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THE VANISHING NATIONS AND THE LEGAL RIGHTS OF CLIMATE REFUGEES FROM SINKING ISLAND STATES

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I. ABSTRACT

Whole nations are slowly going underwater not due to war or poverty, but rather rising sea levels. As islands such as Tuvalu and Kiribati watch their territorial borders slip away along with their land mass, one very ominous legal question now arises: what happens to a nation whose land disappears, and what happens to the people of that nation when there is no state for them to identify themselves as citizens of? This article addresses a significantly under-explored area of climate-induced statelessness and the legal invisibility of climate refugees in international law. Using a doctrinal and comparative approach, this paper evaluates and critiques the deficiencies of existing legal regimes-the 1951 Refugee Convention and the 1961 Statelessness Convention-in tackling such legal question. The paper also looks at how existing frameworks, such as the UNFCCC and the Paris Agreement, do not grant displaced persons due binding protection from environmental collapse, and how the absence of enforceable obligations continues to marginalize affected communities. It considers the emerging responses, including the proposals for digital sovereignty where nations such as Tuvalu attempt to preserve their identity, governance, and culture through technological continuity. It argues that ultimately, climate displacement is a constitutional and moral crisis, not just a humanitarian concern, which redefines concepts of nationhood, citizenship, and human rights; it calls for wide-reaching legal reform, ethical responsibility, and collective international cooperation to ensure that when land disappears, the law, identity, and justice will endure beyond the tides.

II. KEYWORDS

Climate, Refugees, statelessness, Environmental, International law, Disappearance

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III. INTRODUCTION

Simon Kofe, Minister for Justice, Communication and Foreign Affairs, announced the 'Future Now' (Te Ataeao Nei) project at COP27 in Sharm El-Sheikh, Egypt, in November 2022.², in anticipation of the future where its land ceases to exist. This kind of statement, in the real world, reflects the unimaginable reality that exists: entire nations are disappearing because of rising sea levels. While climate change is worsening for all low-lying island states, this is particularly urgent for Tuvalu, Kiribati, and the Marshall Islands, because their homes will be permanently underwater, and their peoples will have to exist without land, protection, or any legal recognition³. The peoples of these island nations are very close to becoming “stateless without movement”

They are already being erased by nature, but, so far, they are still being erased by law. International law is lagging on this issue, even despite how urgent it is. The 1951 Refugee Convention does not recognize a status of “refugee”⁴ for people who are fleeing environmental collapse, and the 1961 Convention⁵ on the Reduction of Statelessness does not have any 'successful' mechanism for providing examples for people who have lost their nationality due to climatic destruction. There is also no example in international law establishing what happens when a sovereign state ceases to exist. Within the contemporary global legal environment, where both climate justice and the issue of migration are being affected concurrently, the issue exists at the interface of human rights, refugee law, territorial sovereignty, and environmental justice. It raises questions about what we mean by nationhood, citizenship, and legal protection.

The goal of this article is to provide an account of the legal identity crisis experienced by the citizens of sinking island nations, to illustrate its limitations in terms of international law, the challenges of statelessness caused by climate factors, and to

² Serafina O’Faolain, ‘Tuvalu to Become First Digital Nation’ (The Guardian, 2022).

³ Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP 2012).

⁴ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

⁵ Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

argue that climate refugees should be included as protected persons under existing and future binding legal instruments. It shifts attention to accountability in a new way and pushes for a future oriented legal framework of dignity, rights, and belonging appropriate for people from nations that may or may not exist one day outside of memory or cartography.

A. APPROACH AND SCOPE OF RESEARCH

It will examine relevant treaties, conventions, and legal norms on refugee protection, statelessness, and state sovereignty in international law. In addition to primary legal instruments such as the 1951 Refugee Convention, the 1961 Convention on the Reduction of Statelessness, and the UNFCCC, key primary and secondary data sources include General Comments from various UN instruments, reports from international agencies (e.g. UNHCR, IOM, relevant international organizations), and scholarly articles and legal commentaries and case law, in order to understand the policy gaps. The article incorporates a comparative approach in order to examine how different jurisdictions, including the Climate Refugee visa proposal in New Zealand, are seeking to fill the legal void. Further, the methodology is interdisciplinary as it incorporates environmental justice, human rights law, and public international law. In conclusion with this layered approach, the article seeks to illuminate not only the legal invisibility of climate refugees, but provide renewed calls to action on the moral and political imperative to reform in light of disappearing homelands.

