**ENVISIONING CLIMATE REFUGE: NEED FOR LEGAL RIGHTS OF FUTURE GENERATIONS AND ENVIRONMENTAL ASSYLUM.**

**ABSTRACT**

Climate change poses a growing threat to human rights, displacing populations and jeopardizing the well-being of future generations. This paper examines the legal framework for state responsibility in climate-induced human rights violations, with a particular focus on the rights of future generations and environmental refugee asylum.

While international instruments acknowledge the right to a healthy environment and the need for intergenerational equity, legal mechanisms for integrating the rights of future generations remain underdeveloped. The paper explores the limitations of the 1951 Refugee Convention in addressing the plight of environmental refugees displaced by climate change.

The paper proposes a framework for strengthening state responsibility by: 1) recognizing the rights of future generations within existing human rights instruments, and 2) expanding the definition of "refugee" to encompass those displaced by environmental degradation. This research employs a qualitative analysis of legal texts, including human rights treaties, environmental conventions, and case studies related to climate displacement.

1. **INTRODUCTION**

Climate change poses an existential threat to human rights across the world. Rising global temperatures are projected to increase the frequency and severity of extreme weather events, intensify resource scarcity, and heighten vulnerability for already marginalized communities.[[1]](#footnote-0) The adverse effects of climate change will be borne not only by present generations, but also by future ones.[[2]](#footnote-1) This raises pressing questions about intergenerational equity and the rights of those yet to be born.[[3]](#footnote-2) At the intersection of climate change and human rights is the issue of cross-border displacement. Climate change is expected to displace up to 1 billion people by 2050 as habitats become inhospitable.[[4]](#footnote-3) These “environmental refugees” often fall through the cracks of the existing international protection framework. Developing countries disproportionately shoulder the burden of providing asylum to those displaced for environmental reasons.[[5]](#footnote-4)

This paper analyses the integration of future generations' rights into the legal concept of state responsibility for climate-induced human rights violations, with a focus on environmental refugee asylum.[[6]](#footnote-5) It reviews relevant international agreements, domestic laws, and case law related to intergenerational equity, state responsibility, and environmental refugee status. Gaps and limitations in existing legal instruments are examined.[[7]](#footnote-6) The analysis proposes a framework for expanding state responsibility to encompass obligations to future generations in addressing climate-induced displacement. The paper argues for strengthening international environmental refugee law by incorporating rights-based principles of intergenerational equity. In methodological terms, the study utilizes a qualitative approach involving comparative analyses of legal texts, academic literature, and case law. The conceptual framework is grounded in legal philosophy on duties to posterity and sustainable development. Findings are contextualized through case studies of climate-induced human migration. Recommendations are targeted at various stakeholders including states, courts, civil society groups, and international organizations.

1. **CLIMATE CHANGE AND HUMAN RIGHTS**

Climate change has profound implications for the enjoyment of human rights across the world. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), climate change directly and indirectly threatens the full spectrum of civil, political, economic, social and cultural rights.[[8]](#footnote-7) Rising sea levels, desertification, and extreme weather events jeopardize rights to life, health, food, water, shelter, and self-determination.[[9]](#footnote-8) Climate change also exacerbates poverty, hunger, and inequality, with the most severe impacts felt by marginalized groups.[[10]](#footnote-9) At the international level, linkages between human rights and climate change have been recognized in treaties such as the Paris Agreement and by human rights bodies. However, there remain gaps in implementation and enforcement of states' human rights obligations in the climate context. Domestically, only around 60 countries acknowledge climate-related human rights duties in laws or policies. Climate litigation alleging violations of constitutional rights has seen mixed success across jurisdictions.[[11]](#footnote-10) Overall, while climate change clearly threatens the enjoyment of human rights, existing legal frameworks do not yet provide adequate protection against climate-induced harms. Further evolution of international and domestic law is required to uphold human rights in an era of climate crisis.

