

Slipping Through the Gaps: How International Law Overlooks Climate Refugees

Lexie Salamone, Webster University – Saint Louis

Climate change poses a very real threat to migrants, both inside and outside of state borders. Existing international refugee law is hyper-focused on a fixed and outdated definition of “migrant” and is consequently ill equipped to deal with this looming threat. By looking at examples in the Pacific Islands, the Central American Northern Triangle, and Puerto Rico, this paper aims to understand ways in which current definitions and international legal instruments create a protection gap that ignores the needs of climate refugees. With the aim of better understanding how states and communities can work to bridge this gap, emphasis is placed on regional organizations and agreements in the face of this ever-growing problem.

Ioane Teitiota became an unsuspecting brand ambassador for climate refugees in 2015. After continuously facing unemployment and financial hardships in his homeland of Kiribati, he and his wife relocated to New Zealand with work permits in 2007. However, having misunderstood the legal process for a visa extension, Teitiota, his wife, and three young children – who were all born in New Zealand but did not hold citizenship – faced deportation in 2011. Teitiota’s lawyer, Michael Kidd, prayed for a solution and, upon hearing a variety of concerns pointing back to Kiribati’s rising sea levels and contaminated water sources, decided to argue that Teitiota faced “indirect persecution from human-caused global warming” (Weiss, 2015). After gaining national attention, Teitiota’s appeal was ultimately denied by New Zealand’s Immigration and Protection Tribunal, the High Court, and the Court of Appeals. All ruled that while the case may be morally strong, it was not within their powers to “expand the scope of the international refugee convention to cover those displaced by climate change” (Weiss, 2015). This

decision was solidified by the argument that climate change is indiscriminate, and also does not inherently fall under the 1951 Refugee Convention's well-founded fear clause (which highlights discriminant social and political factors as the only instances in which a refugee classification can be extended). While the changing climate and other environmental factors absolutely played a role in Teitiotia's reluctance to return to Kiribati, the courts had no legal instruments to acknowledge these factors as grounds for granting refugee status.

Insecurity underlies displacement in any context. Displacement as a result of climate change, however, appears to bring its own monsters into the equation – those that cannot be defeated with the existing international legal instruments meant to combat displacement. As lines are drawn connecting the changing climate to large-scale displacement, the number of individuals and communities uprooted by this looming threat will only continue to grow. When people are forced from their lands by environmental degradation – whether that be due to the sheer power of nature or human-caused natural disasters – questions remain unanswered about where they can relocate and what resources can be allocated for assistance. This research aims to understand the limitations of the current internationally accepted definitions of “refugee” and “internally displaced person”, drawing upon the protection gap to discover how those communities most impacted by climate change are left to their own devices – both within and outside of their own borders.

This research begins by defining relevant key terms such as “refugee” and “internally displaced person” that will be utilized throughout the paper in an attempt to better understand the nuances of migration. The paper then delves into contemporary migration movements and their connections to the changing climate, highlighting deviations from the accepted definitions and inquiring about gaps left in international legal protection for those that do not match the mold of “refugee”. Furthermore, seeing that the changing climate does not inherently move people across borders without forcing them to migrate internally first, the legal protections of internally displaced persons are also examined to

uncover gaps in the protection of those individuals. The research attempts to make sense of an emerging trend in temporary protection by looking at case studies in the Pacific Islands, the Central American northern triangle, and Puerto Rico to see how the protection gap manifests itself in places impacted by climate change and how governments and communities work to combat this.

In examining the actualization of climate change in these respective regions, this research identifies a common denominator in each situation: regional agreements. Regional agreements point to solutions that may be more appropriate for dealing with these challenges than the legal frameworks outlined by the broader international community. This paper concludes with recommendations for how best to confront the protection gap, looking at possibilities within both regional and international agreements to supplement existing international customary law and other non-binding instruments.

Nuances of cross-border movement

Cross-border movement is not meant to be painted with a single brush. Often, the term “migrant” is used as a catchall to describe anyone moving across borders. In reality, there are far more categorical differentiations, though this research will focus specifically on the classifications of “refugee” and “internally displaced person”. The internationally accepted definition of refugee stems from the 1951 Refugee Convention, which contends that a refugee is someone who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (United Nations, 1951).

