

September 2019

Climate Displaced Peoples: Utilizing Regional Approaches to Combat Climate-Induced Displacement in the 21st Century

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Recommended Citation

Oshani Amaratunga, *Climate Displaced Peoples: Utilizing Regional Approaches to Combat Climate-Induced Displacement in the 21st Century*, 36 Pace Envtl. L. Rev. 261 (2019)

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ARTICLE

Climate Displaced Peoples: Utilizing Regional Approaches to Combat Climate-Induced Displacement in the 21st Century

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* I would like to give special thanks to Professor Randall S. Abate for his unwavering mentorship and guidance during earlier drafts of this Article. I would also like to thank Professor Patrícia Galvão-Ferreira for her continuous support and Professor Anneke Smit for encouraging me to write the first draft of this Article for her law course. Lastly, I would like to thank my family and friends for their endless love and support during my time in law school.

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I. INTRODUCTION

“[T]he 21st century is being marked by people on the move . . . But, ladies and gentlemen, the complexity of today’s displacement goes well beyond the asylum-migration nexus . . . [F]or each centimeter the sea level rises, there will be one million more displaced.”¹

As climate change intensifies, countries around the world are witnessing its devastating effects.² However, the impacts of climate change go far beyond images of melting ice caps and extreme weather headlines. Climate change is affecting the very nature of human movements in a way that is becoming “the greatest threat to human rights in the 21st century.”³

Over the past decade, the risk of climate-induced displacement has reached critical levels, resulting in an emerging pattern of migration that will continue to increase at exponential levels.⁴ According to the Internal Displacement Monitoring Centre’s 2015 Global Estimates Report, between 2008 and 2014, an average of

1. U.N. High Comm’r for Refugees, Opening Statement by Mr. António Guterres, U.N. High Comm’r for Refugees, at the Fifty-Eighth Session of the Exec. Comm. of the High Comm’r’s Programme (ExCom), Geneva, (Oct. 1, 2007), <https://perma.cc/PJ2G-PZDP> [hereinafter Guterres].

2. Jonathan Urry, *Climate Change and Society*, in *WHY THE SOCIAL SCIENCES MATTER* 45, 52–53 (Johnathan Michie & Cary L. Cooper eds., 2015) (highlighting a three-fold increase in storm and flood events and using ‘state’ to mean ‘nation’ or ‘country’).

3. See Matthias Mueller, *Climate Change: The Greatest Threat to Human Rights in the 21st Century*, UNIV. COLL. LONDON: GLOB. GOVERNANCE INST. (Sept. 2, 2016), <https://perma.cc/VE2P-AMT6>; *Climate Change – The Greatest Threat to Human Rights in the 21st Century*, WORLD FUTURE COUNCIL (July 6, 2016), <https://perma.cc/96EF-Z7KX> [hereinafter *Climate Change Threat*].

4. Jeff Turrentine, *Climate Change Is Already Driving Mass Migration Around the Globe*, NAT. RESOURCES DEF. COUNCIL (Jan. 25, 2019), <https://perma.cc/HQ6K-S5V3>.

26.4 million people were displaced by climate-related disasters annually.⁵ To put this figure into perspective, if the climate displaced persons during that period formed a new country, it would be the fourth largest in the world, close behind the population of the United States.⁶ In 2017, while one person was displaced due to armed conflict every two seconds,⁷ climate-related disasters displaced one person every second.⁸ With each passing year, the number of people displaced by climate-related events will continue to rise.⁹

It is estimated that by 2050 there will be more than 200 million people displaced by climate change worldwide.¹⁰ This is eight times the number of refugees currently under the U.N. Office of the High Commissioner for Refugees' ("UNHCR") protection, and three times the total number of forcibly displaced people accounted for in 2017.¹¹ By the end of the century, if countries maintain a "business-as-usual" approach to climate change regulation, the

5. INTERNAL DISPLACEMENT MONITORING CTR., GLOBAL ESTIMATES 2015: PEOPLE DISPLACED BY DISASTERS 20 (2015), <https://perma.cc/3ENU-PMVZ>.

6. Gulrez Shah Azhar, *Climate Change Will Displace Millions in Coming Decades. Nations Should Prepare Now to Help Them*, THE CONVERSATION (Dec. 18, 2017), <https://perma.cc/7T6V-Z64P>.

7. *Forced Displacement Above 68m, New Global Deal on Refugees Critical*, U.N. HIGH COMM'R FOR REFUGEES (Jun. 19, 2018), <https://perma.cc/H7TF-4H7N>.

8. *Climate Victims – Every Second, One Person is Displaced by Disaster*, RELIEFWEB (Jul. 27, 2016), <https://perma.cc/VS78-WF26>.

9. JOANNA APAP, EUROPEAN PARLIAMENTARY RESEARCH SERV., THE CONCEPT OF 'CLIMATE REFUGEE': TOWARDS A POSSIBLE DEFINITION 1 (2019), <https://perma.cc/26B9-HDLM>; see generally Lin Taylor, *One Person Every Second Displaced by Conflict, Disaster in 2016 - Report*, REUTERS (May 22, 2017), <https://perma.cc/4LMF-AKDU> (discussing the displacement of millions of Chinese and Philippine citizens due to climate-related weather events that will continue as global temperatures warm).

10. *See Migration, Climate Change and the Environment: A Complex Nexus*, INT'L ORG. FOR MIGRATION, <https://perma.cc/XC9U-FYQF> (citing 200 million as the most common estimate, although figures range from 25 million to one billion); accord Frank Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10 GLOB. ENVTL. POL. 60, 68 (2010) (stating that although various projections have been cited by different sources, this figure is the most widely cited one.).

11. *U.N. Figures at a Glance*, *supra* note 8 (noting that in 2015 alone, over nineteen million people were subject to climate-induced displacement).

world will witness a 200% increase in asylum applications.¹² As a result, states will have no choice but to change their approach to forcibly displaced people and begin to recognize the protections they will require.¹³

Part II of this Article begins with a case study of the Pacific Island nations of Tuvalu and Kiribati. Small island nations are most vulnerable to the effects of climate change through rising sea levels and land degradation.¹⁴ Here, the Teitiota family will be introduced as one example of the thousands of island nation residents who are subject to climate-induced displacement and have, in turn, become climate-displaced peoples (“CDPs”).¹⁵ This section will define CDPs and explore the multidimensional categories of climate displacement.¹⁶

12. John Abraham, *Study Finds that Global Warming Exacerbates Refugee Crises*, THE GUARDIAN (Jan. 15, 2018), <https://perma.cc/696S-DFEC>; see generally Anouch Missirian & Wolfram Schlenker, *Asylum Applications Respond to Temperature Fluctuations*, 358 SCI. 1610, 1610 (2017), <https://perma.cc/48GA-ZWYR>.

13. Roberta Cohen & Megan Bradley, *Disasters and Displacement: Gaps in Protection*, 1 J. INT’L HUMANITARIAN LEGAL STUD. 95, 95–96 (2010), <https://perma.cc/X658-LL9L>.

14. United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107, <https://perma.cc/88NV-KJ9Z> (recognizing in its preamble that small island countries are especially vulnerable to floods, drought and desertification); see also Elizabeth G. Hanna & Lachlan McIver, *Small Island States – Canaries in the Coal Mine of Climate Change and Health*, in CLIMATE CHANGE AND GLOBAL HEALTH 181 (Colin Butler ed., 2016) (analyzing the unique vulnerabilities of small island states and describing small island states as “canaries in the coal mine of climate change.”); see, e.g., DAVID HODGKINSON ET AL., “THE HOUR WHEN THE SHIP COMES IN’: A CONVENTION FOR PERSONS DISPLACED BY CLIMATE CHANGE 1–2 (2010), <https://perma.cc/GW87-Z3AU> (identifying the Maldives as a particularly “fragile” island vulnerable to the effects of climate change as more than 80% of the island is less than one meter above sea level).

15. See HODGKINSON ET AL., *supra* note 14, at 1–2 (recognizing the rising numbers of CDPs around the world); APAP, *supra* note 9, at 2 (noting that in the last decade, in the Pacific island nations of Kiribati, Nauru and Tuvalu, one in ten people have migrated due to the effects of climate change).

16. Many terms such as “climate migrants,” “climate displaced persons,” and “climate refugees” have been used in the scholarly literature. See generally HODGKINSON ET AL., *supra* note 14, at 13 (recognizing persons displaced by climate change as climate change displaced persons) . . . In this Article, individuals subject to climate-induced displacement will be referred to as CDPs. This term is more inclusive and comprehensive, and more accurately reflects the multifaceted challenges these individuals face.

Although thousands of small island nation residents, like the Teitiota family, have or will become CDPs, they are left without any effective legal mechanisms to protect their rights.¹⁷ Part III addresses applicable international and regional law instruments and analyzes the gaps in the existing legal framework. One of the many reasons why existing legal mechanisms fall short in effectively protecting the rights of CDPs is their failure to recognize the complex multidimensional nature of climate-induced displacement.¹⁸ Existing legal frameworks address the initial stages of climate displacement but fail to acknowledge the long-term consequences of displacement.¹⁹

Part IV of this Article argues that rather than relying on international agreements to address this multi-casual issue, the focus should shift to strengthening regional approaches to combat climate-induced displacement. Utilizing a bottom-up approach, these efforts would capitalize on the unique capacities of each state and acknowledge that regions will experience climate displacement differently.²⁰ Examples like the Nansen Initiative and its successor, the Platform on Disaster Displacement, highlight the great potential regional strategies offer to address climate displacement and protect the rights of CDPs.²¹ In addition, this Part will explore

17. Rana Balesh, *Submerging Islands: Tuvalu and Kiribati as Case Studies Illustrating the Need for a Climate Refugee Treaty*, 5 BARRY U. ENVTL. & EARTH L.J. 78, 81 (2015) (citing Jeremy Kelley, *Climate Change and Small Island Stats: Adrift in a Raising Sea of Legal Uncertainty*, 11 SUSTAINABLE DEV. L. & POL'Y 2, 56 (2011)); see generally COSMIN CORENDEA, LEGAL PROTECTION OF THE SINKING ISLAND REFUGEES (2016) (analyzing protection gaps in international law for protecting climate displaced peoples in Pacific island nations and recognizing that Pacific island nations are especially vulnerable to climate change impacts and have limited adaptation options).

