

CHAPTER 5

Beyond 'Refugee' Status: Reimagining the Application of Non-Refoulement for Climate-Displaced Persons

Paramesti Mukhopadhyay and Prashna Samaddar

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CHAPTER 5

Beyond ‘Refugee’ Status: Reimagining the Application of Non-Refoulement for Climate-Displaced Persons

PARAMESTI MUKHOPADHYAY* AND DR. PRASHNA SAMADDAR**

Escalating climate changes have led to the emergence of a category of ‘forced migration’ which still persists as an unresolved issue within the framework of international law. Persons being displaced due to severe climatic conditions continue to remain external to the purview of ‘refugees’ as embodied under the Convention ‘Relating to the Status of Refugees, 1951.’ This existing structure limits protection of ‘climate-displaced’ persons owing to an inadequate definition of ‘persecution’ provisioned under the Convention. Nonetheless, there is a crucial need for developing a mechanism that would ensure protective safeguards to climate-displaced persons. Hence, this paper contends that such development requires a re-evaluation of the principle of ‘non-refoulement’ in order to bridge the protection gap. The essence of non-refoulement warrants the protection of life and freedom by prohibiting contracting parties from expelling or returning persons who are given the status of ‘refugees’ by virtue of the Convention. Going beyond the conventional paradigms, this principle must be moulded to incorporate the climate displaced persons. Lack of recognition of climate-displaced persons as refugees under the Convention must not interfere with the obligation of states to protect climate-displaced persons. This paper advocates for a conceptual transition in the application of non-refoulement where the state responsibility remains grounded in ‘risk or harm based’ protection rather than ‘persecution based’ protection. Envisioning non-refoulement beyond the mere limits of persecution will aid in addressing the lacuna existing in the international law framework. Extending this ambit will offer an ‘integrated approach of refugee law and human rights law’ whereby the ‘principle of non-refoulement’ will guarantee the protection of rights of persons who are affected by climate-induced displacement.

Keywords: Migration, Refugee, Persecution, Climate-displaced, Non-refoulement, Protection.

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1 INTRODUCTION

‘It is for the people to determine the destiny of the territory and not the territory the destiny of the people.’¹

The rapid growth in drastic environmental conditions has gradually made displacement a matter of compulsion rather than choice. The latest report by the ‘Internal Displacement Monitoring Centre’ documents the displacement of 45.8 million people due to disasters in 2024 which accounts for nearly seventy percent of the total displacements.² Climatic events including excessive heavy rainfall, continued drought, tremendous cyclones, etc., have led 90 out of 123 million displaced people to survive in countries with utmost exposure to hazardous environmental conditions.³ The ‘issue of climate change’ acts as a ‘threat multiplier’ which leads to the increase in vulnerabilities relating to ‘poverty’, ‘insecurity’ and ‘weak governance’.⁴ The UNHCR identified this issue of climate crisis as a ‘risk-multiplier’ that exacerbates and amplifies prevailing ‘inequalities’ and ‘injustices’ comprising the repercussions of ‘conflict’, ‘violence’ and ‘forced displacement’ within and across borders.⁵ Declaration of *Ecosystem Threat Register (ETR)* in 2018 revealed that not less than 1.2 billion people have high risks of being displaced due to these threats by 2050.⁶ Despite this accelerating rate of ‘climate-displaced’ persons, international refugee law exposes a structural gap by not recognizing climate hazards as a well-grounded reason for which the fear of persecution can arise thereby repudiating such individuals from the status of a refugee.

The existing international framework elucidates a refugee as an individual who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”.⁷ This narrow definition limits the application of the same to ‘climate-displaced’ persons. The ‘UN Framework Convention on Climate Change’ endorsed the *Cancun Agreement* which urged States to incorporate measures

¹ Western Sahara, Advisory Opinion, 1975 I.C.J. 12, ¶ 122 (Oct. 16).