This definition provides a very narrow set of qualifications, making it an incredibly exclusive classification of cross-border migrants. Any type of forced migration across international borders that falls outside of these specified reasons for fear of persecution is not considered a refugee movement. To

be legally considered a refugee, one must be identified as such by the United Nations High Commissioner on Refugees (UNHCR) based on credible fear due to the reasons mentioned previously, and it comes with its own set of protections, the most notable being the right to safe asylum and the policy of non-refoulement, or the safety from involuntary repatriation. This category of migrant is not an easy classification to come by, nor is it necessarily permanent either. The limitations of “refugee” in relation to the climate will be elaborated upon further below.

Another classification of migrant, an internally displaced person (IDP), is understood as:

Persons or groups of persons who have 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 (United Nations High Commissioner for Refugees, 1998).

“Internally displaced person” is a slightly broader subcategory of migrant, as it incorporates more than the aforementioned fears within the refugee definition as a valid reason for fleeing. It is important to note a clear difference, too, in that internally displaced person is displaced within the borders of their own country, meaning that the home country is still able to provide for them. The definition of an IDP is not legally binding, and therefore internationally supported protections for this classification are limited. Both refugees and IDPs are considered variations of migrants, but they delve into specific classifications that “migrant” cannot necessarily reach. Protections for refugees and IDPs differ from someone who could be considered an economic migrant, as an economic migrant is understood to be voluntary, while the aforementioned are forced. However, definitions of refugee and IDP do not extend to all possible scenarios of forced migration, as these classifications provide exhaustive lists of the scenarios to which they refer in a response to a very specific international crisis (Williams, 2008). Thus emerges a protection gap, which disproportionately impacts those who are already dealing with other situations of insecurity.

This concept of a protection gap has been a topic of discussion among scholars and policymakers likely since the Refugee Convention created the definition of “refugee”. The journey to becoming an internationally recognized refugee is not one that many legitimate refugees can often afford to take, as the long and bureaucratic waiting game can cost lives. Migrant camps, detention centers, and other makeshift physical limbos serve as a temporary fix while people wait for years on end to access more secure environments (Ponthieu & Derderian, 2013). Though the reasons for forced migration differ from person to person, the level of insecurity and vulnerability is shared amongst all that find themselves in the process.

As the first severe impacts of climate change are being felt – particularly by those living in sub-Saharan Africa, South Asia, and Latin America – displaced persons are struggling to find safety and security within international law (McDonnell, 2018). The Intergovernmental Panel on Climate Change (IPCC) warned in 1990 that the “gravest effects of climate change may be those on human migration” (Farquhar, 2015, p. 29). In an echo to this statement, statistics from 2013 suggest that “almost three times as many people were newly displaced by disasters than by conflict” (McAdam, 2015, p. 132). Climate change is fast becoming one of the biggest threats to security, and the legal mechanisms currently in place demonstrate an insufficient degree of preparedness for this potential disaster. Migration in response to climate change is not prompted without a culmination of other existing social, economic, or political factors, and the necessity of migration often comes as a result of reaching an individual’s or community’s adaptive capacity (McAdam, 2015). Since refugee status only applies to those with an established credible fear based on specific reasons outlined in the Refugee Convention, people forced out of their countries by climate-related factors (such as a disappearing territory, dry farmland, or some type of natural disaster) do not qualify for the classification. That is, unless climate change sparks or contributes to the development of a conflict, as demonstrated with water scarcity in Israel and Palestine (Shemesh, 2004).

More common for those who become displaced as a result of climate change is a movement within a country's borders, designating these populations as internally displaced (McDonnell, 2018). Statistics from 2016 estimate 24 million people had been displaced within the borders of their own country because of natural disasters that year (Sengupta, 2017). With numbers this large, deductive reasoning would likely suggest that the internally displaced classification serves as a solution to the protection gap. Various sources do reference the value of the Guiding Principles on Internal Displacement in response to climate refugees, as the list of qualifications seems far less strict than that of the 1951 Refugee Convention (Koser, 2008; Williams, 2008). Indeed, the Guiding Principles do acknowledge natural disasters, development projects and conflict as a factor in internal displacement, but even with this broader definition, protection gaps still plague those forced to relocate within the borders of their own country. For example, Koser (2008) points to examples of preemptive relocation or economic triggers as being still left out of this variation of forced migration. In addition, the Guiding Principles are not legally binding. While they may be better suited to meet the needs of climate-induced migration, gaps in protection remain.