18. Jane McAdam, *Building International Approaches to Climate Change, Disasters, and Displacement*, 33 WINDSOR Y.B. OF ACCESS TO JUST. 1, 9 (2016), <https://perma.cc/TC9W-LS4B>; see also Marissa S. Knodel, *Wet Feet Marching: Climate Justice and Sustainable Development for Climate Displaced Nations in the South Pacific*, 14 VT. J. ENVTL. L. 127, 153 (2012) (describing protection gaps for CDPs in international law as a "legal vacuum.").

19. See Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 L. & POL'Y 502, 508–14 (2008).

20. McAdam, *supra* note 18, at 3–4, 10.

21. APAP, *supra* note 9, at 7.

the unique yet important role that the UNHCR can play in developing regional approaches to combating climate displacement.²²

For states to develop effective regional policies to address climate displacement, a specialized funding mechanism will be necessary. Using the Green Climate Fund (“GCF”)²³ as a model, Part IV also calls for the GCF to recognize climate displacement as a focus area for funding purposes. It proposes that, among the funding that is allocated to GCF’s Readiness and Preparatory Support Program,²⁴ a portion of these funds should be designated to support regional solutions to address climate displacement. Through collaboration between UNHCR and the GCF, states would receive the support they require to fund bottom-up approaches to protect the rights of CDPs and address their unique climate displacement needs.

II. THE MULTIDIMENSIONAL NATURE OF CLIMATE-INDUCED DISPLACEMENT

A. Tuvalu and Kiribati: The Case of the Teitiota Family

Tuvalu is an island nation located in the South Pacific Ocean, midway between Hawaii and Australia.²⁵ This Polynesian island

22. U.N. HIGH COMM’R FOR REFUGEES, CLIMATE CHANGE, DISASTERS AND DISPLACEMENT 29 (Guy S. Goodwin & Jane McAdam eds., 2017), <https://perma.cc/EN5S-FG8D> [hereinafter Goodwin-Gill & McAdam].

23. *Who We Are: About the Fund*, GREEN CLIMATE FUND, <https://perma.cc/GE9Q-B9UC> [hereinafter *Green Climate Fund*]. Adopted in 2011 by the U.N. Framework Convention on Climate Change (“UNFCCC”), the GCF is a collaborative funding mechanism between states and various UN agencies working together to assist in financing mitigation and adaptation projects to combat climate change.

24. GREEN CLIMATE FUND, READINESS AND PREPARATORY SUPPORT GUIDEBOOK: ACCESSING THE READINESS AND PREPARATORY SUPPORT PROGRAMME OF THE GREEN CLIMATE FUND: AN INTRODUCTION AND HOW-TO GUIDE 4 (2018), <https://perma.cc/UJ57-DUHF> [hereinafter *Readiness and Preparatory Support Program*]. The GCF Readiness and Preparatory Support Program (“RPSP”) was established to support and assist developing countries to gain greater access to GCF resources by prioritizing funding for countries that are particularly vulnerable to the adverse effects of climate change.

25. Balesh, *supra* note 17, at 84.

nation consists of three reef islands and six island atolls, comprising a total of twenty-six square kilometers.²⁶ Known as one of the world's lowest-lying countries, Tuvalu's elevation ranges from five meters to less than one meter above sea level.²⁷ As climate change intensifies, Tuvalu faces a serious threat from increasing sea levels.²⁸ It is estimated that by the end of the century, Tuvalu will experience a rise of one to two meters in sea level, which will result in total inundation of the island.²⁹ As a result, Tuvalu (and its 11,000 residents) has become one of the first countries in the world to face the prospect of forcible relocation due to climate change.³⁰

Tuvalu is just one example of the several Pacific Island nations facing total inundation.³¹ Kiribati, another Pacific Island nation located south of Hawaii, is also projected to face a similar fate.³² As sea levels continue to rise, Kiribati is estimated to be completely submerged by 2050.³³ Like Tuvalu, many Kiribati residents are attempting to seek refuge elsewhere while their governments declare states of emergency in response to climate change impacts.³⁴ These

26. *Id.*; Aram Kamali, *Climate Refugees: Exposing the Protection Gap in International Law*, CLIMATE INSTITUTE (Aug. 23, 2016), <https://perma.cc/ZV8A-DJXX>.

27. Kamali, *supra* note 26.

28. *Id.*

29. *Id.*

30. Kent Tukeli, *Disappearing Tuvalu: First Modern Nation to Drown?*, WORLD ATLAS (Apr. 5, 2017), <https://perma.cc/DR7Q-SASC>; *accord*, Greg Harman, *Has the Great Climate Change Migration Already Begun?*, THE GUARDIAN (Sept. 15, 2014), <https://perma.cc/PR4H-AGBQ>; Nick Noack, *Has the Era of the 'Climate Change Refugee' Begun?*, WASH. POST (Aug. 7, 2014), <https://perma.cc/UNR7-A453>.

31. See Darren James, *Lost at Sea: The Race Against Time to Save the Carteret Islands from Climate Change*, AUSTRAL. BROAD. CORP. (Aug. 3, 2018), <https://perma.cc/56AL-WL6W> (discussing [t]he Carteret Islands that are located in the South Pacific off the coast of Papua New Guinea. Originally projected to be submerged by 2015, the Carteret Islands are currently 1.5 meters above sea level with a total land area of 0.5 square kilometers. As it continues to sink, it is estimated that the Carteret Islands will be underwater by 2020); Katherine Butler, *14 Islands Threatened by Climate Change*, MOTHER NATURE NETWORK (Jan. 10, 2018), <https://perma.cc/M5ZZ-GGLG> (listing 14 island nations at risk of inundation due to the impacts of climate change and rising sea levels); *accord* Knodel, *supra* note 18, at 147.

32. Balesh, *supra* note 17, at 80.

33. *Id.*

34. McAdam, *supra* note 18, at 7.

island nations are bracing for a climate-related disaster that will result in thousands being forcibly displaced.³⁵

The Teitiota family is one example of vulnerable island nation residents who are finding themselves at risk of being displaced.³⁶ Originally from Kiribati, the Teitiota family relocated to New Zealand in 2007, where they stayed until their visas expired in 2010.³⁷ Faced with the threat of deportation, the family applied for refugee status.³⁸ Ioane Teitiota, his wife, and their three children sought refugee protection on the basis of “changes to [their] environment in Kiribati caused by sea-level-rise associated with climate change.”³⁹ Five years later, and after several lower court dismissals, this case found its way to the Supreme Court of New Zealand.⁴⁰ The Supreme Court upheld all lower court decisions and denied the family refugee status.⁴¹ The Court held that the Teitiota family’s claim for protection was inconsistent with the definition of “refugee” within existing refugee law.⁴² Despite fearing for the safety of his family if forced to return to their submerging island nation, Ioane Teitiota and his family were returned to Kiribati.⁴³ Though the family was unsuccessful in securing protection as refugees, their attempt gained considerable media attention, as newspaper publications around the world began recognizing the Teitiota family as the “World’s First Climate Change Refugee[s].”⁴⁴

35. *Id.* at 9.

36. Kamali, *supra* note 26; *see also* Jon Letman, *Rising Seas Give Island Nation a Stark Choice: Relocate or Elevate*, NAT. GEOGRAPHIC (Nov. 19, 2018), <https://perma.cc/8M5D-QZUY>.

37. *Id.*

38. *Id.*

39. KELLY BUCHANAN, NEW ZEALAND: “CLIMATE CHANGE REFUGEE” CASE OVERVIEW 1, 3 (2015), <https://perma.cc/93JW-ELCE>.

40. *Id.*

41. Kamali, *supra* note 26; *see generally* AF (Kiribati) [2013] NZIPT 800413 (Immigration and Protect. Trib.) at [97–98] per Burson B.L. (providing a detailed overview of the judicial history of the Teitiota family’s case).

42. Kamali, *supra* note 26 (“environmental migrants can still ‘rely on the protection of their national government’”).

43. Tim McDonald, *The Man Who Would Be the First Climate Change Refugee*, BBC NEWS (Nov. 5, 2015), <https://perma.cc/4TU6-AD9H>; *see also* Robert McLeman, *Who Will Become the World’s First Climate Change Refugee?*, GLOBE & MAIL (May 11, 2018), <https://perma.cc/97QP-NPXE>.