² INTERNAL DISPLACEMENT MONITORING CTR., GLOBAL REPORT ON INTERNAL DISPLACEMENT (2025), https://api.internal-displacement.org/sites/default/files/publications/documents/idmc-grid-2025-global-report-on-internal-displacement.pdf?_gl=1*h4d1vl*_ga*MTg2MjI5NDEwMi4xNzc2MzkyNjA4*_ga_PKV55L6N8V*c zE3NzY0MjU0NDQkbzIkZzAkdDE3NzY0MjU0NDQkajYwJGwJGgw.

³ *How Climate Change Impacts Refugees and Displaced Communities*, USA FOR UNHCR, THE UN REFUGEE AGENCY (Apr. 22, 2026), <https://www.unrefugees.org/news/how-climate-change-impacts-refugees-and-displaced-communities/>.

⁴ Fatemeh Doshman Kosh, *Climate Refugees in the Crucible of International Law: From Identifying Normative Gaps to Proposing a Comprehensive Protection Framework a Synthetic Analysis of Contemporary Legal Scholarship and Institutional Approaches* (Apr. 20, 2026), <https://dx.doi.org/10.2139/ssrn.6309382> [<https://perma.cc/2LXN-HHM7>].

⁵ Nina Lakhani, *Climate Disasters Displaced 250 Million People in Past 10 Years, UN Report Finds*, GUARDIAN (Nov. 19, 2025), <https://www.theguardian.com/environment/2025/nov/09/climate-disasters-displaced-250-million-people-in-past-10-years-un-report-finds>.

⁶ *Climate Refugees – the World’s Forgotten Victims*, WORLD ECON. F. (June 18, 2021), <https://www.weforum.org/stories/2021/06/climate-refugees-the-world-s-forgotten-victims/>.

⁷ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

to “enhance understanding, coordination and cooperation with regard to climate change induced displacement.”⁸ Adoption of ‘The New York Declaration for Refugees and Migrants’ by the ‘UN General Assembly in 2016’ endorsed the development of two global domains – ‘refugees’ and ‘other migrants.’⁹ The ‘Global Compact for Safe, Orderly and Regular Migration’ along with the COP24 (‘24th Conference of the Parties to the United Nations Framework Convention on Climate Change’) stressed on the dire circumstances of persons displaced due to climate change.¹⁰ Ian Fry, ‘special rapporteur on human rights and climate change to the United Nations’, recommended the adoption of a new protocol to the 1951 Geneva Convention¹¹ which would focus on individuals displaced due to climate change in its entirety.¹² Despite these recurring negotiations and several international instruments, climate displaced persons have neither been accorded a definition nor any legal protection. Hence the question persists – ‘when do individuals classify as climate refugees?’

The first attempt to define the category of ‘climate-displaced persons’ as ‘environmental refugees’ was made by the UNEP researcher, *Essam El-Hinnawi*, who elaborated ‘environmental refugees’ as “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life.”¹³ Nevertheless, this umbrella ambit was criticised on the basis of its generic criteria and no distinction among types of environmental refugees. The ‘OAU Convention’, 1969¹⁴ was another endeavour to extend protective safeguards to climate-displaced persons by clarifying that a “Refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” but it failed in terms of providing global protections.¹⁵

Gradually, the term ‘climate refugees’ became the most commonly used expression which can be elucidated as “people who have to leave their habitats, immediately or in the near future,

⁸ Shaindl Keshen, Steven Lazickas & Lucía Solórzano, *Non-refoulement: A Legal Hope for the Protection of Environmental Migrants and Their Rights*, INT’L ORG. & UNITED NATIONS STUD. (Nov. 3, 2021), <https://multilateralism.sipa.columbia.edu/news/non-refoulement-legal-hope-protection-environmental-migrants-and-their-rights>.

⁹ EUR. PARLIAMENTARY RSCH. SERV., THE CONCEPT OF ‘CLIMATE REFUGEE’ TOWARDS A POSSIBLE DEFINITION (2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI\(2021\)698753_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI(2021)698753_EN.pdf).

¹⁰ *Id.*

¹¹ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

¹² Julian Hatter, “Climate Refugees” Do Not Exist as a Concept—But Countries Are Testing New Approaches to Offer Protection, MIGRATION POL’Y INST. (Mar. 19, 2026), <https://www.migrationpolicy.org/article/climate-migration-law>.