A sizeable number of states have agreed to extend the definition of refugee to include those fleeing "due to significant disturbances to public order," but the legal instruments are still not binding, and therefore there is still no obligation on part of the international community to provide for these populations (Fornalé & Doebbler, 2017, p. 331). A commonly used counter argument regarding the expansion of "refugee" is that climate refugees could hypothetically continue to rely on the protection of their national government in case of displacement, whereas "traditional" refugees would not be afforded that luxury (Williams, 2008). Questions could be asked here about the ability to provide for nationals if the nation sinks under and the existence of the government is uncertain, but nonetheless, this is a valid counterpoint. Another concern is that an expansion of "refugee" would open the floodgates, meaning that far too many people would need assistance with the expansion, inherently

devaluing the current protection for refugees under the existing definition (Williams, 2008). Arguments about the culpability of the state in events of environmental degradation have also been brought to the attention of international legislative bodies in an attempt to expand the definition, but to no avail. The inability to trace climate change back to any particular country proves difficult to pin any contributory culpability on any one nation-state, meaning that there is little foundation in an attempt to claim climate change as state violence carried out on its own people. The current definition clearly is meant to apply to a very exclusive class of forced migrant, and it is unlikely that the pressure of protection gaps will be able to expand upon the definition.

Responsibility to Protect (R2P) is an international obligation that some research has attempted to connect to climate refugees as well (Farquhar, 2015). Adopted in 2005 after witnessing the terrible outcomes of the Rwandan genocide and the conflicts in the Balkans, R2P is meant to be an international commitment to put an end to the world's gravest atrocities – those of genocide, crimes against humanity, war crimes, and ethnic cleansing (United Nations Office on Genocide and the Responsibility to Protect, n.d.). R2P is a moral obligation to provide humanitarian assistance when conflicts get particularly ugly, and for that reason is typically connected to refugee protections. In the argument that climate change will create refugees, it becomes a question of whether or not R2P can apply in this situation as well. Considering the specific crimes to which R2P was created as a response, climate change may not directly fall into those categories unless paired with other occurrences, which does not appear to be impossible. While the R2P climate refugees has been a topic of conversation (and this issue was indeed brought to light at the 2005 World Summit), it remains uncertain whether this will be applied to the current doctrine in the future (Farquhar, 2015). As it exists currently, R2P is not an obligation that can assist in climate displacement as its own phenomenon, but may be helpful as climate change inevitably exacerbates existing conflicts in various regions and states.

A variety of international legal doctrines and bodies exist surrounding the topic of climate change or the topic of migration, but most of them lack the coherent connections between the two needed to bridge the protection gap. Both the IPCC and the United Nations Framework Convention on Climate Change (UNFCCC) devote energy and resources to climate change and adaptation. The IPCC's purpose consists of assessing climate change-related science, looking at impacts, risks, and potentials for adaptation or mitigation (Intergovernmental Panel on Climate Change, n.d.). The IPCC shares research on climate change but does not conduct its own. UNFCCC, a policy body meant to spur international action on climate change, dictates that developed countries must commit to "providing assistance to developing countries 'in meeting the costs of adaptation to those adverse effects [of climate change]'" (Farquhar, 2015, p. 37). This assistance does not, however, take migration into consideration. The Kyoto Protocol and the Paris Climate Agreement were both meant to build upon the UNFCCC, aiming to create more specific goals that would contribute to the reduction of greenhouse gases. The Kyoto Protocol commits parties to this goal (United Nations Climate Change, n.d.a), while the Paris Climate Agreement aims to take the UNFCCC and strengthen the response by all member parties to keep the earth's surface temperature below a two degree increase (United Nations Climate Change, n.d.b). The Paris Agreement seems to be the most specific and focused framework in terms of climate change, but nonetheless none of these agreements talk enough about migration. They continue to focus more on prevention, when it is certainly more beneficial to the countries and peoples already suffering from climate change to focus more on adaptation and plans for relocation when no alternatives exist any longer.

In July and August 2018, the United Nations General Assembly adopted the Global Compact for Migration and the Global Compact for Refugees. Both documents act as a guidebook of sorts, one that helps to sharpen international response and understanding of migration and refugee movements. Migration researchers and advocates hoped, when these compacts were still whispers in 2016, that these would be the first documents of their kind to acknowledge climate refugees and create

international policies on the subject (McDonnell, 2018). This is far from the outcome, however. While the compacts do reference the topic by acknowledging climate change or environmental degradation as a driver of migration or refugee movements, neither one make much of a difference in creating policies or paving the way for any progress in putting climate refugees at the forefront of any international legal decisions (McDonnell, 2018).