44. McDonald, *supra* note 43; McLeman, *supra* note 43.

Despite the international community's nascent recognition of climate displaced peoples, the Teitiota family is not alone in seeking refugee protection for climate displaced peoples.⁴⁵ In fact, between 2000 and 2015 alone, more than twenty cases were brought before New Zealand and Australian courts by Tuvalu and Kiribati island residents.⁴⁶ Each applicant sought refugee protection from the impacts of climate change, and all claims were denied.⁴⁷

B. Defining Climate Displaced Peoples

Human migration as a response to changes in the environment is not a new concept.⁴⁸ Angela Williams, a New Zealand lawyer and former law professor at the University of Sussex, explains that since the beginning of human civilization, environmental factors such as seasonal change and depletion of agricultural crops and natural resources have historically compelled populations to relocate to new areas.⁴⁹ However, as climate change has intensified, so have the reasons for human migration.⁵⁰ It was not until the 1980s that the impacts of a rapidly changing climate on human migration began to be recognized at the international level,⁵¹ and the concept of CDPs began to materialize.⁵²

Climate displaced peoples can be defined as:

persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their

45. See, e.g., BUCHANAN, *supra* note 39, at 7 (discussing several unsuccessful climate displacement cases).

46. McAdam, *supra* note 18, at 5.

47. *Id.*

48. Williams, *supra* note 19, at 507.

49. *Id.*

50. *Id.* at 502.

51. *Id.* at 506; see, e.g., Fabrice Renaud et al., *Control, Adapt or Flee: How to Face Environmental Migration?* A publication series of U.N. UNIV. INST. FOR ENV'T & HUMAN SEC. 10–11 (2007) (noting that the connection between climate change and migration was formally recognized by the United Nations Environment Programme in 1985).

52. Williams, *supra* note 19, at 506.

homes or choose to do so, either temporarily or permanently, and who move either within their country or abroad.⁵³

This definition acknowledges the multidimensional nature of climate-induced displacement and recognizes the many factors that can cause this type of displacement.⁵⁴ Some of these factors can include the CDPs' reasons for migration, duration of migration, and migration in relation to state borders.⁵⁵ Reasons for migration may include land degradation, water scarcity, or rising sea levels (like the case of Tuvalu and Kiribati).⁵⁶ Duration of migration will depend on whether the choice to relocate will be temporary, long-term, or permanent.⁵⁷ All of these factors are essential to consider when attempting to define CDPs.⁵⁸

CDPs may experience sudden environmental changes, also known as "sudden-onset disasters," as well as "[s]low-onset processes."⁵⁹ Each type of event will result in different consequences and affect the nature and degree of the decision to migrate.⁶⁰ CDPs who experience "sudden-onset disasters" such as a tsunami may become "temporarily displaced due to temporary environmental stress but [seek to] return to their homes once the area has been rehabilitated."⁶¹ For example, the 2004 Indian Ocean tsunami was an extreme "sudden-onset" climate event that displaced over five million people in 11 different countries in Asia and Africa.⁶² Many

53. Cohen & Bradley, *supra* note 13, at 17. Although this definition provided by the International Organization for Migration refers to "environmentally displaced peoples," the elements of this definition appropriately identify the multifaceted challenges that CDPs face. Thus, the same definition will be referred to in this article to characterize CDPs.

54. Williams, *supra* note 18, at 507.

55. *Id.*

56. *Id.*

57. *Id.*

58. See generally Frank Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10 GLOB. ENVTL. POLITICS 60, 62–63 (2010), <https://perma.cc/5G79-27QD>.

59. McAdam, *supra* note 18, at 3.

60. *Id.*

61. *Id.*; Williams, *supra* note 19, at 506.

62. Cohen & Bradley, *supra* note 13, at 96; McAdam, *supra* note 18, at 3. Note that terms such as "slow-onset processes" and "slow-onset events" may be used interchangeably, and "sudden-onset disasters" are synonymous with "sudden impacts."

victims of this “sudden-onset” climate event were temporarily displaced until homes were rebuilt, and communities rehabilitated.⁶³

In contrast, those who experience “slow-onset processes” include those who migrate “in search of a better quality of life as a result of progressive degradation of environmental resources.”⁶⁴ Residents like the Teitiota family of Pacific island nations such as Tuvalu and Kiribati would fall under this category. However, “[s]udden impacts” and “slow[-]onset events” are not mutually exclusive categories; they are intrinsically linked and cannot easily be separated.⁶⁵ These events can be so intertwined that it has prompted scholars like McAdam to argue that there is “no such thing as a ‘natural’ disaster” because “disasters are always contingent on underlying, social, economic, political, and environmental factors.”⁶⁶ Moreover, the implications of these disasters are not confined to state borders.⁶⁷ As climate change continues, its impacts will create transboundary concerns.⁶⁸

As a result, defining and categorizing CDPs is a difficult and complex task as the causes of climate-induced displacement are multidimensional in nature.⁶⁹ Thus, “this range of varied interpretations and consideration of different factors highlights many of the key challenges with the characterization and implementation of [this] concept[.]”⁷⁰ The multidimensional nature of CDPs is one of the many reasons why residents such as the Teitiota family have difficulty seeking protection under existing legal mechanisms.

63. Alan Taylor, *Ten Years Since the 2004 Indian Ocean Tsunami*, THE ATLANTIC (Dec. 26, 2014), <https://perma.cc/YY5Z-BM83> (illustrating “before and after” images of tsunami-affected communities in Indonesia and Thailand).

64. McAdam, *supra* note 18, at 3; Williams, *supra* note 19, at 506.

65. Andrea C. Berringer, *Migration and Climate Change: Global Governance Regimes and the Incorporation of Climate Change Displacement*, in CLIMATE CHANGE AND GLOBAL POLICY REGIMES: TOWARDS INSTITUTIONAL LEGITIMACY 204 (Timothy Cadman ed., 2013), <https://perma.cc/SNG5-RGQR>.

66. McAdam, *supra* note 18, at 3.

67. Richard Hill, *Climate Change, Population Movements and Governance: Case Studies in Response Mechanisms*, in CLIMATE CHANGE AND GLOBAL POLICY REGIMES: TOWARDS INSTITUTIONAL LEGITIMACY 190 (Timothy Cadman ed., 2013), <https://perma.cc/EA5E-524D> (“national borders [are] becoming increasingly irrelevant . . . since rising temperatures and sea levels impact all nations”).

68. *Id.*; see *infra* Part IV for an analysis of the distinction between internal displacement and cross-border displacement caused by climate-related events.

69. See Williams, *supra* note 19, at 507.

70. *Id.*

III. THE VOID IN THE EXISTING LEGAL FRAMEWORK

The Teitiotia family's claim for protection failed because they were seeking to be recognized as refugees.⁷¹ This claim, and ultimately all of the others brought between 2000 and 2015, were denied because none of these claims were covered under any internationally recognized definition of "refugee."⁷² This Part describes the existing international and regional legal mechanisms under which climate displaced peoples may seek protection. It will also highlight why these legal mechanisms fail to provide adequate protection for CDPs.⁷³

A. International

1. Convention Relating to the Status of Refugees

Adopted in 1951, the Convention Relating to the Status of Refugees ("Refugee Convention") defines the term "refugee" and is recognized as "the basic and universal instrument relating to the status of refugees."⁷⁴ The Refugee Convention defines a refugee as:

someone who is unable or unwilling to return to their country of origin 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

71. BUCHANAN, *supra* note 39; see generally Jane McAdam, *The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement*, 3 *MIGRATION STUD.* 131, 133 (2015), <https://perma.cc/SBA7-CUWK>.

72. Williams, *supra* note 19, at 508–11; see also McAdam, *supra* note 18, at 4.

73. Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 *HARV. ENVTL. L. REV.* 349, 357 (2009) (explaining that no legal mechanism currently exists that effectively includes CDPs as a category of peoples who require protection against displacement).

74. OAU Convention Governing the Specific Aspects of Refugee Problems in Africa Preamble, Sept. 10, 1969, 1001 *U.N.T.S.* 45, <https://perma.cc/MRS4-T7HW> [hereinafter OAU Convention on Refugees].

nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. . .⁷⁵

Central to the definition of a refugee under the Refugee Convention is the existence of a causal connection between the fear of persecution and one of the five enumerated grounds.⁷⁶ Also known as the Nexus Clause, an individual seeking refugee protection must demonstrate that they have a well-founded fear of being persecuted for reasons based on a Convention ground.⁷⁷ In addition, the individual must be outside of their country of origin and unable or unwilling to return due to their fear of persecution.⁷⁸

The Refugee Convention's initial interpretation of refugee was intended to respond to the conflict-induced displacement crisis occurring in Europe following World War II.⁷⁹ For this reason, the definition of a refugee was "limited in scope to persons fleeing events occurring in Europe before January 1, 1951."⁸⁰ Since the Refugee Convention was drafted as a "post-Second World War instrument,"⁸¹ some have argued that the original intent of the Refugee Convention was to protect only those whose political and civil rights had been violated.⁸²

The first and only amendment to the Refugee Convention appeared in the 1967 Protocol, which removed the temporal and geographic restriction, and expanded this definition to provide "universal coverage."⁸³ Almost seven decades later, the Refugee

75. Convention and Protocol Relating to the Status of Refugees, art. 1, July 28, 1951, 189 U.N.T.S. 150, <https://perma.cc/B6Z4-NHBT> [hereinafter Refugee Convention].

76. Michelle Foster, *Causation in Context: Interpreting the Nexus Clause in the Refugee Convention*, 23 MICH. J. INT'L L. 265, 266 (2002).

77. *Id.*

78. Docherty & Giannini, *supra* note 73, at 362.

79. Heather Alexander & Johnathan Simon, "Unable to Return" in the 1951 Refugee Convention: Stateless Refugees and Climate Change, 26 FLA. J. INT'L L. 531, 556 (2014) (explaining that the intention of drafting the Refugee Convention was to address the plight of persons fleeing persecution after the World War II) [hereinafter Alexander & Simon].

80. *Id.* at 559.