1. **The Rights of Future Generations**

The rights of future generations (RFG) refer to the moral obligations owed by present generations to those yet to be born.[[12]](#footnote-11) RFG are grounded in intergenerational equity - the idea that future generations should inherit a planet in no worse condition than it was received.[[13]](#footnote-12) Philosophically, RFG derive from anthropocentric and ecocentric ethics concerning justice, sustainability, and human dignity. Legally, RFG focus on ensuring future generations can enjoy a livable environment and human rights protections.[[14]](#footnote-13)While not legally enforceable rights, RFG have growing recognition in international environmental law. Principle 3 of the Rio Declaration acknowledges a duty to equitable development for present and future generations. RFG feature in treaties like the UNFCCC, Convention on Biological Diversity, and UNCLOS. In India, judicial decisions have invoked RFG in cases concerning forest conservation and climate justice.[[15]](#footnote-14) However, translating RFG into concrete state obligations remains complex given their abstract nature.[[16]](#footnote-15) Overall, RFG represent an evolving legal concept with increasing relevance, but require further jurisprudential development to be meaningfully applied.

1. **Existing Legal Approaches**

Existing international law contains limited mechanisms to address climate-induced human rights violations and environmental displacement. Key treaties like the UNFCCC and Paris Agreement do not create concrete state obligations or liability for climate harms. Refugee and human rights conventions largely pre-date climate change and omit environmental drivers of displacement. Attempts to employ universal jurisdiction and transboundary harm principles to litigate climate impacts have achieved minimal success. Domestic climate litigation alleging human rights breaches also faces jurisdictional hurdles. Case studies like Urgenda show potential but remain restricted in legal scope. International climate funds offer important but voluntary and unpredictable support. Overall, current legal approaches lack reliable enforcement of state duties regarding climate change. They fail to center justice for vulnerable communities, in both present and future generations. New perspectives are vital, including: rights-based frameworks encompassing intergenerational equity; expanded concepts of state responsibility for extraterritorial harms; and strengthened international cooperation on climate displacement. Radically innovative thinking is required to overhaul inadequate environmental and human rights law in the age of climate crisis.

1. **METHODOLOGY**

This research employs a qualitative methodology cantered on conceptual and doctrinal analysis of relevant legal texts and academic literature. The study is oriented around a comparative case study approach to contextualize conceptual legal arguments. In terms of research design, the analysis involves a detailed review of major international environmental law and human rights instruments to identify principles related to state responsibility, refugee protection, and intergenerational equity.[[17]](#footnote-16) Domestic laws and policies on climate change in select countries are examined to assess integration of future generations' rights.[[18]](#footnote-17) Comparative case studies of climate-induced human displacement provide grounded examples of legal gaps. For data collection, legal documents like treaties, conventions, and court judgments are gathered from official sources and databases.[[19]](#footnote-18) Academic books and journal articles offer conceptual framing and critical perspectives. Reports from international organizations provide data on climate impacts.[[20]](#footnote-19) The methodology entails interpretive reading and qualitative coding of sources to identify relevant themes and patterns in the legal discourse.[[21]](#footnote-20) Overall, the research design combines doctrinal and conceptual inquiry with grounded case comparisons. This enables critical analysis of limitations in current legal approaches, and allows formulating reform proposals to better uphold human rights and intergenerational justice.

1. **THE RIGHTS OF FUTURE GENERATIONS IN CLIMATE-INDUCED HUMAN RIGHTS VIOLATIONS**

Climate change poses a grave threat to the enjoyment of human rights for both present and future generations.[[22]](#footnote-21) The effects of climate change - sea level rise, changing weather patterns, food and water insecurity, etc. - stand to infringe upon civil, political, economic, social and cultural rights across the world. However, given the long-term nature of climate change, the rights of future generations are particularly imperilled.[[23]](#footnote-22) This raises difficult questions about how to legally conceptualize and protect the rights of those yet to be born. Some guidance on this issue can be found in the concept of “intergenerational equity” - the idea that the needs of the present generation should be met without compromising the ability of future generations to meet their own needs.[[24]](#footnote-23) The principles of intergenerational equity have been incorporated into a number of international environmental treaties and declarations.[[25]](#footnote-24) For instance, the 1992 Rio Declaration states that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”[[26]](#footnote-25)