B. RESEARCH QUESTIONS

- How does current international law, including the 1951 Refugee Convention and the 1961 Statelessness Convention, address or fail to address the legal status of climate refugees from sinking island nations?
- What are the legal and practical challenges of recognizing displaced populations from disappearing nations as refugees under international law?
- How can existing frameworks like the UNFCCC and the Paris Agreement be reformed to provide binding protection for climate-displaced persons?

- What are the legal implications when a sovereign state loses its territory due to climate change, and how does this affect the citizenship and nationality of its people?

C. RESEARCH HYPOTHESES

- The 1951 Refugee Convention and the 1961 Statelessness Convention are insufficient to address the legal challenges posed by climate-induced statelessness and displacement, leaving climate refugees without adequate protection.
- The lack of binding international legal frameworks for climate displacement, such as those within the UNFCCC, exacerbates the marginalization of displaced populations from sinking island nations.
- The recognition of climate refugees under existing international law will require a redefinition of the concepts of sovereignty, nationhood, and citizenship, as the traditional criteria for refugee status do not apply to environmental causes.
- Emerging solutions, such as digital sovereignty models, may provide a temporary form of legal identity and protection for displaced island nations, but they do not address the broader legal and political challenges of statelessness.
- Without substantial reform and international cooperation, climate refugees will continue to be legally invisible and politically marginalized, lacking access to basic human rights protections.

D. RESEARCH METHODOLOGY

This study adopts a doctrinal and comparative approach to explore the legal status and rights of climate refugees, particularly those from sinking island nations. The research involves analyzing international legal instruments, such as the 1951 Refugee Convention, the 1961 Statelessness Convention, and the UNFCCC, to identify gaps in protection for individuals displaced by climate change. It uses a comparative methodology to examine how different jurisdictions, like New Zealand's climate

refugee visa proposal, address climate displacement. The study also includes interdisciplinary insights from environmental justice, human rights law, and public international law to highlight the ethical and legal implications of statelessness due to climate change. Through this, the research aims to propose new legal frameworks and reforms for the recognition and protection of climate refugees.

E. EXISTING LEGAL FRAMEWORK AND THEIR LIMITATIONS

International law is presently unable to delineate a legal status for those displaced by climate change particularly slow onset disasters like rising sea levels. Many of the most important principles of refugee protection are articulated with reference to land and nationality. The 1951 Refugee Convention, which is the legal bedrock of refugee protection, defines a refugee as someone who flees persecution⁶ based on factors like race, religion, or political opinion not environmental reasons. Without legal protections, those fleeing nations submerged under rising sea levels will not receive refugee protection. The 1961 Convention on the Reduction of Statelessness does not address that specific predicament, where individuals may lose nationality based on the territory of their state disappearing. Article 1 of the Montevideo Convention (1933)⁷, for example, states that a state has a permanent population, defined territory, a government, and the capacity to enter into relations with other states; climate change threatens the territorial component of these states' existence. Furthermore, neither of the non-binding provisions in the UN Framework Convention on Climate Change⁸ (UNFCCC) specifically contain legal safeguards established for climate displaced persons, creating an extremely dangerous gap in the international legal protections offered to persons displaced by climate change.

IV. WHEN COURTS FALL SILENT: THE JUDICIAL BLIND SPOT ON CLIMATE DISPLACEMENT

In contrast to other human rights matters, the climate change statelessness and displacement also lack significant judicial interpretation at both international and

⁶ 1951 Refugee Convention (n 3) art 1A (2).

⁷ Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933) 165 LNTS 19, art 1.