81. Refugee Convention, *supra* note 75, at 2.

82. Docherty & Giannini, *supra* note 73, at 362.

83. *Id.*

Convention has 145 State parties, and it is understood as the “centerpiece of international refugee protection.”⁸⁴

2. The Nexus Clause Conundrum

Although the Refugee Convention expanded the definition of refugee by removing its temporal and geographic restrictions, it still maintains a narrow interpretation, one that falls short of effectively protecting the rights of CDPs.⁸⁵ The reason for this shortcoming is the requirement to establish a nexus between persecution and an enumerated Convention ground.⁸⁶ Without the existence of this causal connection, an individual would not be entitled to protection under the Refugee Convention.⁸⁷ While climate-related disasters can be harmful and at times fatal, cases under the Refugee Convention have concluded that these events “do not meet the [legal] threshold of ‘persecution,’ which normally requires human agency.”⁸⁸ Thus, the Nexus Clause in the definition of refugee excludes potential climate-related threats.⁸⁹ As a result, the Refugee Convention does not acknowledge climate-induced displacement, nor does the scope of its protection extend to CDPs.⁹⁰

Additionally, the UNHCR has been reluctant to categorize CDPs as “refugees” and neglects to acknowledge the inclusion of climate-related events within the traditional Convention framework.⁹¹ This resistance stems from a fear that such inclusion “will

84. *Id.*; see U.N. High Comm’r for Refugees [UNHCR], *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, at 1 (2015), <https://perma.cc/LTG8-2CGU> (listing State Parties as of Apr. 2015).

85. See Docherty & Giannini, *supra* note 73, at 357.

86. See generally Foster, *supra* note 76 (analyzing the causation standard established in refugee law between persecution and the enumerated Convention grounds).

87. See *id.*

88. McAdam, *supra* note 18, at 4; see also Berringer, *supra* note 65, at 204 (noting the difficulty in identifying the causal links between climate change, persecution and human agency).

89. See Docherty & Giannini, *supra* note 73, at 357–58; see also Knodel, *supra* note 18, at 138–39.

90. Docherty & Giannini, *supra* note 73, at 357–58; see also Goodwin-Gill & McAdam, *supra* note 22, at 29.

91. See NINA HALL, *DISPLACEMENT, DEVELOPMENT, AND CLIMATE CHANGE: INTERNATIONAL ORGANIZATIONS MOVING BEYOND THEIR MANDATES* 59 (Thomas G. Weiss & Rorden Wilkinson eds., 2016) (referring to U.N. Secretary General Guterres’s concern regarding the UNHCR adopting the term “climate refugee”); see

complicate and confuse the organization's efforts to protect the victims of persecution and armed conflict"⁹² because climate-induced displacement cannot easily be separated from the various social and political grounds that the Refugee Convention considers.⁹³ Consequently, climate change has intersectional implications that can act as a "strategic security threat that sits alongside others like terrorism and state-on-state conflict[.]"⁹⁴ Accordingly, "[t]he impacts of climate change or disasters do not cause displacement on their own but, rather, interact with other economic, social, and political drivers that themselves affect migration[.]"⁹⁵ Thus, the impacts of climate change may exacerbate other security threats.⁹⁶ This can create additional state pressures and increase social, political, and economic instability, which may ultimately lead to armed conflict.⁹⁷ In turn, these interrelated pressures may drive people to flee.⁹⁸

Climate change impacts are often interconnected with various social and political issues, which makes it difficult to separate con-

also Betsy Hartmann, *Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse*, 22 J. INT'L DEV. 233, 238 (2010).

92. U.N. High Comm'r for Refugees, Statement at Nansen Conference on Climate Change and Displacement' (June 6, 2011), <https://perma.cc/25ZV-MQT6> [hereinafter Statement at Nansen Conference].

93. McAdam, *supra* note 18, at 3 (considering climate change a "threat amplifier"); see also Knodel, *supra* note 18, at 144 (recognizing that the incorporation of "environmental" into the definition of "refugee" is controversial because a direct causal link between climate change—as something independent from political and economic changes—and displacement is not easily discernible"); see generally, François Gemenne, Commentary, *Climate Migrants are Refugees – Not Commodities*, 33 THE ENVTL. F. 56, 56 (2016) (analyzing the distinction between "refugee" and "migrant" and asserting that "environmental migrants" are also non-conventional "political refugees").

94. Damian Carrington, *Climate Change Will Stir 'Unimaginable' Refugee Crisis, Says Military*, THE GUARDIAN (Dec. 1, 2016), <https://perma.cc/Z6PX-BFPG>.

95. McAdam, *supra* note 18, at 3.

96. Carrington, *supra* note 94.

97. McAdam, *supra* note 18, at 3; Onita Das, *Climate Change and Armed Conflict: Challenges and Opportunities for Maintaining International Peace and Security Through Climate Justice*, in CLIMATE JUSTICE: CASE STUDIES IN GLOBAL AND REGIONAL GOVERNANCE CHALLENGES 411, 416 (Randall S. Abate ed., 2016) (explaining that climate change is a "threat multiplier" that exacerbates the risk of security threats).

98. Berringer, *supra* note 65, at 202–03.

ventional conflict-induced displacement with climate-induced displacement.⁹⁹ This creates increasing difficulty to categorize CDPs for rights-based protection¹⁰⁰ and highlights that the simple inclusion of climate-related events within the traditional Refugee Convention framework does not address the multidimensional and intersectional challenges that CDPs face.¹⁰¹

B. Regional

1. Organization for Africa Unity and Cartagena Declaration on Refugees

Regional protection regimes such as the Organization for Africa Unity (“OAU”) Convention on Refugees and the Cartagena Declaration on Refugees subsequently expanded the definition of “refugee.”¹⁰² This expanded definition acknowledges that a fear of persecution is not the only reason for individuals to flee their country of origin.¹⁰³ For example, the OAU Convention, was adopted in 1969 and acknowledged that:

The term “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.¹⁰⁴

99. Goodwin-Gill & McAdam, *supra* note 22, at 6.

100. *Id.* at 5.

101. Williams, *supra* note 19, at 509.

102. Refugee Convention, *supra* note 75, at 4.

103. OAU Convention on Refugees, *supra* note 71, at art. 1; Gillian McFadyen, *The Contemporary Refugee: Persecution, Semantics and Universality*, SPECIAL ISSUE: THE 1951 UN REFUGEE CONVENTION - 60 YEARS ON 9, 19 (2012) (describing the OAU Convention on Refugees as the “first ‘salient challenge’ to the idea that persecution is the fundamental criteria for refuge”).

104. OAU Convention on Refugees, *supra* note 74, at art. 1, ¶ 2.

Likewise, the Cartagena Declaration on Refugees, adopted in 1984, recognizes that “it is necessary to consider enlarging the concept of a refugee[.]”¹⁰⁵ It provides:

[T]he definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.¹⁰⁶

As reflected in these definitions, the regimes of the OAU Convention and Cartagena Declaration on Refugees expand the definition of “refugee” to those who have been subject to “events seriously disturbing public order[.]”¹⁰⁷ According to Cohen and Bradley, “[g]iven the propensity of natural disasters to seriously disturb the public order, environmentally displaced persons who have crossed international borders could potentially be counted as refugees under this definition.”¹⁰⁸ Similarly, the Cartagena Declaration on Refugees expands this definition further to include events that cause “massive violation[s] of human rights.”¹⁰⁹ McAdam argues that forcibly returning an individual to a disaster-affected area can constitute a mass violation of human rights because it would “expose them to a real risk of death or cruel, inhuman, or degrading treatment.”¹¹⁰ As a result, these regional instruments offer a broader

105. Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena Declaration on Refugees art. 3, ¶ 3 (Nov. 22, 1984), <https://perma.cc/M2NX-JE93> [hereinafter Cartagena Declaration on Refugees].

106. *Id.*

107. OAU Convention on Refugees, *supra* note 74, at art. 1, ¶ 2; *see also* Cartagena Declaration on Refugees, *supra* note 105, at art. 3, ¶ 3.

108. Cohen & Bradley, *supra* note 13, at 106.

109. Cartagena Declaration on Refugees, *supra* note 105, at art. 3, ¶ 3.

110. McAdam, *supra* note 18, at 5-6; *see also* McDonald, *supra* note 43 (describing the fear that Mr. Ioane Teitiota has for his family’s life, the article cites him as stating, “I’m the same as people who are fleeing war. Those who are afraid of dying . . . The sea level is coming up, and I will die, like them. It will affect my life when the sea takes over my land. It will kill me and my family.”).

definition of the term “refugee” that arguably include protection for CDPs.¹¹¹

Nonetheless, despite this expanded scope of protection, neither framework explicitly mentions climate-induced displacement or the adverse implications of climate change. Although it is possible for climate-related events to “seriously disturb[] public order,”¹¹² without explicit reference to climate-induced displacement, these instruments fail to address the multidimensional consequences of climate change and the unique impacts it can have on human displacement.¹¹³ As a result, both the OAU Convention and Cartagena Declaration on Refugees fall short as resources to address the unique protection needs of CDPs.¹¹⁴

2. Guiding Principles on Internal Displacement and Kampala Convention

Both the United Nations Guiding Principles on Internal Displacement (“Guiding Principles”)¹¹⁵ and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“Kampala Convention”)¹¹⁶ offer a broader scope of protection for displaced peoples by recognizing climate-related events as potential causes for displacement.¹¹⁷ Compared to the OAU Convention and Cartagena Declaration on Refugees, the Guiding Principles and Kampala Convention are regional instruments that have greater potential to offer protection for the rights of CDPs.