Rather than an attempt to fill the protection gap, other measures have been taken to provide temporary protections for those outside the narrow definition of refugee in order to supplement the existing protections for forced migration. These protections are increasingly seen as regional agreements, often in the forms of special humanitarian visas (Sengupta, 2017). The Guidelines on Temporary Protection or Stay Arrangements, developed in 2014, aim to “respond to humanitarian crises and complex or mixed population movements, in situations where existing responses are unsuitable or inadequate” (Türk, 2015, p. 40). The Guidelines identify four scenarios where temporary protection may be particularly helpful, those being mass influxes of asylum seekers in humanitarian crises, complex cross-border movements, fluid or transitional contexts, or other temporary conditions in the country of origin where migration is necessary (Türk, 2015). In the United States, temporary protected status was extended to Haitians and Hondurans, among others, when faced with a great crisis and limited time to process refugee or asylum applications. This temporary protected status supplements where protection gaps exist, but does not fill it completely since it is inherently temporary (Ponthieu & Derderian, 2013). An immediate issue with these temporary or complementary protections, then, is that they do not help to prevent involuntary repatriation, since the state is only offering protection for a fixed amount of time and it will likely not fluctuate, even if the place of origin is still unsafe or uninhabitable (Williams, 2008). The Guidelines on Temporary Protection or Stay Arrangements do try to acknowledge this issue, calling for a transition from temporary protection to a more permanent solution (Türk, 2015). Still, though, temporary protection is not sufficient in confronting the threat of climate change displacement.

Regardless of the framework applied, individuals pushed out by rising sea levels, dry farmland, and other consequences of climate change are often unable to fit the narrow mold created by international legal instruments. As Williams (2008) puts it, “there still remains a need for such individuals to be recognized and protected based on their own intrinsic value and circumstances rather than being manipulated and engineered into a preexisting framework designed for other purposes” (p. 513). Trying to tweak definitions and apply outdated language to a growing number of people and communities is not productive, particularly since none of the protections for forced migrants extend to any individual migrating preemptively. International refugee protection demonstrates a serious gap in the face of current international crises that will only continue to grow.

Tangible protection gaps

To explore tangible examples and realities of protection gaps for those forced to migrate due to climate change, this research utilizes case study examples. These case studies compare three seemingly different situations to examine where climate change has manifested itself in different disasters, the ways in which international law is failing for these specific countries and regions, and how their respective governments and others within the region have tried to fill gaps left by narrow definitions. The first study highlights various islands in the Pacific Ocean, acknowledging the popular narrative of sinking nations. The study focuses on Kiribati in particular and the ways in which their government goes within and beyond international law and regional initiatives to create options for migration where none exist. The second study investigates the countries of the Northern Triangle of Central America and how an expanding desert contributes to insecurity and mass migration, as well as how migrants from this region are demonized and dismissed by their host countries. The final study explores Puerto Rico and its hurricane-induced destruction in 2017, understanding the unique situation of island-dwelling U.S.

citizens being pushed to migrate to the mainland U.S. and how that impacts their legal migration status and stigma associated with the population.

A sinking homeland: Pacific islands

This first case study examines climate-related threats that set the scene for migration movements in the Pacific and how the featured states are attempting to adapt and supplement where international legal instruments are not applicable. This particular case draws most of its content from information about Kiribati, though this is not the only island facing the threat of rising sea levels. More recent scientific findings continue to support a common narrative surrounding the Pacific islands – a widely circulated fear of islands disappearing under the sea (Ni, 2015). While not applicable to all island states in the Pacific, this narrative does hold some weight. Rising sea levels and changing weather patterns are actively endangering people and livelihoods throughout the Pacific islands, particularly within the small island states that lie at or below sea level, and international law has not been productive nor helpful in helping Pacific islanders in adapting to this issue.

Kiribati is made up of 32 coral atolls and an island, all lying within one to four meters above sea level. There exists no such thing as “higher ground” on the island. The state is considered one of the world’s least developed countries, and its rapidly growing population is plagued with poverty, insecure resources, and economic vulnerability. Located on the equator, Kiribati was historically known as a hurricane-free zone. With the changing weather patterns, however, they are no longer safe from extreme weather events. The sea level continues to rise in this region, and all factors combine to create a perfect storm. Studies suggest that Tarawa, the capital of Kiribati, is likely to be almost completely submerged by 2050 (Ni, 2015).