⁸ UNFCCC (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

domestic levels.⁹ One of the very few noteworthy cases is *Teitiota v. New Zealand* (2020)¹⁰, when the UN Human Rights Committee evaluated whether the rejection of a Kiribati national's claim for refugee status breached his right to life under article 6 of the International Covenant on Civil and Political Rights (ICCPR)¹¹. Although the Committee denied him relief, it heralded for the first time that climate change could qualify as a serious threat to life, indicating the potential for obligations of non-refoulement.¹²

In the domestic sphere, there remains no binding precedent recognizing climate refugees. Many courts defer to legislative frameworks, like the 1951 Refugee Convention, by which climate change would not be deemed an environmental basis of refugee status. This ongoing silence in the courts has formed a gap of interpretation for the thousands of people with no legal remedy.¹³ The absence of judicial activism to declare a climate change exception rooting from broader reluctance to reshape current refugee and statelessness protections to a warming world.¹⁴

V. LEGAL LACUNAE BENEATH RISING TIDES: A CRITICAL EXAMINATION

The legal framework governing displacement is not only outdated it is structurally blind to environmental realities. The 1951 Refugee Convention is based on post-war ideas of persecution and fails to adapt to slow onset disasters, such as rising sea levels. Traditional refugees flee intentional harm, but climate migrants flee environmental collapse, which the law does not recognize. The Montevideo Convention, which includes criterion of statehood, does not address what happens when a state is completely submerged under water.

⁹ Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press, 2012).

¹⁰ *Ioane Teitiota v New Zealand* (2020) CCPR/C/127/D/2728/2016 (UNHRC).

¹¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6.

¹² United Nations Human Rights Committee, *General Comment No. 36: Article 6 (Right to Life)*, CCPR/C/GC/36 (2018).

¹³ UNHCR, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (2020).

¹⁴ Siobhán McNerney-Lankford, "Human Rights and Climate Change: Framing the Legal Issues," *World Bank Legal Review* Vol. 6 (2015), pp. 135-158.

Without territory, a state may forfeit its UN membership, or diplomatic recognition including the power to protect its citizens, thus creating by default stateless persons, a situation not addressed by the 1961 Statelessness Convention. To date, countries such as New Zealand¹⁵ and Australia have piloted special visa schemes, but these remain non-binding and limited in scope. The lack of customary international law or a binding treaty, gives rise to the legal vacuum where protections are not guaranteed, but exercised at the discretion of the individual states¹⁶. This piecemeal and irregular pattern of 'protection' leaves legally invisible, politically vulnerable, and climate threatened populations.

VI. RECENT DEVELOPMENTS AND GLOBAL RESPONSES

Turning the tide or too late? In the past decade, climate displacement has changed from a warning of what is to come to a present-day crisis, prompting an international response however slow and inequitable. The global community was first introduced to Tuvalu when it announced it would establish its own nation in the metaverse¹⁷, also in 2021 as a digital way to preserve national sovereignty, culture, and legal identity, even when land disappears. This was a seemingly symbolic, and possibly desperate, act, which foreshadows how our notion of nationhood itself is being transformed by climate change.

In 2021, the UN Human Rights Council (UNHRC)¹⁸ passed the resolution recognising the right to a healthy environment as a human right, implicitly contributing to recognition of climate displaced communities. The UNHCR released protection guidelines which outline that climate change and the risk of climate induced displacement could intersect with traditional forms of persecution (though still stops shy of responding to calls for formal refugee status). At the national level, New Zealand announced it would introduce a specific climate refugee visa in 2017, although it was suspended later. Nevertheless, it represented a recognise of this new category.

¹⁵ Sarah Dehm, 'Visas and the Climate Crisis' (2021) 32 IJRL 131.

¹⁶ Jane McAdam, 'Swimming Against the Tide' (2009) 23 IJRL 2.

¹⁷ Republic of Tuvalu, *Address to COP27* (2022).

¹⁸ UNHRC Res 48/13 (2021).