111. Goodwin-Gill & McAdam, *supra* note 22, at 35.

112. OAU Convention on Refugees, *supra* note 74, at art. 1, ¶ 2; *see also* Cartagena Declaration on Refugees, *supra* note 105, at art. 3, ¶ 3.

113. *See* Goodwin-Gill & McAdam, *supra* note 22, at 32.

114. *Id.* at 35–36.

115. U.N., Econ. & Soc. Council, Comm. on Human Rights Fifty-Fourth Session, Report of the Representative of the Secretary General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Guiding Principles on Internal Displacement, at 5, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998), <https://perma.cc/EC54-NR58> [hereinafter Guiding Principles].

116. African Union, *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“Kampala Convention”)*, Oct. 23, 2009, at pmb. (entered into force Dec. 10, 2012), <https://perma.cc/QLK4-PS2U> [hereinafter Kampala Convention].

117. Williams, *supra* note 19, at 511; *see also* Cohen & Bradley, *supra* note 13, at 96.

Adopted in 1998, more than a decade after Cartagena Declaration on Refugees, the Guiding Principles have been recognized as an “important international framework for the protection of internally displaced persons[.]”¹¹⁸ The Guiding Principles define internally displaced peoples as those who:

[H]ave been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.¹¹⁹

As stated within this definition, the Guiding Principles recognize natural disasters as a potential cause for displacement.¹²⁰ Moreover, Principle 6 of the Guiding Principles states “[e]very human being shall have the right to be protected against being arbitrarily displaced from his or her home[.]”¹²¹ and affirms that this protection includes those who have been displaced by disasters.¹²² As a result, the Guiding Principles affirm recognition and can provide rights-based protection for internally displaced CDPs.¹²³ By incorporating refugee law into international humanitarian law and human rights law, “[t]he [Guiding] Principles affirm that “IDPs are entitled to the same human rights as other people in their countries, and that governments in cooperation with international organizations are obliged to assist and protect them.”¹²⁴

Over a decade after the adoption of the Guiding Principles, the Kampala Convention reinforced the Guiding Principles and adopted the same definition for internal displacement.¹²⁵ Like the

118. Williams, *supra* note 19, at 511.

119. Guiding Principles *supra* note 113.

120. *Id.*

121. *Id.* at 6.

122. *Id.* at 6–7.

123. Cohen & Bradley, *supra* note 13, at 99.

124. *Id.*

125. Allehone Mulugeta Abebe, *The Kampala Convention and Environmentally Induced Displacement in Africa*, INT’L ORG. FOR MIGRATION INTERSESSIONAL WORKSHOP ON CLIMATE CHANGE, ENVIRONMENTAL DEGRADATION AND MIGRATION 4 (2011), <https://perma.cc/7M7R-C4NJ>; see Kampala Convention *supra* note 114.

Guiding Principles, the Kampala Convention, adopted in 2009, recognizes the implications that natural disasters can have on human displacement.¹²⁶ However, unlike the Guiding Principles, the Kampala Convention also acknowledges and explicitly makes references to climate change as a cause of displacement.¹²⁷ Article 5 of the Kampala Convention recognizes that states have an obligation to “take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.”¹²⁸ Recognized as a binding instrument in African states, the Kampala Convention provides that states are responsible to protect those who are displaced by the implications of climate change.¹²⁹

Thus, the Guiding Principles and the Kampala Convention offer unique legal protection because these instruments strive to tailor international legal standards to the special needs of IDPs while establishing protection obligations during all phases of displacement.¹³⁰ These regional frameworks have the potential to provide protection for CDPs who have been internally displaced.¹³¹ Not only do they focus on the rights of those who are internally displaced, but they also explicitly include those who have been displaced by natural disasters and climate change.¹³²

Although both of these regional instruments have potential to protect CDPs who are internally displaced, it would be of no use to the Teitiotia family and other island nation residents who find themselves crossing borders to seek refuge.¹³³ While the majority of CDPs find themselves internally displaced during the initial phases of displacement, the interplay between sudden-onset and slow-onset climate events can result in cross-border migration.¹³⁴

126. Kampala Convention, *supra* note 120, at pmb1.

127. Kampala Convention, *supra* note 120, at art. 5, ¶ 4; Abebe, *supra* note 125, at 1.

128. Kampala Convention, *supra* note 120, at art. 5, ¶ 4.

129. *Id.* The Kampala Convention is the first regional instrument in the world to impose this type of state obligation. APAP, *supra* note 9, at 7.

130. Cohen & Bradley, *supra* note 13, at 108–09.

131. *Id.*

132. See Guiding Principles, *supra* note 119, at 5; see also Kampala Convention, *supra* note 126, at art. 5, ¶ 4.

133. See Williams, *supra* note 19, at 513.

134. *Id.*

The initial phases of climate-induced displacement may be triggered by a sudden-onset natural disaster; however, the fact that there is no protection provided for those who have crossed an international border “fails to appreciate the true extent of the problem[.]”¹³⁵ Extreme climate events such as saltwater intrusion and the degradation of agricultural lands can lead to small island nations becoming completely uninhabitable.¹³⁶ Such slow-onset events will adversely impact the livelihoods of those that live on the land, leaving them no choice but to seek refuge outside their national borders.¹³⁷ Thus, “internal displacement may well lead to transborder displacement in the long term[.]”¹³⁸

To use Tuvalu as an example, the Tuvalu government declared the island in a state of emergency in 2011 due to severe water shortages.¹³⁹ These shortages will not only impact food security, but also the livelihoods of those who live on the land.¹⁴⁰ In 2019, while visiting the island nation, U.N. Secretary General, António Guterres described Tuvalu as one of the “frontrunners in the race against the [global] climate emergency.”¹⁴¹ As these concerns heighten, the land will soon become unsuitable for human habitation causing residents to flee.¹⁴²

As a result, CDPs who are not “internally” displaced because they have crossed an international border would not receive protection under the Guiding Principles or the Kampala Convention.

135. *Id.*

136. McAdam, *supra* note 18, at 7–8; see also Justin T. Locke, *Climate Change-Induced Migration in the Pacific Region: Sudden Crisis and Long-Term Developments*, 175 *GEOGRAPHICAL J.* 171, 178 (2009) (emphasizing that slow-onset climate events have long-term consequences on food security, health, and natural resources).

137. Williams, *supra* note 19, at 513.

138. *Id.*

139. McAdam, *supra* note 18, at 7–8.

140. Stephen Castles, *Environmental Change and Forced Migration: Making Sense of the Debate* 1 (UNHCR: Evaluation and Policy Analysis Unit, Working Paper No. 70, 2002), <https://perma.cc/MTH7-T98R>.

141. ‘Save Tuvalu; Save the World’; *UN Chief Echoes Rallying Cry from Front Lines of a Global Climate Emergency*, UN NEWS (May 29, 2019), <https://perma.cc/N6UM-2JQQ>.

142. *Id.*; see also Knodel, *supra* note 18, at 132 (stating that heightened concerns related to security and livelihood will “reduce the ability of a nation and culture to exist in their original homeland”).

Consequently, there is no international framework that would provide cross-border CDPs rights-based protection they require.¹⁴³ By only offering protection to CDPs who are internally displaced, these existing legal mechanisms offer a “piecemeal approach” to protecting CDPs because they fail to appreciate the long-term consequences of climate change and the complex multi-layered phases of climate displacement.¹⁴⁴ The protection obligations established under the Guiding Principles and the Kampala Convention only offer a temporary domestic solution to an otherwise increasing and long-term international crisis.¹⁴⁵

IV. PROPOSED REGIONAL RESPONSES TO CLIMATE-INDUCED DISPLACEMENT

The fact that existing legal mechanisms fail to consider the rights of CDPs does not mean that CDPs are any less worthy of protection, nor does it delegitimize their claims for refuge.¹⁴⁶ Instead, this fundamental void in legal protection illustrates that CDPs are unique and must be considered through a different protection lens.¹⁴⁷ As a result, this legal gap “recognizes and demonstrates the need for a more contemporary and innovative approach”¹⁴⁸ for CDPs.

The multidimensional nature of climate displacement and the difficulty in separating climate displacement from other socio-economic and political drivers further complicates attempts to formulate an overarching international agreement that effectively protects the rights of CDPs.¹⁴⁹ Identifying the multi-layered phases of

143. See Docherty & Giannini, *supra* note 73, at 357.

144. APAP, *supra* note 9, at 7; see also Williams, *supra* note 19, at 513.

145. APAP, *supra* note 9, at 6–7; Williams, *supra* note 19, at 503; see also UNHCR, The Warsaw Intern'l Mechanism For Loss And Damage Associated With Climate Change Impacts, Task Force on Displacement Activity II.4, *Mapping of Existing International and Regional Guidance and Tools on Averting, Minimizing, Addressing and Facilitating Durable Solutions to Displacement Related to the Adverse Impacts of Climate Change*, at 45 (Aug. 2018) [hereinafter Warsaw Task Force] (acknowledging that existing legal instruments fail to consider the long-term consequences of climate change because they “focus on the present and immediate future, with relatively short-term time horizons”).

146. See Williams, *supra* note 19, at 509; see also Statement at Nansen Conference, *supra* note 92.

147. Williams, *supra* note 19, at 509; see also Hill, *supra* note 67, at 190.

148. Williams, *supra* note 19, at 509.

149. *Id.* at 512–13.

climate displacement will depend on each state's particular vulnerabilities and their capacities to address climate displacement.¹⁵⁰ Thus, the creation of a "one-size-fits-all" international approach to addressing climate displacement would not adequately protect the unique rights of CDPs.¹⁵¹ Instead, what is needed are carefully crafted regional solutions that are capable of acknowledging the particular needs of states and CDPs.