Other island states face similar fates as Kiribati. Cyclone Pam, which hit Vanuatu in 2015, was the largest ever recorded in the region before Fiji suffered Cyclone Winston the next year (Wewerinke-

Singh, 2018). These disasters, though not abnormal, reached unusual intensities for which the countries were severely underprepared, which meant they inherently suffered great losses. In 2014, a family of four originally from Tuvalu tried (like Ioane Teitiota) to make a claim in court that the effects of climate change would negatively affect them and that they needed to migrate to New Zealand for their own safety. The New Zealand Immigration and Protection Tribunal ultimately permitted them to stay, not for this reason but for their strong family ties in the country (McAdam, 2015). Just 12 years before, Tuvalu threatened the United States with a lawsuit in the International Court of Justice “for failing to reduce greenhouse gas emissions and endangering Tuvalu’s survival” (Ni, 2015, p. 353). While this did not come to fruition, the threat that greenhouse gas emissions pose to the existence of a state and people is very real and valid. Both the Solomon Islands and Papua New Guinea have made plans to relocate entire populations of specific towns in response to the threats of climate change (Lewis, 2015). In sum, these examples demonstrate that small island states are disproportionately affected when faced with destruction and degradation as a result of climate change and natural disasters. They are not often supplied with resources that would have them prepared to deal with the aftermath. In the face of this, they are already taking precautionary measures to adequately prepare their populations for what has proven to be inevitable.

Former President of Kiribati Anote Tong tried tirelessly to come up with more realistic solutions to the threat of climate change. He has called for a policy to be known as “migration with dignity” for the people of Kiribati, looking to neighboring states to welcome the people of Kiribati whenever they choose to leave rather than being forced to migrate – a situation associated with vulnerability and helplessness. Displacement discourse and terms like “climate refugees” have created a negative self-image of Pacific Islanders, who often express the notion that they are not drowning and not refugees (Lewis, 2015). Within this policy of “migration with dignity”, the government of Kiribati implemented education and training programs so that the people of Kiribati would be able to be both adequately

prepared and financially secure when they did have to migrate (Lewis, 2015). He explored possibilities of constructing floating islands for relocation, and purchased land from neighboring Fiji specifically for his people, all the while building sea walls to try and come up with immediate short-term solutions (Weiss, 2015; Ni, 2015). The message is clear to him, as well as to others in the Pacific: they are running out of time and options. Adaption – which often translates to migration as the best option – is the only viable defense to the threat of climate change.

In conjunction with international law, there is currently no regional legal protection in the Pacific for those displaced by climate change. A number of climate refugee cases have been heard with no success (Ni, 2015; McAdam, 2015). Neighboring New Zealand provides additional protection on humanitarian grounds if a refugee or otherwise protected person is at risk of deportation, but the changing climate or natural disasters still would not be sufficient to receive protections without other factors (Farquhar, 2015). The Pacific Access Category (PAC) agreement between New Zealand and Tuvalu, Kiribati, Fiji, and Tonga establishes an annual quota for citizens of island nations to be granted residence in New Zealand (Williams, 2008). Some have pointed to this agreement as a solution for environmental refuge, but PAC is a very specific category of immigration that not everyone would be able to qualify for, nor does it really have anything at all to do with the climate as a factor. On the other hand, other regional organizations and agreements are meant to help small island states and countries in the Pacific prepare for climate change. The Pacific Regional Environment Programme in Samoa takes measures to pool resources and responsibilities of those in the Pacific in order to implement their own approach (Kelman, 2018). The Alliance for Small Island States, though not confined solely to the Pacific, exists to form a collaborative voice on issues that impact small island states the most – one of those being climate change. Opportunities exist for a cohesive response and adaptation efforts within regional collaborations.

Overall, countries in the Pacific have limited options and resources available for environmental refugees. At this point, the migration is still seen as preemptive and there still exists this idea that the government is able to provide assistance to those trying to leave. In the future, however, important questions should be asked about the government's existence if the countries disappear beneath the sea. Existing legislation can put a circle in a square, but not everyone will be able to fight their way into that mold. The fate of Kiribati and other small island states remains ambiguous.

The death of lifeline: An expanding desert in the Northern Triangle

On the other end of the "extreme weather pattern" spectrum, desertification plagues the Central American Northern Triangle of Central America – Guatemala, El Salvador, and Honduras. A 2015 drought hit more than a million farmers across Guatemala, El Salvador, Honduras, and Nicaragua, with a loss of 80 percent of bean crops and 60 percent of corn (Miller, 2017). Climate change is being felt in the Central American Northern Triangle in the form of a still-intensifying mid-summer dry period. A 2010 report warned of an "environment ripe for migration" that would "place an additional burden on communities along the U.S. southern border" (Miller, 2017, p. 76). Seasonal migration from Central America has long been used to make a living in the off seasons, but if every season becomes an off season, migration will certainly become a more permanent phenomenon. Ten million farmers across Mexico and Central America barely survive with the crops they grow in a normal season, and if rain patterns change, their livelihoods are at a severe risk (de Sherbinin et al., 2011). Tropical storms will also begin to threaten the region as the climate changes. As the weather patterns in the Northern Triangle become more extreme, insecurity will push people on a journey north, where it is unlikely that they will be met with open arms and a sense of understanding. In fact, the United States and has taken precautionary measures to deter immigrants from entering their communities.