Most recently, in 2022, the International Law Commission (ILC)¹⁹ began discussing the legal consequences of sea-level rise, including state sovereignty and statehood. There is a growing push in legal academia either to redefine the term "refugee" to encompass climate displaced persons or to develop a new primary treaty under the UN Framework Convention on Climate Change (UNFCCC). The Paris Agreement mentions "loss and damage," but without binding commitments. Climate litigation is also on the rise across the globe, with youth organizations and communities displaced by climate change litigation states for inaction.

Nevertheless, the vast majority of initiatives are non-binding, piecemeal, or symbolic. With no binding international legal instrument, displaced persons continue to live in uncertainly legally unprotected and politically marginalized. The recent developments show some favourable signs, but be in whole are far too little, and far too late unless they are turned into enforceable legal rights.

VII. INTERNATIONAL COOPERATION AND THE ROLE OF REGIONAL BODIES

While small island states such as Tuvalu, Kiribati, and the Marshall Islands are threatened by submergence from rising sea levels, the role of relating as a community through collective responsibilities towards climate refugees is being brought to light.²⁰ No one country can solve the issue of climate refugees alone, but it is clear that to share the responsibilities we all need to join together as a community, particularly the countries that have caused the most climate change.²¹

Although the UNFCCC recognizes the special conditions of Small Island Developing States (think SIDS) in global negotiations, it does not grant any legally binding protections to displaced populations from these countries as a result of climate change. The Paris Agreement recognizes "climate induced displacement" in Article

¹⁹ ILC, *Sea-level Rise in Relation to International Law: First Issues Paper* (2020).

²⁰ Intergovernmental Panel on Climate Change (IPCC), *Sixth Assessment Report, Summary for Policymakers* (2023).

²¹ United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (2015), Goals 13 & 17.

8²², but it does not outline or create a new legal category or rights framework for climate refugees.

This can be heartening and makes the involvement of regional bodies such as the Pacific Islands Forum, African Union, or South Asian Association for Regional Cooperation (SAARC) of great significance.²³ These organizations have the potential to lead the way for regional treaties or agreements that would encompass cross-border displacement caused by climate change. An example of this is New Zealand's previous pilot visa program granted to climate displaced people (though it has since been shut down).

The developed world especially those with large carbon footprints can offer climate finance, resettlement assistance, and the capacity to develop programs and initiatives in the island states. The Loss and Damage Fund through COP28²⁴ could be important if designed with a firm focus on a group of people that are facing a situation with permanent loss of their homeland. And unless there is unambiguous synergetic cooperation, there is a risk of whole cultures vanishing, and not just the land per se. This is a global and regional alliance and must cooperate to do everything possible to ensure that climate refugees fleeing these disappearing nations are not without any state, any rights or any voice.

VIII. TECHNOLOGY, DIGITAL SOVEREIGNTY, AND THE FUTURE OF VANISHING NATIONS

In recent years, technology has emerged as an unexpected ally in the fight for the survival of vanishing nations. As rising seas threaten the physical existence of low-lying island states, digital transformation is being explored as a means to preserve sovereignty, governance, and cultural identity. In 2022, Tuvalu announced its plan to become the world's first digital nation creating a complete online replica of its land,

²² Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1, art 8.

²³ Pacific Islands Forum Secretariat, *Boe Declaration on Regional Security* (2018); African Union, *African Common Position on Climate Change* (2014); SAARC Secretariat, *SAARC Action Plan on Climate Change* (2008).

²⁴ UNFCCC, 'COP28 Outcomes on Loss and Damage' (2023).

government records, and cultural archives within the metaverse.²⁵ This attempt to preserve “digital statehood” highlights a new frontier in international law: whether sovereignty can exist without territory.

Under the Montevideo Convention (1933), a state must possess a defined territory, but digital continuity challenges this criterion. If a nation continues to operate virtually maintaining a government, population registry, and diplomatic relations can it retain international recognition even after submersion? Legal scholars are now debating the concept of “reterritorialized sovereignty” or “cloud nations”, where identity and citizenship are maintained through technology rather than geography.²⁶ This development forces international law to expand its imagination of what a “state” truly is.