This Part proposes solutions to this need for more regional approaches to address climate displacement. First, it highlights the value of regional solutions and provides an example of an existing and effective regional framework. It then explores the unique role that UNCHR can play in the creation of regional approaches and recommends an innovative funding option that can support states in the development of regional climate displacement policies.

A. Proposal for "Bottom-Up" Reform

1. The Value of Regional Solutions

In a speech delivered to the United Nations Development Programme in September 2018, U.N. Secretary-General António Guterres acknowledged the multidimensional nature of climate-induced displacement and recognized the critical need to not only address sudden-onset climate events, but also underlying slow-onset events.¹⁵² However, due to its multi-layered consequences, "climate change remains controversial given its cross-cutting reach from environmental and social impacts, through to economic and political policy[.]"¹⁵³

Recently, there have been a number of international initiatives that recognize the interlinkages between climate change and

150. Hill, *supra* note 67, at 198–99.

151. JANE MCADAM, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 7 (2012).

152. See generally António Guterres, U.N. Sec'y-Gen., Secretary-General's Remarks on Climate Change [as delivered] (Sept. 10, 2018), <https://perma.cc/FL6D-U3FV>.

153. Williams, *supra* note 19, at 517.

displacement.¹⁵⁴ For example, the Global Compact for Safe, Orderly and Regular Migration (“Global Compact”), adopted on December 10, 2018 and developed under the United Nations, is an “intergovernmentally negotiated agreement” which seeks “to cover all dimensions of international migration in a holistic and comprehensive manner.”¹⁵⁵ The Global Compact refers to sudden-onset and slow-onset climate events and recognizes these events as causes of forced displacement.¹⁵⁶

Although the Global Compact was formally adopted in 2018, its commitments are non-binding and have yet to be implemented.¹⁵⁷ Moreover, despite its passive recognition of climate-related events, there is yet to be any mention of how this instrument will assist states in addressing climate displacement at a regional level.¹⁵⁸ Thus, when it comes to international agreements “there is a risk that a one-size-fits-all response could downplay the cultural

154. See Goodwin-Gill & McAdam, *supra* note 22, at 5 (referring to a number of recent international initiatives and agreements including the Sustainable Development Goals, the Sendai Framework for Disaster Risk Reduction, the World Humanitarian Summit, and the New York Declaration for Refugees and Migrants).

155. *Global Compact for Migration*, U.N. REFUGEES AND MIGRANTS, <https://perma.cc/38YG-R3JY>.

156. *Global Compact for Migration, Global Compact for Safe, Orderly and Regular Migration*, at 9, 12 (July 11, 2018), <https://perma.cc/8H3K-V39A>; see also Carolyn Beeler, *UN Compact Recognizes Climate Change as Driver of Migration for First Time*, PUB. RADIO INT’L (Dec. 11, 2018), <https://perma.cc/9K9B-8TQA> (stating that the Global Compact is recognized as the first global agreement towards a common approach to international migration).

157. *Global Compact on Migration Formally Adopted in Marrakech*, THE N. AFRICA POST (Dec. 10, 2018), <https://perma.cc/7X98-9SCJ>; see also *General Assembly Officially Adopts Roadmap for Migrants to Improve Safety, Ease Suffering*, UN NEWS (Dec. 19, 2018), <https://perma.cc/PBF8-FCRU>.

158. SARAH OPITZ STAPLETON ET AL., CLIMATE CHANGE, MIGRATION AND DISPLACEMENT: THE NEED FOR A RISK-INFORMED AND COHERENT APPROACH 27 (2017), <https://perma.cc/27ZC-B6JE>; see also Tim McDonnell, *The Refugees The World Barely Pays Attention To*, NAT’L PUB. RADIO (June 20, 2018), <https://perma.cc/R3PK-B6TM> (statement of Nina Hall) (“[T]he language in the compacts is too vague to spur much progress. . . neither compact will be legally binding.”) (statement of Steve Trent) (“The global compacts are a start, but it’s clear that they’re not enough.”); Warsaw Task Force, *supra* note 145, at 44 (stating that although there are several international instruments that recognize the inherent link between the implications of climate change and human displacement, “relatively few of them are fully dedicated to the issue of averting, minimizing, addressing, and/or facilitating durable solutions to displacement related to climate change and disaster”).

and livelihood needs of displaced communities and local knowledge bases for adaptation.”¹⁵⁹

Therefore, a regional approach is needed to address climate-induced displacement.¹⁶⁰ The ability of a community to recover from both sudden and slow-onset implications of climate change will depend on that particular community’s resilience and coping capacity.¹⁶¹ As such, each state will have its own “tipping point”¹⁶² and will experience the impacts of climate change differently based on the resources and protections in place within each state.¹⁶³ While climate change impacts are international in scope and trans-boundary in nature, the immediate impacts will be experienced at a regional level.¹⁶⁴

A bottom-up approach would allow for a more inclusive process, giving regions the opportunity to gauge the varying capacities of each state and analyze the climate-related concerns specific to each region.¹⁶⁵ Given the regional impact of climate change, focus should instead be placed on strengthening national policies.¹⁶⁶ This approach would provide states with the chance to not only work at their own pace, but to also be flexible when adopting and implementing policies.¹⁶⁷ As a result, the rights of CDPs are better recognized and protected when their needs are considered through a more localized framework.¹⁶⁸ The UNHCR further endorses this regional approach.¹⁶⁹ When speaking on behalf of the agency in

159. McAdam, *supra* note 151, at 7; *see also* Warsaw Task Force, *supra* note 145, at 45 (stating that existing international instruments inadequately address the unique human rights risks that climate displaced populations face, and that more regional policies are needed that encourage “migration with dignity” and that are sensitive to the cultural heritage and various capacities of states).

160. Williams, *supra* note 19, at 512 (advancing a more bottom-up approach to strengthen national policies); Warsaw Task Force, *supra* note 145, at 47.

161. Goodwin-Gill & McAdam, *supra* note 22, at 14.

162. *Id.* at 33 n.136.

163. *See generally id.*; *see also* Warsaw Task Force, *supra* note 145, at 45; Knodel, *supra* note 18, at 133 (noting that an island’s state of vulnerability can depend on its “existing economic, social, and physical conditions”).

164. Williams, *supra* note 19, at 518.

165. *Id.* at 521.

166. *Id.* at 520–23; Warsaw Task Force, *supra* note 145, at 45–46.

167. Williams, *supra* note 19, at 511.

168. *See id.*

169. Alister Doyle, *World Needs Refugee Re-Think for Climate Victims: U.N.*, REUTERS (June 6, 2011), <https://perma.cc/5P68-KXZG>.

2011, Antonio Guterres stated that when combating climate-induced displacement, the “primary responsibility for the protection and well-being of affected populations will . . . rest with the states concerned.”¹⁷⁰

Consequently, this bottom-up approach becomes “a system that instead recognizes the idea of climate change displacement at an international level, while leaving the detail of agreement and degree of engagement to national policies.”¹⁷¹ Regional approaches, such as the Nansen Initiative, and its successor, the Platform on Disaster Displacement, allow states to identify these tipping points and encourage states to work together to create action plans that enhance resilience.¹⁷²

2. Leveraging Existing Instruments to Develop an Effective Regional Framework

The Nansen Initiative and the Platform on Disaster Displacement demonstrate the value of regional policies and their potential in framing a bottom-up rights-based protection regime.¹⁷³ Established in 2012, the Nansen Initiative on Disaster-Induced Cross-Border Displacement (“Nansen”) was a three-year intergovernmental strategy led by the governments of Norway and Switzerland.¹⁷⁴ Using a “bottom-up consultative approach,”¹⁷⁵ Nansen sought to “build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters, including the adverse effects of climate change.”¹⁷⁶ Within its three-year span, Nansen engaged in seven sub-regional consultations involving regions throughout the world.¹⁷⁷ These consultations resulted in the creation of the Agenda for the Protection of Cross-Border Displaced

170. *Id.*

171. Williams, *supra* note 19, at 520.

172. Jane McAdam, *From the Nansen Initiative to The Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement*, 39 U. OF NEW SOUTH WALES L. J. 1518, 1520 (2017).

173. *Id.*

174. THE NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE: VOLUME 1 6 (2015) [hereinafter NANSEN INITIATIVE].

175. *Id.*

176. *Id.*

177. See McAdam, *supra* note 172, at 1520–21.

Persons in the Context of Disasters and Climate Change (“Agenda”).¹⁷⁸

Endorsed by 109 governments, the purpose of the Agenda is to offer a comprehensive “toolbox of concrete measures and effective practices that governments can implement now to avoid displacement . . . and to protect and assist those who are displaced.”¹⁷⁹ Through these measures, the Agenda calls on states to place more focus on climate adaptation plans and to strengthen disaster risk reduction measures.¹⁸⁰

While Nansen formally reached the end of its three-year mandate in 2015, it inspired the creation of its successor, the Platform on Disaster Displacement (“PDD”).¹⁸¹ The PDD, which launched in May 2016 at the World Humanitarian Summit, continues to advance the objectives of the Agenda originally created by Nansen.¹⁸² The purpose of PDD is to assist states in implementing the Agenda by forming state-led partnerships with various stakeholders and agencies, including the UNHCR.¹⁸³

Like its predecessor, PDD embraces the multidimensional nature of climate displacement.¹⁸⁴ By acknowledging the value of regional solutions, PDD aims to address the voids in existing refugee law.¹⁸⁵ Rather than endorse a top-down, one-size-fits-all approach, PDD “focuses on the integration of effective practices by states and (sub-)regional organizations into their own normative frameworks in accordance with their specific situations.”¹⁸⁶ As part of its com-

178. *Id.* at 1524.