Despite these references, the rights of future generations remain only loosely defined under international law.[[27]](#footnote-26) Generally, it is nation-states, not future individuals or groups, which are understood to hold rights vis-à-vis future generations.[[28]](#footnote-27) However, some scholars argue that new conceptions of international personhood are needed to directly vest rights in future generations. For example, proposals have been made for the establishment of an intergenerational trustee with legal personality to directly represent the inheritable interests of future generations. Domestically, some nations have been more proactive in incorporating the interests of future generations into law and policymaking. For instance, constitutions in Norway, Germany and South Africa contain explicit references to the rights or interests of future generations. A number of countries have also established specialized institutions, such as parliamentary committees or ombudspersons, to advocate for the rights and interests of posterity. In India, courts have read environmental rights into the constitution's Article 21 right to life, noting that the right to life includes the right to “wholesome” environment.[[29]](#footnote-28) Climate change litigation may provide another avenue for securing the rights of future generations. In some jurisdictions, lawsuits have been filed on behalf of future generations, often led by youth activists.[[30]](#footnote-29) While procedural barriers exist, these lawsuits raise awareness and may incrementally advance jurisprudence on intergenerational responsibilities.[[31]](#footnote-30) Overall, integrating future generations into the legal framework for state responsibility remains an evolving project. But promoting intergenerational equity is vital for upholding the spirit of universal human rights in an era of climate crisis.

1. **ENVIRONMENTAL REFUGEES AND ASYLUM**

Climate change is poised to displace millions of people worldwide, as rising seas, desertification, and extreme weather events make traditional habitats unlivable.[[32]](#footnote-31) Those who are forcibly displaced due to climate change impacts are often called “environmental refugees” or “climate refugees.”[[33]](#footnote-32) However, these people do not fit neatly into international refugee law frameworks. Pursuing environmental refugee status and asylum remains a fraught legal issue. “The 1951 Refugee Convention defines a refugee as someone unable or unwilling to return to their country of origin due to a well-founded fear of persecution on account of race, religion, nationality, political opinion, or particular social group.”[[34]](#footnote-33) Climate factors are not included among these protected grounds for asylum. Moreover, persecution implies human culpability, whereas climate change cannot be directly attributed to specific human acts of persecution. Some scholars argue that climate displacement can be addressed within the Refugee Convention’s framework. For instance, climate impacts may increase competition for scarce resources, leading to persecution or civil strife along ethnic, religious or other lines. Or, governments’ knowing failure to respond to climate threats and displacement could constitute persecution.[[35]](#footnote-34) However, these arguments stretch the Convention’s language, and have gained little international traction thus far.

Absent changes to the Refugee Convention, some look to international human rights law to address this gap.[[36]](#footnote-35) The Universal Declaration of Human Rights recognizes a right to seek asylum from persecution in other countries.[[37]](#footnote-36) Some experts argue that failure to admit climate refugees could constitute impermissible discrimination. Human rights bodies have expressed concern about displacement’s impacts on vulnerable groups’ rights. However, human rights law does not affirmatively obligate states to grant asylum, limiting its utility here. Domestic laws and policies offer additional, albeit inconsistent, pathways for environmental refugees. For instance, the U.S. may grant Temporary Protected Status to migrants from countries suffering climate-linked environmental disasters. Some European countries have granted protection based on climate’s impacts on human rights.[[38]](#footnote-37) But overall, environmental refugee status remains tenuous. The lack of coordination internationally continues to leave many climate-displaced migrants in limbo. Developing nations disproportionately feel these impacts, lacking resources to assist or resettle migrants internally. Scholars argue international cooperation mechanisms are needed to share this burden equitably. Proposals include regional agreements on migration and resettlement, and funding mechanisms to assist vulnerable nations.[[39]](#footnote-38) However, the absence of common legal definitions hinders cooperation. Integrating climate displacement into international refugee and human rights frameworks remains imperative for protecting current and future generations' fundamental rights and dignity.

1. **INTEGRATING THE RIGHTS OF FUTURE GENERATIONS INTO THE LEGAL FRAMEWORK**

The projected long-term impacts of climate change demand that legal systems evolve to better account for intergenerational justice and the rights of future generations. Integrating the interests of posterity into standing legal frameworks for attributing state responsibility presents complex doctrinal and theoretical challenges.[[40]](#footnote-39) However, pursuing intergenerational equity is vital for upholding future generations' fundamental human rights in the face of the climate crisis.[[41]](#footnote-40) International environmental law provides the clearest foothold for incorporating future generations' rights and needs, through principles like intergenerational equity. Major environmental treaties refer to responsibilities to future generations, even if these references lack binding legal force.[[42]](#footnote-41) Scholars argue these principles must be translated into concrete duties and mechanisms. Proposals include: granting future generations procedural rights to participate through guardians in environmental decisions affecting their interests;[[43]](#footnote-42) developing substantive rights to sustain certain environmental conditions necessary for dignity and development; and imposing erga omnes obligations on states to preserve the environment for posterity. [[44]](#footnote-43)