Furthermore, the preservation of governance data, constitutional archives, and citizenship records through blockchain and cloud-based technologies ensures continuity of legal identity for displaced citizens. However, the digital nation model also raises new challenges: cybersecurity, digital exclusion, and questions of representation for those who lack access to technology.²⁷ While digital sovereignty cannot replace the lived experience of a homeland, it symbolizes resistance a refusal to let entire civilizations disappear into silence. If law can recognize governments-in-exile, it must now prepare to recognize nations-in-digital-existence.

IX. THE ETHICAL AND MORAL DIMENSION OF CLIMATE DISPLACEMENT

Climate-induced displacement is not only a question of law but also a profound moral and ethical challenge to the conscience of humanity.²⁸ It essentially boils down to the principle of climate justice, basically a recognition that the people who contribute the

²⁵ Government of Tuvalu, “*Tuvalu: The First Digital Nation*” (Press Statement, 2022).

²⁶ Maxine Burkett, “The Nation Ex-Situ: On Climate Change, Reterritorialized Nationhood and the Post-Climate Era,” *Climate Law Journal* (2011).

²⁷ UNESCO, *Ethical Dimensions of the Metaverse: Ensuring Inclusion and Equity* (2024).

²⁸ United Nations Human Rights Council, *Resolution 48/13: The Human Right to a Clean, Healthy and Sustainable Environment* (2021).

least to global emissions are the ones suffering the gravest consequences.²⁹ The people of the sinking island states of Tuvalu, Kiribati, and the Marshall Islands have emitted only a fraction of the carbon that drives global warming, yet they face the complete erasure of their nations.

This inequity makes what is otherwise a purely environmental concern into an issue of global fairness and responsibility.³⁰ The ethical dilemma further extends to the notion of intergenerational equity, which requires present generations to preserve the planet for future ones. With nations disappearing into the sea, it is not just the present population that loses its homeland; it is the generations yet to come who have lost their heritage, their language, and their identity. The disappearance of these states represents nothing less than the erasure of collective memory and cultural continuity. Therefore, climate change displacement is a moral accountability issue on which law must act as a guardian of human dignity, rather than as a procedural framework.³¹

Further, under international environmental law, the CBDR principle places a moral obligation on the industrialized nations to support vulnerable states through financial support, relocation, and legal recognition of climate refugees. This is not charity; it is restitution a way to make amends for damage inflicted and being inflicted. The blindness towards climate refugees is only a symptom of a more profound ethical disease afflicting the global order: the tendency to place sovereignty above solidarity.³² Unless law is tempered with all the compassion and equity, justice itself runs the risk of being submerged along with the sinking islands.

²⁹ Mary Robinson, *Climate Justice: Hope, Resilience, and the Fight for a Sustainable Future* (Bloomsbury, 2018).

³⁰ United Nations Framework Convention on Climate Change (UNFCCC), *Paris Agreement* (2015), Preamble and Art. 8 (Loss and Damage).

³¹ UN General Assembly, *Universal Declaration of Human Rights*, G.A. Res. 217A (III) (1948), Art. 1 and 25.

³² United Nations High Commissioner for Refugees (UNHCR), *Legal Considerations regarding Claims for International Protection made in the context of the adverse effects of climate change and disasters* (2020).

X. POLICY RECOMMENDATIONS AND LEGAL REFORM FOR CLIMATE REFUGEE PROTECTION

The complicated challenge of climate induced displacement requires a multifaceted, human rights-based solution that entails legal reform, institutional accountability and responsibility, and international collaboration.