179. McAdam, *supra* note 18, at 10 (internal quotations omitted).

180. *Id.*

181. McAdam, *supra* note 172, at 1520.

182. *Our Response*, PLATFORM ON DISASTER DISPLACEMENT, <https://perma.cc/TLA3-J3HU> [hereinafter *Platform on Disaster Displacement Response*].

183. *See Why UNHCR is Taking Action on Climate Change Displacement*, U.N. OFF. OF THE HIGH COMM’R FOR REFUGEES (2017), <https://perma.cc/6PRQ-75SB> (noting UNHCR’s endorsement of support for the Platform on Disaster Displacement).

184. Walter Kälin, *The Nansen Initiative: Building Consensus on Displacement in Disaster Contexts*, 49 FORCED MIGRATION REV. 5, 5 (2015).

185. McAdam, *supra* note 172, at 1525.

186. PLATFORM ON DISASTER DISPLACEMENT, COORDINATION UNIT, UPDATE ON PROGRESS SINCE THE WORLD HUMANITARIAN SUMMIT 1 (2017), <https://perma.cc/S8X4-CNLV>.

prehensive toolbox, the Agenda offers resources for states to provide humanitarian visas, as well as temporary protection and stays of deportation arrangements for CDPs.¹⁸⁷ The Agenda recognizes the adverse implications of slow-onset climate events, and for this reason, recommends that states should provide voluntary migration opportunities so that residents are given the choice to relocate in anticipation of future environmental harm.¹⁸⁸

The Agenda also recognizes that a holistic approach must be taken when advancing voluntary migration opportunities to ensure that these options are attainable to all CDPs.¹⁸⁹ Not all voluntary migration options will provide the necessary protection that CDPs need, and some maintain strict eligibility requirements that may exclude many CDPs.¹⁹⁰ For example, New Zealand's Pacific Access Category ("PAC") is a voluntary migration and resettlement program.¹⁹¹ Recognized as a special "immigration deal"¹⁹² between several Pacific island nations and New Zealand, PAC provides permanent residence annually to a set number of residents from Fiji, Tonga, Tuvalu, and Kiribati.¹⁹³ However, to be eligible for PAC, one must not only have a minimum level of English, but must also meet a minimum income level and basic health requirements.¹⁹⁴ These requirements were designed to ensure that once relocated, individuals would be able to sustain employment, and thus, a livelihood.¹⁹⁵ Although PAC has supported many island nation residents and families seeking to relocate and resettle elsewhere, not everyone will be able to meet the strict PAC requirements.¹⁹⁶

187. McAdam, *supra* note 172, at 1524; see W.H., *Why Climate Migrants Do Not Have Refugee Status*, THE ECONOMIST (Mar. 6, 2018), <https://perma.cc/9YA3-RF96>.

188. McAdam, *supra* note 172, at 1543.

189. Kälin, *supra* note 184, at 5.

190. Williams, *supra* note 19, at 516.

191. McAdam, *supra* note 172, at 1544.

192. FRIENDS OF THE EARTH AUSTRALIA, CLIMATE JUSTICE: A FAIR SHARE OF THE ATMOSPHERE 19 (2006), <https://perma.cc/QZ3S-PDJ9>.

193. McAdam, *supra* note 172, at 1544.

194. See John Gibson et al., *How Pro-Poor is the Selection of Seasonal Migrant Workers from Tonga Under New Zealand's Recognized Seasonal Employer Program?*, 23 PACIFIC ECON. BULL. 187, 197 (2008).

195. See *id.* at 197–98.

196. Knodel, *supra* note 18, at 158 ("PAC remains a limited and structured migration program rather than a program to address climate-displaced persons."); Williams, *supra* note 19, at 515 (noting the protection gaps of PAC due to its strict eligibility requirements that often exclude many residents).

Since the Teitiota family was returned to Kiribati after their claim for refugee status was denied, Ioane Teitiota has been unable to find employment.¹⁹⁷ Without basic income, CDPs like the Teitiota family would not be eligible for voluntary migration under PAC. Consequently, the PDD recognizes that voluntary migration opportunities must be addressed with care as their effectiveness will depend on the varying capacities of each state.¹⁹⁸ By understanding the regional challenges of states, PDD recognizes the challenges that can arise when creating voluntary migration opportunities.¹⁹⁹ As a result, PDD encourages more inclusive, sustainable migration opportunities, so that programs like PAC do not leave people behind.²⁰⁰

Nansen is an example of the product of regional collaborative efforts to address climate-induced displacement.²⁰¹ The use of regional consultations and collaborations allowed Nansen to create a broad Agenda that is still applicable and effective on a regional level.²⁰² Its successor, PDD, continues to advance the goals of Nansen; these state-led initiatives “harness[] regional cooperation between states and build[] on existing geopolitical, economic, cultural, and environmental relationships that already exist within many regional frameworks.”²⁰³ Such an approach may encourage good practices between states where ideas and initiatives can be shared and exchanged for the benefit of the entire region.²⁰⁴

197. McDonald, *supra* note 43.

198. APAP, *supra* note 9, at 3 (“Ensuring that climate-induced planned resettlement is dealt with humanely and effectively will require careful policy planning . . .”).

199. McAdam, *supra* note 18, at 10–11.

200. See Hill, *supra* note 67, at 188 (stating that governance mechanisms must be applied equitably and policies and practices must “ensure interest representation, inclusiveness, [and] equality . . .”).

201. Warsaw Task Force, *supra* note 145, at 47.

202. See McAdam, *supra* note 18, at 9–10.

203. Williams, *supra* note 19, at 524; see also Hill, *supra* note 67, at 189 (stating that if governance frameworks fail to take cultural considerations into account, they “will inevitably result in imposed ‘solutions’ that may lead to all manners of unintended consequences[]”).

204. Williams, *supra* note 19, at 512; see also Knodel, *supra* note 18, at 173.

B. The UNHCR and Potential Funding Avenues

1. The Role of the UNHCR

Although the UNHCR may be reluctant to incorporate CDPs into a Convention refugee protection framework, and instead endorses regional initiatives, this does not mean that it absolves itself from carrying any responsibility in the protection of CDPs. As U.N. Secretary-General António Guterres noted, the “UNHCR is not a migration management agency and does not want to become one. But to be able to fulfil our mandate, we must recognize the mixed nature of many present-day population flows.”²⁰⁵ Considering that climate-induced displacement is a present-day migration concern, there is a potential opportunity for UNHCR to play an important protective role.²⁰⁶

Although the agency’s mandate focuses on reactive protection measures, the agency nonetheless recognizes the multi-layered challenges that accompany climate-induced displacement and is aware of CDPs’ current and emerging protection needs.²⁰⁷ Therefore, “the key is to find ways in which UNHCR’s expertise can add value to, and complement, the roles of other actors so as to enhance protection”²⁰⁸

With almost 70 years of knowledge and practical experience in protecting the rights of refugees, the UNHCR has potential to play a critical role in addressing CDP protection, both in a normative and operational sense.²⁰⁹ Goodwin-Gill and McAdam argue that “its credibility and authority will allow it to develop pro-active and innovative initiatives”²¹⁰ As a result, UNHCR can provide “value-added’ [support], where its experience and expertise have much to offer”²¹¹ Through offering this experience, one proposal has been to call on the UNHCR to assist in developing a United Nations Special Rapporteur with a specific focus on climate

205. Guterres, *supra* note 1.

206. Goodwin-Gill & McAdam, *supra* note 22, at 26; *see also* Berringer, *supra* note 65, at 214 (noting the potential “unique” role UNCHR can play in addressing climate displacement).

207. *See* Goodwin-Gill & McAdam, *supra* note 22, at 30.

208. *Id.* at 31.

209. *Id.* at 24, 26.

210. *Id.* at 37.

211. *Id.* (internal quotations omitted).

displacement.²¹² A UN Special Rapporteur can assist states by ensuring proper oversight and coordination in the development of regional policies.²¹³

UNHCR also has a critical role to play in increasing global awareness of the urgency of addressing climate displacement. To fulfill this objective, the agency must start by working towards normalizing appropriate terminology used to characterize peoples affected by climate-induced displacement.²¹⁴ Despite its reluctance to adopt CDPs within the conventional legal framework, it is still critical that international policies and initiatives “at the very least acknowledge the link between climate change and displacement and recognize the resulting problem.”²¹⁵ Only after effective and appropriate terminology become normalized within the global context can the rights of CDPs be properly recognized within effective regional legal frameworks.²¹⁶

2. Creating a Climate Displacement Category Under the Green Climate Fund

With the help of UNHCR, climate-induced displacement can become recognized terminology within the language of refugee rights protection.²¹⁷ This recognition can help to further legitimize regional approaches initiated by states.²¹⁸ For these regional frameworks to come into fruition, collaboration between the UNHCR and states must occur to formulate a comprehensive and sustainable funding mechanism. Although this type of financing instrument may not currently exist, states may look to other funding models for inspiration. The GCF assists in financing mitigation and adaptation projects related to climate change and is the result

212. ENVTL. JUSTICE FOUND., *BEYOND BORDERS: OUR CHANGING CLIMATE – ITS ROLE IN CONFLICT AND DISPLACEMENT* 6 (Nov. 2, 2017).

213. *Id.* at 5.