¹³ Diane C. Bates, *Environmental Refugees? Classifying Human Migrations Caused by Environmental Change*, 23 SPRINGER 466 (2002).

¹⁴ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, 1001 U.N.T.S. 45 (entered into force June 20, 1974).

¹⁵ Tyler Bergeron, *No Refuge for ‘Climate Refugees’ in International Law*, ENV’T, NAT. RES., & ENERGY L. BLOG (Jan. 20, 2023), https://law.lclark.edu/live/blogs/200-no-refuge-for-climate-refugees-in-international#_ftn8.

because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: rise in sea level, extreme weather events, and drought and water scarcity."¹⁶ Michael W. Doyle attempted to define 'climate refugees' as "someone liable to being returned to a country experiencing adverse climate effects that were – contributing to an increasing threat of loss of life, resulting in harms to family life or indigenous culture, not being adequately addressed by local policy measures and not supported by global measures for enhancing resilience".¹⁷ Various intergovernmental agencies prefer the term 'environmentally displaced persons' as they choose to restrict the usage of the term 'refugees' to transboundary movement or flight where there lies a fear of 'persecution' as per the 'Geneva Convention Relating to the Status of Refugees', 1951.¹⁸ Hence, the fundamental challenge that arises is that climate refugees are unable to assert their well-founded fear of persecution and thereby membership in one of the groups highlighted in the 'Geneva Convention, 1951'¹⁹ which excludes them from the bracket of 'refugees'.²⁰ This further leads to the elimination of climate-displaced persons from the implementation of the 'principle of non-refoulement.'

2 CONTOURS OF PERSECUTION

There is a dearth of a precise definition of 'persecution' under the present 'international refugee law' framework. 'Article 33 of the Geneva Refugee Convention, 1951'²¹ only outlines the components that comprise 'persecution' for the 'application of non-refoulement' rather than providing a comprehensive definition. Considering persecution as a pivotal constituent which underpins the premise of non-refoulement, it becomes crucial to establish and articulate its contours.

In 1991, a more principled framework was formulated by Hathaway who linked persecution with the denial of internationally recognised rights.²² Persecution can be interpreted as "serious human rights violations, including a threat to life or freedom, as well as other kinds of serious

¹⁶ Frank Biermann & Ingrid Boas, *Climate Change and Human Migration: Towards a Global Governance System to Protect Climate Refugees*, EUR. COMM'N (2010), https://www.globalgovernancewatch.org/library/doclib/20160205_ClimateChangeandHumanMigration.pdf.

¹⁷ Michael W. Doyle, "Forced Migrants," *Human Rights, and "Climate Refugees"*, CAMBRIDGE UNIV. PRESS (2025), <https://www.cambridge.org/core/books/lawless-zones-rightless-subjects/forced-migrants-human-rights-and-climate-refugees/1198282269488672E98798EC044763A9>.

¹⁸ Frank Biermann & Ingrid Boas, *Climate Change and Human Migration: Towards a Global Governance System to Protect Climate Refugees*, EUR. COMM'N (2010), https://www.globalgovernancewatch.org/library/doclib/20160205_ClimateChangeandHumanMigration.pdf.

¹⁹ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

²⁰ Nandini Praveen, *Climate Refugees: A Comprehensive and Legal Analysis to Understanding Climate Change-Induced Migration and Displacement*, 2 J.L. & EMERGING TECH. 42 (2022).

²¹ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

²² Daniel Wilsher, *Between Martyrdom and Silence: Dissent, Duress, and Persecution as the Suppression of Human Rights Under the Refugee Convention*, 33 INT'L J. REFUGEE L. (2021).

harm, as assessed in light of the opinions, feelings and psychological make-up of the applicant."²³ Article 9 of Council Directive 2004/83/EC explicates 'acts of persecution' as "*acts which are sufficiently serious to constitute a 'severe violation of basic human rights.'* This can be either in their 'nature or repetition' or through an 'accumulation of various measures.'"²⁴ Persecution was articulated and defined by Lord Hoffmann in the formula "*Persecution = Serious Harm + The Failure of State Protection*".²⁵

Although the concept of persecution is inherently anchored in severe violations of human rights and imposition of grave harm, its legal formulation is restricted to certain listed grounds specified under the Refugee Convention, 1951²⁶. This limited enumeration precludes climate-displaced persons from attaining refugee status and further protection by non-refoulement. This normative lacuna emphasises the need for alternative avenues to provide protection to individuals who are displaced due to climatic changes. One of the avenues can be extension of the applicability of non-refoulement beyond its conventional paradigms by incorporating a human rights approach.