- **Refugee:** The 1951 Refugee Convention is in need of revision or an additional protocol to include those fleeing environmental decay and climate disaster. A new international protocol³³ developed by the United Nations High Commission on Refugees (UNHCR) or the United Nations Framework and Convention on Climate Change (UNFCCC) can recognize "climate refugees" by providing a legal status of recognition, rights, and protections similar to other refugees.
- **Initiating National Legal Frameworks for Climate Migration:** Efforts are also needed at the domestic level, and national governments, particularly those that stand to face the threats of climate displacement, such as India, Bangladesh, and Pacific Island states, need to introduce domestic legislation with a specific focus on developing methods to identify, relocate, and rehabilitate, the populations affected by climate disaster. There should be a clearly articulated climate migration policy, that supports and works in concert with disaster management, urban planning, and environmental protection policies.
- **The role of the judiciary:** There is a unique role for judiciaries to play when it comes to climate migration through interpreting existing fundamental rights. For example, in India, the fundamental rights (like the right to life and the right to dignity) under Article 21 of the Indian Constitution can be interpreted broadly to include protection of climate migrants.³⁴ Judicial actions can also push executive action and hold both

³³ UNHCR, *Legal Considerations Regarding Claims for Protection* (2020).

³⁴ Constitution of India, Art 21.

institutions accountable in the implementation of climate resilience programs and climate rehabilitation initiatives.

- **Civil Society and Grassroots Involvement:** The role of NGOs, academic institutions, and civil society is to mobilize and educate. They can begin by undertaking awareness campaigns, doing field research, and providing on the ground assistance to displaced of the communities. Their work can inspire and change public perception as well as influence policymakers.
- **International solidarity and climate Financing:** We need to establish a global agreement of solidarity that includes monetary transaction and technology transfer. Developed countries who cause greater emissions who should ultimately bear the costs of relocation of habitation and remediation in vulnerable areas through climate reparations and "lost and damage" financing.³⁵ Unless we take extreme actions through legal reforms, effective governance, and a global conscience, we will continue to fail climate migrants legally. "When the land disappears, the people must not. The world has a moral and legal duty to protect those whose homes are drowning, not in war, nut in water. Climate refugees from sinking island nations deserve not just sympathy, but justice."

XI. CONCLUSION

While climate change creates new patterns of food supply and surging seas and hurricanes from global warming feed on the world, the island states that are sinking under the waves know that this predicament is no longer a forecast into the future it is a response.³⁶ Countries like Tuvalu, Kiribati, and the Maldives are feeling the impact of climate change on the ground: salt water encroaching, agriculture lost, coast lines shrinking, and people being displaced against their will.³⁷ These are human rights crisis, not merely environmental issues.

³⁵ Center for International Environmental Law, 'Climate Reparations: Legal and Political Basis' (2021).

³⁶ Intergovernmental Panel on Climate Change (IPCC), *Sixth Assessment Report, Working Group II: Impacts, Adaptation and Vulnerability* (2023).

³⁷ United Nations Office for Disaster Risk Reduction (UNDRR), *The Human Cost of Disasters: An Overview of the Last 20 Years* (2020).

Despite this reality, climate refugees do not exist within international law. They currently have no protection under the 1951 Refugee Convention. There are no legal instruments in place for those fleeing climate change from the rising sea and disappearing land. This vulnerability means that thousands and perhaps millions in the future of people will be stateless, rightless, and voiceless, as they are rendered expedient because of climates changes.³⁸ Time is of the essence. We are not going to be able to do exactly the right things when larger areas in the world simply disappear without a trace.

It is time for the world to demonstrate a new level of compassion, responsibility, and innovation to meet the current crisis. Our legal frameworks to address the growing issue of climate displacement need to develop further; we need to work cooperatively, drawing on precedents like treaties, humanitarian visas, and regional co-operation, to recognize the unique identity and dignity of people from disappearing nations.³⁹ In the end, it is not simply a matter of saving land it is a matter of saving cultures and histories, and lives. The injustice inflicted upon climate refugees is not simply a legal failure, but a failure of humanity.⁴⁰ The law must cease to be silent; it must speak up for those with no land to stand on.⁴¹ “You can lose a house, a job, even a country but no one should lose their rights with the tide.”

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³⁸ United Nations High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (2020).

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