214. Goodwin-Gill & McAdam, *supra* note 22, at 28.

215. Williams, *supra* note 19, at 520; *see also* Berringer, *supra* note 65, at 202 (suggesting that the link between climate change and displacement needs to be recognized and integrated into international and regional policies).

216. Goodwin-Gill & McAdam, *supra* note 22, at 29; *see also* Knodel, *supra* note 18, at 131 (advancing the need to “develop a legally recognized definition” of CDPs).

217. *Id.*

218. Goodwin-Gill & McAdam, *supra* note 22, at 29.

of effective collaboration between states and various UN agencies.²¹⁹ Although it does not currently have a specific fund that addresses climate displacement, the GCF may have potential to assist in creating such a fund.

The GCF was formally adopted at the 2011 United Nations Climate Change Conference in Durban, Africa.²²⁰ Under the mandate of the U.N. Framework Convention on Climate Change (“UNFCCC”), the GCF was established to create an innovative and ambitious funding mechanism that seeks to “reshape the global architecture of climate change financing.”²²¹ Recognized as “a legally independent institution,”²²² the GCF is supported by an independent Secretariat and is headed by the Green Climate Board, which is comprised of 24 members.²²³ Within the Board, there is an equal composition of members from developed and developing country parties.²²⁴ Among the developing country members, the GCF’s mandate guarantees representation by relevant UN regional groupings, as well as, representation from small island nations and least developed countries.²²⁵ From the Board’s composition alone, the GCF focuses on regional approaches to address the impacts of climate change.

As the GCF’s interim trustee, the World Bank is responsible for holding the Fund’s financial assets and preparing its financial records and statements.²²⁶ The World Bank does not make deci-

219. *Green Climate Fund*, *supra* note 23.

220. *Id.*

221. Kenneth W. Abbott & David Gartner, *The Green Climate Fund and the Future of Environmental Governance* 4 (Earth System Governance, Working Paper No. 16, 2011); *see also Green Climate Fund*, *supra* note 219. At the G7 Summit in June 2015, leaders emphasized GCF’s role as a key institution for global climate finance. *Resource Mobilization*, GREEN CLIMATE FUND, <https://perma.cc/2ESM-4A9B>.

222. Liane Schalatek et al., Heinrich Böell Stiftung & Overseas Dev. Inst., *The Green Climate Fund*, Climate Finance Fundamentals, Brief 11, at 1 (Nov. 2018); *see Who We Are: Secretariat*, GREEN CLIMATE FUND, <https://perma.cc/6YMC-GQUD>.

223. U.N. Framework Convention on Climate Change, *Rep. of the Conference of the Parties on its Seventeenth Session*, Dec. 3/CP.17, U.N. Doc. FCCC/CP/2011/9/Add.1, annex I, ¶ 9 (Dec. 11, 2011).

224. *Id.*

225. *Id.*

226. *Id.* ¶ 24.

sions on behalf of the GCF; instead, it administers the Fund's assets in accordance with the Green Climate Board's decisions.²²⁷ The GCF's first "resource mobilization" period began in 2014 and is still in process, receiving pledges on an ongoing basis.²²⁸ The Fund's main investments are provided in the form of grants and loans that are primarily funded by developed country parties to the UNFCCC.²²⁹ As of May 2018, GCF has received financial pledges from 43 state governments and nine developing country parties.²³⁰ Since 2014, the total amount of signed pledges raised has equaled 10.3 billion dollars, with the United States, Japan, United Kingdom, and France as its top donors.²³¹ Since its inception, the GCF has made significant progress in mobilizing resources and working towards investing in combating climate change through regional mitigation and adaptation projects. For example, by the end of 2017, the GCF amassed over \$633 million in resources that have aided in implementing 19 regional projects worldwide.²³²

The GCF Readiness and Preparatory Support Program ("RPSP") was established in 2014 to help developing countries gain greater access to GCF resources.²³³ Any country party may apply to the RPSP; however, over half of funding allocated for the RPSP is reserved for developing countries identified by UNFCCC as being particularly vulnerable to the adverse effects of climate change.²³⁴ These countries include less developed countries, small island states, and African States.²³⁵ RPSP provides up to \$3 million per country and up to \$1 million per year to assist states in creating national adaptation plans, and through the RPSP, the GCF

227. *Id.* ¶ 25.

228. *Green Climate Fund*, *supra* note 23. The first phase of the resource mobilization period began in 2014 and continued through the end of 2018. *Id.*

229. *See id.*

230. GREEN CLIMATE FUND, STATUS OF PLEDGES AND CONTRIBUTIONS MADE TO THE GREEN CLIMATE FUND: PLEDGE TRACKER (2018), <https://perma.cc/5EXV-8A3U> (providing a detailed chart of pledges and contributions GCF has received as of May 8, 2018.)

231. *See id.*

232. *Green Climate Fund*, *supra* note 23.

233. *Readiness and Preparatory Support Program*, *supra* note 24.

234. *Id.*

235. *Id.*; *see also* Knodel, *supra* note 18, at 143 (noting that compared to developed countries, developing countries experience "asymmetrical impacts of climate change").

aims to “support effective, country-driven adaptation activities”²³⁶ that consider the unique vulnerabilities and capacities of each state to address climate change.²³⁷ As of 2019, the RPSP has worked with 135 countries and is “set to become the largest global support programme made available to developing countries to enhance access to climate finance in support of their efforts to combat climate change.”²³⁸

Through a focus on regional support and representation, the GCF has placed important emphasis on investing in national adaptation plans to combat climate change, particularly within vulnerable countries, such as small island states.²³⁹ Additionally, the RPSP ensures that vulnerable states have access to GCF’s resources and multilateral funds.²⁴⁰ Although the RPSP provides this additional support for states, it has yet to recognize climate displacement as a focus area in need of funding. With such a comprehensive climate change funding mechanism already in place, the RPSP offers promise to provide a funding platform that can assist states in developing adaptation plans that address climate-induced displacement.²⁴¹ Thus, this Article proposes the RPSP designate a portion of its financial resources to assist states in developing national adaptation plans focused on addressing climate displacement.

236. GREEN CLIMATE FUND, GCF IN BRIEF: ADAPTATION PLANNING 1 (2018), <https://perma.cc/9ALQ-9UH3> [hereinafter GCF IN BRIEF: ADAPTATION PLANNING]; see *Readiness Support*, GREEN CLIMATE FUND, <https://perma.cc/VUA6-R43D>.

237. GCF IN BRIEF: ADAPTATION PLANNING, *supra* note 229.

238. Readiness and Preparatory Support Programme: Strategy for 2019-2021 and Work Programme 6,7 (2019), https://www.greenclimate.fund/documents/20182/1424894/GCF_B.22_08_-_Readiness_and_Preparatory_Support_Programme_Strategy_for_2019-2021_and_Work_Programme_2019.pdf/34b15586-5492-1a7c-3534-b580d53b7acd.

239. *Green Climate Fund*, *supra* note 23; see generally *Project FP091*, GREEN CLIMATE FUND, <https://perma.cc/XQT4-REMQ> (illustrating GCF mitigation and adaptation project focused on strengthening policies on water supply management in South Tawara (capital of Kiribati)).

240. See *The Funds*, GREEN CLIMATE FUNDS, <https://perma.cc/F8F4-RGEF> (providing an up to date list of GCF’s multilateral climate funds); see also Knodel, *supra* note 18, at 148 (acknowledging that “financial capacity is another major limiting factor for developing nations trying to adapt to the adverse impacts of climate change”).

241. See Berringer, *supra* note 65, at 214 (identifying “migration as an appropriate adaptation measure”).

By creating a designated climate displacement funding category with the RPSP, this proposal can open the door to building of partnerships between UNHCR and UNFCCC and can encourage further collaboration between these agencies and regional states. Along with an appointed UN Special Rapporteur on climate displacement to aid in coordination, a designated climate displacement fund under the auspices of the GCF would provide a strong foundation to support states' efforts to develop effective regional initiatives that seek to protect the rights of CDPs.

V. CONCLUSION

The implications of climate change pose significant threats to populations worldwide.²⁴² With every second that passes, yet another person is displaced by a climate-related event.²⁴³ Despite this reality, there is no effective legal framework to protect CDPs.²⁴⁴ Consequently, CDPs like the Teitiota family have no legal mechanisms to protect their rights. Existing legal frameworks are inadequate as they neglect to address the unique challenges CDPs face and fail to recognize the complex multidimensional nature of climate induced displacement.

The impacts of climate change will be felt at a regional level, and thus, what is needed are regional approaches to address this complex form of human displacement.²⁴⁵ States are better equipped to understand the unique challenges of climate displacement and can better appreciate the diverse and varying vulnerabilities of CDPs.²⁴⁶ This bottom-up approach to addressing climate-induced displacement has potential to encourage collaboration among states, without causing states to feel the pressure to conform to a top-down "one-size-fits-all" approach.²⁴⁷

Along with the experienced oversight of the UNHCR, there is potential for states to collaborate with funding initiatives like the Green Climate Fund. By crafting a designated funding category under an instrument like the GCF, states will have a platform from

242. See Urry, *supra* note 2, at 52.

243. RELIEFWEB, *supra* note 8.

244. Docherty & Giannini, *supra* note 73, at 357.

245. Williams, *supra* note 19, at 518.

246. *Id.*

247. Goodwin-Gill & McAdam, *supra* note 22, at 17; see also McAdam, *supra* note 172, at 1520.

which to advance and implement effective regional policies to address climate displacement. Thus, through regional-based initiatives, small island nation residents like the Teitiota family, and CDPs everywhere would receive the legal recognition and rights-based protection they rightfully deserve.