action coupled with severely restrictive immigration policies and accompanying xenophobic sentiment continue to hamper the establishment of both international agreements and national policies to address the challenge of climate change-based displacement. For example, in 2018 the UN Global Compact for Migration was adopted as the first (nonbinding) multilateral agreement in defining a common approach to migration and an official identification of climate change as a driver of migration. However, this international agreement, signed by 164 countries, was rejected notably by the United States and several other countries most responsible for contributing to global climate change.

Furthermore, under Trump, U.S. refugee resettlement is at a record-low, and the administration continues to undermine the protection regime and limit legal migration. A notable example of how such policies disregard considerations of the impact of climate change came with the announcement that the Trump administration would not extend temporary protected status to Bahamas residents displaced by the Category 5 Hurricane Dorian. Temporary protected status (TPS) is a form of humanitarian relief which grants work permits and permission to remain in the U.S. for a period of time (ranging from 6-18 months) for people whose countries of birth or residence are unsafe to return to (due to natural disasters, war, or other such crises). The decision to deny TPS for Bahamas residents is not only a departure from previous administrations' responses to such crises, it is also an indication of the far-reaching consequences of such immigration decisions under conditions of climate change. As climate change contributes to the intensity and frequency of storms and other weather events, it is likely that those vulnerable to short-onset climate-based displacement will be even more limited as the U.S. continues to cut off opportunities for protection.

While the challenge of climate change-based migration and displacement is complex, ignoring the relationship between climate change and movement will not lessen its magnitude as a challenge for the international community. Furthermore, wealthy nations that continue to advance absolute appeals to sovereignty or climate skepticism in their refusal to participate in multilateral agreements will continue to face such challenges even on the domestic front.

Fortunately, in the context of the United States, the challenge has not gone entirely unnoticed by those in government. A bill, called the Climate Displaced Persons Act, was introduced by House Democrats in the fall of 2019 in order to put forward legislation that establishes protection for migrants displaced by climate change.<sup>6</sup> This significant piece of legislation,

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<sup>6</sup> S. 2565 – A bill to establish a Global Climate Change Resilience Strategy, to authorize the admission of climate -displaced persons, and for other purposes. 116<sup>th</sup> Congress (2019-2020). <https://www.congress.gov/bill/116th-congress/senate-bill/2565?q=%7B%22search%22%3A%5B%22Climate+Displaced+Person%27s+Act+of+2019%22%5D%7D&s=1&r=1>

introduced by Rep. Nydia Velázquez, though doomed to fail to become law under the Trump administration, is a marked effort on the part of Democrats to construct federal plans to address the varied challenges climate change poses. The bill directs the State Department to work in conjunction with other federal agencies to create a Global Climate Resilience Strategy that centers climate change in U.S. foreign policy and directs the White House to collect data and submit an annual reports to Congress on displacement due to extreme weather, sea level rise, and drought. The bill is a first of its kind, and a companion to additional legislation proposed by Senator Ed Markey, one of the primary advocates for a Green New Deal.

While only a preliminary step in the direction of addressing the nascent climate displacement challenge, legislation such as the Climate Displaced Persons Act is at least a demonstration of an increasing responsiveness to the growing political, legal, and moral challenge climate change-based displaced poses for the United States. However, an important feature of climate change-based displacement is that it currently occurs within a global territorial state system. Individuals are not free to migrate within this system, and thus movement away from uninhabitable territories and dangerous and unstable environmental conditions without multilateral agreements regarding the protection of such movement is not an accessible adaptation strategy. Relying on *ad hoc* domestic policies of individual states is no longer sufficient to address the pressing moral, political, legal, and humanitarian challenge that climate-based displacement poses. The challenge demands a collective global response and the formulation of international agreements and possibly the development of international institutions responsible for governing climate-related movement.