3 "NON-REFOULEMENT" – A 'JUS COGENS NORM'?

The literal interpretation of 'Article 33'²⁷ provides that "no state shall expel or return a refugee to their own territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". Article 42(1) of the Refugee Convention²⁸ provides an affirmation regarding the immunity of Article 33 from any kind of reservation. A 'negative obligation' is imposed on States by virtue of Article 33²⁹ which prevents the exposure of individuals to persecution.³⁰

Various scholars advance the argument of according the status of '*jus cogens*' to this principle on the basis of its inalienability.³¹ Currently, it has been clarified that the 'principle of non-refoulement' comprises a part of 'customary international law' which makes it binding on all States irrespective of them being a party to the 'Refugee Convention, 1951'.³² The *San*

²³ Janna Weßels, *Sexual Orientation in Refugee Status Determination* (RSC Working Paper No. 74, 2011), <https://www.rsc.ox.ac.uk/files/files-1/wp74-sexual-orientation-refugee-status-determination-2011.pdf>.

²⁴ Richmond Chambers, *What Is "Persecution" Under the Refugee Convention?* (Jan. 31, 2020), <https://immigrationbarrister.co.uk/what-is-persecution-under-the-refugee-convention/>.

²⁵ *Id.*

²⁶ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Siddeeqa Iram, *Reimagining the Asylum Law in India: A Study on the Duty of Non-Refoulement*, 36 NAT'L L. SCH. INDIA REV. (2025).

³¹ Aoife Duffy, *Expulsion to Face Torture? Non-refoulement in International Law*, OXFORD UNIV. PRESS (June 25, 2008), <https://www.eui.eu/Documents/DepartmentsCentres/AcademyofEuropeanLaw/CourseMaterialsHR/HR2010/Chetail/ChetailReading1.pdf>.

³² Jean Allain, *The Jus Cogens Nature of Non-refoulement*, 13 INT'L J. REFUGEE L. (2001).

Remo Declaration, ratified by the ‘International Institute of Humanitarian Law’ in alliance with UNHCR explicitly advocates the ‘status of non-refoulement’ as a foundational part of ‘customary international law.’³³ The principle is now recognised as a norm of customary international law as it fulfils the criteria of ‘*consistent State practice*’ and ‘*opinio juris*’.³⁴ The UNHCR emphasized that ‘the principle of non-refoulement’ has surpassed its conventional origin to be realised as a norm of customary international law contemplating a mutual understanding of its mandatory character in the sphere of international law.³⁵ It is deliberated that the doctrine of non-refoulement is that ‘*jus cogens norm*’ that directly accords protection to other absolute rights including the ‘*right to life*’ which enhances its binding nature.³⁶ It is also argued that this ‘principle of non-refoulement’ is an ‘*obligation erga omnes partes*’ due to three main factors – objective of the Refugee Convention³⁷, shared interest of state parties in following the compliances under the treaty and its absolute nature.³⁸ Hence, it can be clearly established that non-refoulement is inherent and non-negotiable and thus implementation of the same must not be based on any form of discrimination.

4 NON-REFOULEMENT BEYOND REFUGEE LAW

There is paramount necessity to recognise that the ‘principle of non-refoulement’ is not wholly rooted in the ‘Refugee Convention, 1951’³⁹. Its normative framework pervades through a broad spectrum of international instruments which constructs ‘non-refoulement’ as a more comprehensive obligation. Gradually over the decades, the ‘principle of non-refoulement’ has been embedded in several human rights instruments thereby underscoring its core purpose – ‘protection of human dignity’ and ‘prevention of harm.’ The regime of ‘international human rights law’ has widened the ambit of non-refoulement by requiring States to provide shelter to non-nationals in circumstances where their ‘life can be

³³ GLOB. STRATEGIC LITIG. COUNCIL, EXPERT REPORT ON NON-REFOULEMENT AS A PRINCIPLE OF CUSTOMARY INTERNATIONAL LAW (2023), <https://www.global-council.org/resources/expert-report-on-non-refoulement-as-a-principle-of-customary-international-law>.