The United States funds a security package known as the U.S. Central American Security Initiative (CARSI) that is meant to keep “public order” in the face of displacement (Miller, 2017). The U.S. trains Honduran police and military units to assist with humanitarian crises, which actually means that they are taught to prevent their nationals from migrating north. Mexico operates under a three-tiered border policing system, complete with patrol agents, deterrence in the form of speeding trains, super checkpoints, and militarized checkpoints that resemble a warzone (Miller, 2017). With the assistance of the U.S., all of Central America has essentially developed into a militarized border, one that will only continue to grow as climate displaces more people in the Northern Triangle. The U.S.’s involvement in this phenomenon is intentional and ignorant in the face of climate change.

In November of 2016, 11 member states – including the United States – gathered in Honduras for the Regional Conference on Migration (RCM). At this conference, the members adopted “the Guide to Effective Practices for RCM Member Countries: protection for persons moving across borders in the context of disasters” (Kälin & Cantor, 2017, p. 58). This guide serves as an Americas-specific protection initiative that helps to address displaced persons in a disaster context, looking at how existing migration categories – those like temporary admission and suspension of repatriation – can be applied in response to environmental and climate disasters. This guide does not create new laws but emphasizes and strengthens existing policies. This has already proven effective when in March of 2017, Costa Rica and Panama organized a joint response to disaster-induced displacement, utilizing RCM as a guiding mechanism. The South American Conference of Migration (SACM) also acknowledged its importance when deciding to develop their own similar guide (Miller, 2017). This guide emphasizes sudden-onset disasters, still leaving a gap for other situations where migration may be seen as preemptive. Furthermore, it is non-binding, which may prove to be a limitation in the future. Nonetheless, this regional agreement creates room for conversation, understanding, and direction within an incredibly

polarized situation, and may prove to be effective in coming up with other ways to approach influxes by migration that do not contribute to militarization by U.S.-trained forces.

The unique case of climate refugees from Puerto Rico

A culmination of oppression and misfortune underlies the relationship between the United States and Puerto Rico. Puerto Ricans are born in a U.S. territory, automatically granting them citizenship – one that comes without any right to participate in electoral politics unless they opt to move to the mainland U.S. (Vargas-Ramos, 2015). When Hurricanes Maria and Irma devastated the island in 2017, the United States government offered little assistance and the islanders found themselves between a rock and a hard place – one that was exacerbated by an existing economic crisis that had been spiraling out of control for more than a decade (Hinojosa, 2018; Mora et al., 2018). Migration to and from the island is not a new phenomenon, and the exact number of migrants that fled north as a result of the hurricanes is not yet known, although data suggests that outmigration, already at a record high, intensified during this crisis (Mora et al., 2018). Still, this migration draws important questions from previous literature, highlighting the unique relationship with one of Puerto Rico’s colonizers that has since extended citizenship to the islanders. As Puerto Ricans migrate north in response to environmental degradation, their status remains ambiguous.

Migration patterns to and from Puerto Rico are often described as a revolving door, for as some leave, others return (Vargas-Ramos, 2015). This circular migration has been constant and salient ever since Puerto Rico became a U.S. colony. Various research exists that discusses whether or not Puerto Rican migration should be characterized as transnational migration, but it is not within the scope of this paper to engage that debate (Vargas-Ramos, 2015; Meléndez, 2015). Puerto Rican migration demonstrates similarities with the transnational migration of others who do not hold citizenship, particularly in reference to the different types of attachment to the home country that other

transnational migrants will often possess. Nonetheless, Puerto Ricans are U.S. citizens, and for that reason should legally be considered “internally displaced” when relocating to the U.S. in response to Hurricanes Maria and Irma.

