



## Addressing International Climate Displacement: Using Executive Authority to Rebuild U.S. Soft Power

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Climate change is an existential security threat.<sup>1</sup> Climate-generated displacement is an international security problem that requires expedient solutions. Timely U.S. action now can address the threats presented with a speed and directness that current international mechanisms cannot. The speed and directness of domestic action better tackle the immediacy of the threats and allow flexibility to tailor actions to specific security and sovereign considerations.

### Current International Mechanisms Are Insufficient

Current international legal regimes are insufficient to address the magnitude of anticipated climate displacement.<sup>2</sup>

For example, the 1951 Refugee Convention and its 1967 Protocol were designed responding to the human displacement caused by State actors during WWII. The Convention defines refugee as one who “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.” This definition is ill-fitting to the climate change context. Climate change results in both internal and cross-border displacement and is neither the work of a particular state actor nor direct persecution on account of an immutable characteristic, etc.

Given the 1951 Convention’s ill-fit, the

2020 UN Human Rights Committee (HRC) decision in the matter of Teitiota (Kiribati) v. New Zealand was groundbreaking. As described by an HRC member, it “sets forth new standards that could facilitate the success of future climate change-related asylum claims.”<sup>3</sup>

Ioane Teitiota (of Kiribati) lodged a communication with the HRC against New Zealand, arguing NZ violated his “right to life” under the International Convention on Civil and Political Rights (ICCPR) in denying his asylum application because climate change’s effects were destroying his livelihood and Kiribati’s land, resulting in violent land disputes and growing threats to his person. The HRC found for NZ, concluding that its asylum procedures were legally sufficient and Teitiota had failed in his climate arguments to demonstrate imminent harm or bad/arbitrary government action. In so doing, however, the HRC also recognized that climate change is real, it’s affecting displacement, and its harms result from “sudden” and “slow” onset processes. It also underscored the international community’s role in assisting countries adversely affected by climate change.

While many point to Teitiota as hope of how existing international legal mechanisms could address future climate displacement, its path is tenuous and not temporally suitable for addressing climate change’s acute human threats now. It also highlights some limitations of existing human rights mechanisms.

For example, Teitiota's complaint came through the ICCPR's [Optional Protocol](#) individual mechanism. The Protocol's application is limited, with far [fewer State parties](#) than the ICCPR. Second, countries' refugee systems vary in robustness, and it's unclear how the HRC or other bodies would evaluate other countries' responses to asylum claims like Teitiota's, particularly if they recognize margins of appreciation on human rights.<sup>4</sup> Third, substantively, a "right to life" analysis strongly weighs the immediacy of the threat to life, and climate change's impacts generally have not been considered to rise to that immediacy. Fourth, many international human rights structures presume that State actors are those violating human rights, and climate change is not the direct work of a specific State actor.

Raising a claim under another right—such as the "right to a healthy environment"—may raise different but equally challenging issues that contribute to negative outcomes for petitioners and highlight overarching weaknesses in current human rights systems. For example, there has been controversy over the right to a healthy environment's application, even outside a straight climate change context.<sup>5</sup> The bounds of this right are still being fleshed out and expanding its application risks further angering those States already resisting broad application of human rights standards. Many argue that broad human rights applications [weaken human rights systems](#), undermining the strength of the very rights seeking advancement.

### Potential U.S. Options to Address International Climate Displacement

The current lacunae on climate displacement in the international system offer an opportunity for the United States. By taking bold domestic action to address climate change and climate displacement, the United States could [lead by the power of its example rather than by examples of its power](#). As President Biden has argued, reembracing human rights-focused leadership will improve U.S. security by helping to repair the United States' relationships with its allies and building new international relationships.

To that end, one way the president could take action to address climate displacement is pursuing targeted bilateral and/or plurilateral executive agreements focused on countries' particular climate needs.

For example, if Congress makes clear that the [INA](#) covers climate-displaced individuals and delegates power to the executive to address these issues, Biden could have more room to enter into executive agreements that facilitate legal paths for climate-connected immigration.<sup>6</sup>

Such agreements would also offer an opportunity to mitigate security risks posed by growing Great Power influence in regions most affected by climate change.<sup>7</sup> For example, China continues to [expand its influence](#) in the South Pacific/South China Sea (SCS) through economic and land development and to use trade and investment to increase its influence on the African continent. While the United States remains actively engaged in the Pacific, it has not kept pace with China on engagement and support in Africa. Engaging directly with countries on the Continent on climate issues and impacts – particularly in the Sahel where environmental/climate concerns have

amplified existing armed conflicts and the rise of extremism – could decrease violent conflict in service of U.S. interests and advance other policy objectives by helping strengthen U.S.-relations with potential partners also being courted by other Great Powers.

### Conclusion

Climate change presents existential threats to U.S. security and global world order. Bold U.S. action on climate displacement not only helps address these threats but also offers opportunities for the country to rebuild its international reputation as a leader on human rights issues and strengthen its relationships with other nations. The U.S. Executive should use its authority to do so.

## Endnotes

- 1 See, e.g., Alexandra Meise, *Lessons from the Arctic: The Need for Intersectoral Climate Security Policy* (Dec. 2020).
- 2 I use the word “climate displacement” rather than “climate refugee” or “climate migrant” intentionally, as those displaced by climate change’s effects do not fit neatly into the current major legal regimes governing refugees and migrants. See, e.g., Brian Palmer, *There’s No Such Thing as a Climate Change Refugee*, NRDC (Nov. 15, 2015).
- 3 Prof. Yuval Shany, Member, UN Human Rights Committee.
- 4 See, e.g., Janneke Gerards, *Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights*, *Human Rights Law Review*, Vol. 18, No. 3, (Sept. 2018), pp. 495–515.
- 5 See, e.g., UNEP, *What are your environmental rights?* (noting that more than 100 State recognize a right to a healthy environment in their constitutions, but the United States, Canada, and other traditional human rights leaders do not); Human Rights Watch, *The Case for a Right to a Healthy Environment*, (Mar. 1, 2018).
- 6 Using executive agreements as an immigration policy tool is not new. President Trump used power delegated to the executive under the INA to shape immigration policy on national security grounds when in 2019 he entered de facto “safe third country” agreements with Guatemala, Honduras, and El Salvador in an effort to force asylum seekers to stay in these countries and request asylum there rather than ask for asylum in the United States.
- 7 The climate displacement effects felt by each country are not the same. Pursuing such agreements on a bilateral or plurilateral bases also would (1) allow them to be tailored to the specific needs of those countries and regions and (2) decrease the amount of time needed to negotiate and finalize such agreements. Experience long shows that the more parties and inputs one seeks for an international agreement, the longer it takes to negotiate such an agreement and the more likely it is that its provisions will be generalized as compared to a bi-lateral or regional agreement.