³⁴ Ruchi Lal, *The Principle of Non-Refoulement in International Law and Its Applicability in Protection of Refugees in India*, 10 RES. J. HUMAN. & SOC. SCI. (2019).

³⁵ Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951*, DIV. OF INT’L PROT. OF THE UNITED NATIONS HIGH COMM’R FOR REFUGEES (1997), <https://www.unhcr.org/sites/default/files/legacy-pdf/3d4ab5fb9.pdf>.

³⁶ Helen Kerwin, *Teitiota and Climate Non-Refoulement: The International Law Obligation to Create Domestic Protection Mechanisms*, 59 U.S.F. L. REV. 502 (2025).

³⁷ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

³⁸ Pavitra Khaitan & Jvalita Krishan, *The Obligation of Non-Refoulement and Its Erga Omnes Partes Character*, HARV. INT’L L.J. (Dec. 24, 2022), https://journals.law.harvard.edu/ilj/2022/12/the-obligation-of-non-refoulement-and-its-erga-omnes-partes-character/#_ftn47.

³⁹ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

threatened' or be 'subjected to torture or inhuman or degrading treatment.'⁴⁰ *Ashfaq Khalfan* and *Chiara Ligouri* argued that the benefits obtained from the 'perspective of human rights' are three-fold. First, it reinforces the efforts for 'climate justice' at the global level; secondly, the ambit of 'international human rights' law advocates for broader 'legally binding obligations' which assist the States in designing more efficacious policies and the third advantage stems from the wide spectrum of 'human rights tools' which aids in seeking action and supervising outcomes.⁴¹

Obligation under non-refoulement has been expressly included in instruments like '*Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*'⁴² and '*International Convention for the Protection of All Persons from Enforced Disappearances*'⁴³. It can be also inferred from provisions included in '*International Covenant on Civil and Political Rights*', '*the Convention on the Rights of the Child*' and '*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*'.⁴⁴ Dispute settlement bodies like the 'International Court of Justice' and the 'European Court of Human Rights' asserted that the principle of non-refoulement is "*fundamental part of international human rights law, binding even on states that are not parties to the 1951 Refugee Convention.*"⁴⁵ A combined reading of 'international refugee law' and 'international human rights law' prescribes three conditions based on which the protection under this principle is extended – when an individual is within State jurisdiction, when a person is fleeing due to armed conflict and when an individual is compelled to leave due to direct and indirect measures.⁴⁶ Through this incorporation, this principle can provide 'protection to any individual under the jurisdiction of a State' subjected to the presence of any form of pertinent danger.⁴⁷

⁴⁰ INT'L. ORG. FOR MIGRATION, IML INFORMATION NOTE ON THE PRINCIPLE OF NON-REFOULEMENT (Oct. 13, 2023), https://www.iom.int/sites/g/files/tmzbdl2616/files/our_work/ICP/IML/2023-updated-impl-information-note-on-non-refoulement.pdf.

⁴¹ Jane McAdam & Sanjula Weerasinghe, *Climate Change and Human Movement* (UNSW Law Research Series No. 47, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3682410.

⁴² Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

⁴³ International Convention for the Protection of All Persons from Enforced Disappearance, 2006, 2716 U.N.T.S. 3 (entered into force Dec. 23, 2010).

⁴⁴ INT'L. ORG. FOR MIGRATION, IML INFORMATION NOTE ON THE PRINCIPLE OF NON-REFOULEMENT (Oct. 13, 2023), https://www.iom.int/sites/g/files/tmzbdl2616/files/our_work/ICP/IML/2023-updated-impl-information-note-on-non-refoulement.pdf.