The exact number of Puerto Ricans forced to migrate to the mainland U.S. after the hurricanes is not yet known. What is known, however, is that the Federal Emergency Management Agency (FEMA) has had an inadequate response to a disaster impacting U.S. citizens. Two out of five Puerto Rican applicants were “deemed ineligible for various types of assistance” after trying to register for help from FEMA after the hurricanes hit (Hérmendez, 2018). Even after appealing, a staggering 80 percent were rejected. For those that were able to get assistance, FEMA only offered a small amount of support. FEMA-funded hotels had an expiration date, and in some cases, housing assistance meant two months of rent, which is not sufficient for most people stuck in an insecure limbo that are unsure when they will be able to work again. In Pennsylvania, lawyer Will Gonzalez and members of the Greater Philadelphia Long Term Recovery Committee discovered a provision in the public housing law that would allow them to legally put families “in public housing expeditiously because they were survivors of a federally declared disaster” (Hérmendez, 2018). While this provision helped some survivors, there is no consistency in the federal U.S. government that would translate this type of assistance into every similar situation. The RCM Guide mentioned previously also applies to Puerto Rican migration, but once again, it is not legally binding.

Recommendations

This final section uses lessons learned from the above case studies to make recommendations regarding changes to international and regional legal instruments and practices. It is vital to develop adaptation strategies, as the case studies demonstrate that it is far beyond the time to reverse what has already been done. A common theme within the case studies is the presence of regional organizations

and agreements to supplement limited international legal instruments. It can be argued that regional agreements are far more beneficial to those displaced by climate change, especially considering the benefits that exist regarding regional migration as opposed to international movements. Lewis (2015) notes that “when properly planned and executed, regional migration can allow persons affected by climate change to relocate with dignity and maintain connections to their communities and cultures while ensuring they have access to economic opportunities and services” (p. 87). Migration can be far more traumatic as the distance increases, so regional migration would prove beneficial to all involved. Seen in all three case studies – in the Pacific islands with supplementary protection being utilized by PAC and in Central America and Puerto Rico with RCM – regional collaboration on issues that impact everyone within the agreements and organizations seem to make far more sense.

Regional agreements should come about as a result of highly specific conferences that focus on climate change as a primary issue rather than an afterthought. Climate change is not always seen as the imminent danger, as its deepest impacts are gradual. Perhaps using RCM as a mold, it would prove effective to bring together countries within the same region to discuss how climate change has already impacted states and what outside assistance they are looking for in particular. Meetings with the heads of state and government could provide space to come up with plans to pool resources together and construct regional disaster responses. Taking ideas from Aote Tong, planning for the future of one’s own state and looking to neighbors for help implementing ideas could also be helpful. What is perhaps most vital should be constructing emergency evacuation and migration plans to utilize in the future, whether they be permanent or temporary.

International instruments can certainly be improved upon, as well. Holding conferences and negotiations to decide upon a working definition of “climate refugee” and the responsibilities associated would certainly help as the situation grows more dire. If the global community (exemplified by members states of the United Nations) could agree upon a resolution or a global quota that would guarantee

every state's vow to participate in aiding resettlement efforts, this could assist in overall resettlement – and that associated with climate change. However, this is very difficult because the priorities of humanitarian intervention and refugee resettlement differs depending on the country and government in question.

Ultimately, climate change poses a very real threat to already vulnerable communities, and the current existing legal instruments do not do nearly enough to provide protections or options when time runs out. Regional agreements that exist currently can provide some protection and assistance within the issue, though it is clear that these agreements and organizations still need to be clarified further. The best option for improvement would be a heavier reliance on regional agreements and collaboration to ensure each state's mutual survival if a climate disaster impacts the region. While improved international legal instruments can certainly aid in these situations, regional collaboration would likely be a faster and more cohesive response. Climate migration will only continue to grow as an issue in the future, and it is vital that both regional and international legal instruments work to promote adaptation and protection in any way that they can.

References

de Sherbinin, A., Warner, K., & Ehrhart, C. (2011). Deadly storms, crippling drought. *Scientific American*, 304(1), 70–71.

Farquhar, H. (2015). "Migration with dignity": Towards a New Zealand response to climate change displacement in the Pacific. *Victoria University of Wellington Law Review*, 46(1), 29–55.

Fornalé, E., & Doebbler, C. F. J. (2017). UNHCR and protection and assistance for the victims of climate change. *Geographical Journal*, 183(4), 329–335.

Hérmendez, A. R. (2018, August 11). Hurricane Maria: Thousands of displaced Puerto Ricans might be pushed out of temporary housing. *The Washington Post*. Retrieved from https://www.washingtonpost.com/national/hurricane-maria-thousands-of-displaced-puerto-ricans-might-be-pushed-out-of-temporary-housing/2018/08/11/e6c413aa-83b0-11e8-9e80-403a221946a7_story.html?utm_term=.06c15b106572.

