

## A PENCHANT FOR PROTECTION: CLIMATE CHANGE REFUGEES UNDER THE 1951 REFUGEE CONVENTION

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### ABSTRACT

Cross-border displacement due to the impacts of climate change is an emerging reality that will aggravate in the years to come. People who cross borders due to the impacts of climate change, which are of a permanent nature in their home State, have so far been unsuccessful in qualifying for protection under the 1951 *Refugee Convention*. This paper examines how climate change refugees who have a 'well-founded fear of being persecuted' for reasons of 'membership of a particular social group' should be considered refugees under the *Refugee Convention*. The paper advances the argument that a human rights-based approach together with an evolutionary interpretation necessitates the inclusion of such refugees under the Convention. An analysis of Ioane Teitiota's predicament, in leaving the disappearing State of Kiribati and being denied refugee status in New Zealand, demonstrates that a human rights-based approach together with an evolutionary interpretation could have offered him protection under the *Refugee Convention*. The paper also considers the major arguments put forward against the inclusion of climate change refugees under the *Refugee Convention* and concludes that their inclusion within the ambit of the Convention is in keeping with its humanitarian spirit.

### 1. INTRODUCTION

Displacement induced by climate change is a current reality that will be aggravated in the years to come. International law does not explicitly provide climate change refugees with mechanisms to secure resettlement rights or financial assistance, thus leaving a gap in protection for those leaving their countries due to unbearable conditions.<sup>1</sup> It is estimated that

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<sup>1</sup> Xing-Yin Ni, 'A Nation Going under: Legal Protection for Climate Change Refugees' (2015) 38 *Boston College International and Comparative Law Review* 329, 330.