⁴⁵ GLOB. STRATEGIC LITIG. COUNCIL, EXPERT REPORT ON NON-REFOULEMENT AS A PRINCIPLE OF CUSTOMARY INTERNATIONAL LAW (2023), <https://www.global-council.org/resources/expert-report-on-non-refoulement-as-a-principle-of-customary-international-law>.

⁴⁶ Tilman Rodenhäuser, *The Principle of Non-Refoulement in the Migration Context: 5 Key Points*, HUMANITARIAN L. & POL'Y (Mar. 30, 2018), <https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points/>.

⁴⁷ *Id.*

5 REIMAGINING NON-REFOULEMENT FOR CLIMATE REFUGEES

Jesús Verdú Baeza argues that one of the legal responses to climate-induced forced displacement would be to establish a connection between the notion of climate refugees and the necessity for ‘increased protection of human rights’ through a widened interpretation of prevailing international instruments.⁴⁸ Under ‘international refugee law’, the applicability of ‘non-refoulement’ is dependent on an existing fear of persecution which further denies recognition to climate-displaced individuals as ‘refugees’. Nonetheless, the ‘Preamble of the Refugee Convention’, 1951⁴⁹ itself emphasizes on “*fundamental rights and freedoms of human beings without discrimination*” as affirmed by ‘Charter of the United Nations and the Universal Declaration of Human Rights.’⁵⁰ Thus, the bedrock of the notions of ‘persecution’ and ‘non-refoulement’ can be considered to be rooted in ‘protection of human rights.’ This perspective can entail climate-induced displacement to be violative of human rights as massive harm is caused to them independent of their status of recognition under the Refugee Convention, 1951⁵¹.

The landmark ruling in *Teitiota v. New Zealand*⁵² significantly strengthened the status of the ‘principle of non-refoulement’ as a core obligation within the purview of ‘international human rights law’. This case revolved around *Ioane Teitiota* who claimed his deportation to Kiribati to be violative of his ‘right to life’ owing to the severe life threats posed by climatic factors on the small Pacific Island. Although the U.N. Human Rights Committee concluded that the present case did not show any deficiency, it went on to set a global precedent by upholding that “*a State will be in breach of its human rights obligations if it returns someone to a country where – due to the climate crisis – their life is at risk, or in danger of cruel, inhuman or degrading treatment triggered.*”⁵³ The Committee had stressed upon the existence of an actual risk of ‘irreparable harm’ as a requisite for deriving state protection for future cases. It was further analysed by the Committee that States have obligations under the ‘International Covenant on Civil and Political Rights (ICCPR)’⁵⁴. It emphasized that “*the obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant may be broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of [non-citizens] not entitled to refugee status. Thus, States parties must allow all asylum seekers claiming a*

⁴⁸ Jesús Verdú Baeza, *Climate Refugees, Human Rights and the Principle of Non-Refoulement*, 11 EUROMEDITERRANEAN J. INT’L L. & INT’L REL. 6 (2023).

⁴⁹ Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Ioane Teitiota v. New Zealand*, Judgement, CCPR/C/127/D/2728/2016 (U.N. Hum. Rts. Comm. Jan. 7, 2020).

⁵³ Melissa Godin, *Climate Refugees Cannot Be Forced Home*, U.N. Panel Says in Landmark Ruling, TIME (Jan. 20, 2020), <https://time.com/5768347/climate-refugees-un-ioane-teitiota/>.

⁵⁴ International Covenant on Civil and Political Rights, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against refoulement.”⁵⁵ The court also upheld that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”⁵⁶ Similarly, the case of *Portillo Caceres v. Paraguay*⁵⁷ highlighted that environmental harm leads to the violation of multiple human rights enshrined in ‘ICCPR (International Covenant on Civil and Political Rights)’.⁵⁸ Thus, these judgements advocated for a wider interpretation of the ‘principle of non-refoulement’ which would ensure protection and dignity to those individuals who are subjected to climate-induced displacement.