Hinojosa, J. (2018). Two sides of the coin of Puerto Rican migration: Depopulation in Puerto Rico and the redefinition of the diaspora. *Centro Journal*, 30(3), 230–253.

Intergovernmental Panel on Climate Change. (n.d.). About the IPCC. Retrieved from <https://www.ipcc.ch/about/>.

Kälin, W., & Cantor, D. (2017). The RCM Guide: a novel protection tool for cross-border disaster-induced displacement in the Americas. *Forced Migration Review*, (56), 58–61.

Kelman, I. (2018). Islandness within climate change narratives of small island developing states (SIDS). *Island Studies Journal*, 13(1), 149–166.

Koser, K. (2008). Gaps in IDP protection. *Forced Migration Review*, 1(31), 17.

Lewis, B. (2015). Neighbourliness and Australia's contribution to regional migration strategies for climate displacement in the Pacific. *Queensland University of Technology Law Review*, 15(2), 86–101.

McAdam, J. (2015). The emerging New Zealand jurisprudence on climate change, disasters and displacement. *Migration Studies*, 3(1), 131–142.

McDonnell, T. (2018, June 20). The refugees the world barely pays attention to. *National Public Radio*. Retrieved from <https://www.npr.org/sections/goatsandsoda/2018/06/20/621782275/the-refugees-that-the-world-barely-pays-attention-to>.

Meléndez, E. (2015). Puerto Rican migration, the colonial state, and transnationalism. *Centro Journal*, 27(2), 50–95.

Miller, T. (2017). The 21st-century border. In T. Miller (Ed.), *Storming the Wall: Climate Change, Migration, and Homeland Security* (pp. 71-105). San Francisco: City Lights.

Mora, M. T., Dávila, A., & Rodríguez, H. (2018). Migration, geographic destinations, and socioeconomic outcomes of Puerto Ricans during La Crisis Boricua: Implications for island and stateside communities post-Maria. *Centro Journal*, 30(3), 208–229.

Ni, X. (2015). A nation going under: Legal protection for “climate change refugees.” *Boston College International & Comparative Law Review*, 38(2), 329–366.

Ponthieu, A., & Derderian, K. (2013). Humanitarian responses in the protection gap. *Forced Migration Review*, 1(43), 37–40.

Shemesh, M. (2004). Prelude to the six-day war: The Arab-Israeli struggle over water resources. *Israel Studies*, 9(3), 1–45.

Sengupta, S. (2017, December 31). Climate change is driving people from home. So why don't they count as refugees? *The New York Times*. Retrieved from <https://www.nytimes.com/2017/12/21/climate/climate-refugees.html>.

Türk, V. (2015). Temporary protection arrangements to fill a gap in the protection regime. *Forced Migration Review*, 1(49), 40–41.

United Nations. (1951). *Convention Relating to the Status of Refugees*. Retrieved from <https://www.unhcr.org/en-us/3b66c2aa10>.

United Nations Climate Change. (n.d.a). What is the Kyoto Protocol? Retrieved from <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol>.

United Nations Climate Change. (n.d.b). What is the Paris Agreement? Retrieved from <https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>.

United Nations High Commissioner for Refugees. (1998). *Guiding Principles on Internal Displacement*. Retrieved from <https://www.unhcr.org/en-us/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>.

United Nations Office on Genocide and the Responsibility to Protect. (n.d.) Responsibility to Protect. Retrieved from <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.

Vargas-Ramos, C. (2015). Puerto Ricans and transnationalism: A critical empirical assessment. *Centro Journal*, 27(2), 4–49.

Weiss, K. R. (2015, January 28). The making of a climate refugee. Retrieved from <https://foreignpolicy.com/2015/01/28/the-making-of-a-climate-refugee-kiribati-tarawa-teitiota/>.

Wewerinke-Singh, M., & Van Geelen, T. (2018). Protection of climate displaced persons under international law: A case study from Mataso Island, Vanuatu. *Melbourne Journal of International Law*, 19(2), 1–37.

Williams, A. (2008). Turning the tide: Recognizing climate change refugees in international law. *Law & Policy*, 30(4), 502–529.

© Copyright 2020 *Righting Wrongs: A Journal of Human Rights*. All rights reserved.

Righting Wrongs: A Journal of Human Rights is an academic journal that provides space for undergraduate students to explore human rights issues, challenge current actions and frameworks, and engage in problem-solving aimed at tackling some of the world's most pressing issues. This open-access journal is available online at www.webster.edu/rightingwrongs.