The fundamental principle emerging from these rulings is the ‘international protection’ and ‘assistance’ of climate displaced persons by States even though they are not recognised as refugees *stricto sensu*.⁵⁹ Extended application of ‘principle of non-refoulement’ combined with ‘international human rights law’ imposes a necessary obligation on States not to return climate displaced persons to their countries where there lies a risk of ‘serious human rights violations resulting from climate change.’ In reference to the ‘protection of human rights in the context of climate change’, the ‘United Nations Special Rapporteur’ stated that “there is an urgent need to provide a legal regime to protect the rights of persons displaced across international borders due to climate change.”⁶⁰ This necessity of protection of climate displaced persons flows from their ‘individual humanitarian needs’ which surpasses the sovereignty of a State and the ‘interests of the state of origin, the transit state and the destination state’.⁶¹ This evolving jurisprudence throws light on the dire need to strengthen a human-rights oriented structure of the principle of non-refoulement that provides comprehensive protection to climate-displaced persons despite no refugee status.

⁵⁵ Helen Kerwin, *Teitiotia and Climate Non-Refoulement: The International Law Obligation to Create Domestic Protection Mechanisms*, 59 U.S.F. L. REV. 502 (2025).

⁵⁶ Jane McAdam, *Current Developments – Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement*, 114 AM. J. INT’L L. 717 (2020).

⁵⁷ *Portillo Caceres v. Paraguay*, Judgement, CCPR/C/126/D/2751/2016 (U.N. Hum. Rts. Comm. July 25, 2019).

⁵⁸ Megan Scopp, *Climate-Induced Displacement: Establishing Legal Protections for Climate Refugees* (2025), <https://dx.doi.org/10.2139/ssrn.5126351>.

⁵⁹ Andrea Caligiuri, *Invisible in Law: Environmental and Climate Migrants and the Gap in International Protection*, 111 QUESTIONS INT’L L., ZOOM-IN 2 (2025).

⁶⁰ Philippe A. Gagnon & Alexia Lagacé-Roy, *Climate Change and Migration: The State of International Refugee and Human Rights Law*, LIBR. OF PARLIAMENT HILLSSTUDIES (Nov. 11, 2025), https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202402E.

⁶¹ Carina Dietmayer, *Fleeing the Climate: The Need for Protection of Climate Refugees in the Light of International Law*, 37 PACE INT’L L. REV. art. no. 6, at 306 (2025).

6 CONCLUSION

The existing international refugee legal framework remains structurally inadequate in addressing the ‘issue of climate refugees.’ They continue to remain outside the purview of defined refugees under the ‘Refugee Convention, 1951’⁶². Hence, recourse must be taken by extending the State obligation under the ‘principle of non-refoulement’ to provide protection instead of grounding the obligation in defined conventional ‘fear of persecution’. Recent judicial jurisprudence reflects on the competence of international human rights law to deal with climate-induced displacement.⁶³ It verified that the integration of human rights perspective into non-refoulement requires States ‘not to send individuals back to countries where drastic climate changes would expose them’ to ‘life threatening risks, cruel, inhuman or degrading treatment.’⁶⁴ The conventional application of the ‘principle of non-refoulement’ is based on the premise of ‘well-founded fear of persecution’ but persecution itself is not an isolated legal construct. Rather, the essence of persecution is derived from severe violations of human rights which further underpins the concept of ‘non-refoulement.’ The ‘principle of non-refoulement’ must be construed as a mechanism aiming at safeguarding and protecting human rights that can extend beyond the mere perseverance of a ‘formal refugee status’. The *‘jūs cogens’* character of the ‘principle of non-refoulement’ and its recognition as customary international law provides a binding obligation on States to not practise refoulement which must be made applicable for climate refugees as well. Hence, States must have a legal duty to incorporate climate-displaced individuals into their territories despite no refugee status granted under the ‘Convention Relating to the Status of Refugees, 1951’ and the ‘1967 Protocol Relating to the Status of Refugees.’

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⁶² Convention Relating to the Status of Refugees, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954).

⁶³ 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/>.

⁶⁴ Sissy Katsoni & Jan-Phillip Graf, *The Future of “Climate Refugees” in International Law*, VÖLKERRECHTSBLOG (June 5, 2021), <https://voelkerrechtsblog.org/the-future-of-climate-refugees-in-international-law/>.