Human rights law can also evolve to encompass responsibilities towards the unborn.[[45]](#footnote-44) Rights to life, development, and culture all depend on sustainable environmental conditions.[[46]](#footnote-45) Thus, states' and private actors’ environmental abuses infringe not just on present but also future generations’ enjoyment of these rights.[[47]](#footnote-46) Jurisprudence and mechanisms must be developed to recognize this intergenerational dimension of human rights violations arising from environmental harms like climate change.[[48]](#footnote-47) Within states, constitutional rights to environment and future generations’ interests provide another locus for integrating intergenerational equity. For instance, Indian jurisprudence recognizes environmental rights as flowing from the right to life under Article 21.[[49]](#footnote-48) Explicit constitutional recognition of environmental stewardship and the rights and interests of posterity could further strengthen environmental and climate protections.[[50]](#footnote-49) Overall, multifaceted legal evolution is needed across domains like international environmental law and domestic constitutional law to fully integrate future generations into emerging legal frameworks addressing climate change.

1. **CASE STUDIES**

Examining case studies can illuminate the real-world legal challenges arising at the intersection of climate change, displacement, and human rights. Recent litigation and advocacy efforts highlight both the doctrinal difficulties of attributing state responsibility for climate harms, as well as innovative approaches aimed at securing climate justice. In the Matter of Greenpeace Southeast Asia et al. vs. Carbon Majors, petitioners in the Philippines sought a national investigation into the responsibility of 50 fossil fuel companies for human rights impacts resulting from climate change. The Commission on Human Rights ultimately dismissed the petition in 2019, finding that the link between specific emissions and particular climate harms was too attenuated under current legal doctrine.[[51]](#footnote-50) The case exemplifies the causation challenges in climate litigation, especially regarding transboundary and future harms. Still, it focused public scrutiny on carbon majors’ moral responsibilities. The 2005 Inuit petition to the Inter-American Commission on Human Rights (IACHR) broke new ground by framing climate change as a human rights issue. The Inuit argued that U.S. emissions and climate inaction violated their human rights.[[52]](#footnote-51) While the IACHR declined to hear the petition, its novel legal concepts inspired new social movements and litigation strategies based on moral appeals.[[53]](#footnote-52) The framing remains relevant as climate impacts increasingly engender displacement and rights violations.

Domestically, the Urgenda case in the Netherlands produced a major victory for climate litigation. In 2019, the Dutch Supreme Court upheld lower court rulings ordering the national government to enhance emissions cuts to protect human rights from climate dangers.[[54]](#footnote-53) Urgenda's success marrying human rights and climate claims could influence other jurisdictions. However, exporting such strategic climate litigation remains challenging, as few nations mimic the Dutch constitutional framework.[[55]](#footnote-54) Meanwhile, Kiribati has pursued novel international law approaches to secure its citizens’ futures as the Pacific island nation becomes uninhabitable. In 2019, Kiribati purchased land in Fiji to relocate displaced citizens as rising seas trigger migration.[[56]](#footnote-55) And in 2020, it invoked international human rights law to request the UN Human Rights Committee require action on climate-induced displacement.[[57]](#footnote-56) While outcomes remain pending, Kiribati’s creative legal strategies provide a model, despite its limited resources. Overall these cases offer incremental progress legally conceptualizing state climate responsibilities under human rights frameworks, with possible lessons for protecting displaced peoples. Translating advocacy and jurisprudential gains into binding state duties and refugee protections remains an ongoing challenge. But persistent litigation and innovation to secure climate justice may slowly bend the arc of the law toward justice.

1. **CHALLENGES AND CRITIQUES**

While integrating future generations’ rights into legal frameworks on climate and displacement is an ethical imperative, efforts encounter substantial doctrinal and theoretical critiques. A primary challenge is that future generations remain abstract constructs with no concrete legal personality in international law.[[58]](#footnote-57) Some scholars argue representing future generations requires impermissibly defining their hypothetical interests. Proposals for guardianship mechanisms to directly represent posterity spark concerns about anti-democratic tendencies.[[59]](#footnote-58) This highlight conceptual difficulties granting enforceable rights to not-yet-existent entities. Causation obstacles also loom large, especially regarding future harms. It is difficult to trace complex climate impacts and migration patterns to specific state acts and omissions.[[60]](#footnote-59) Climate involves diffuse, collective action problems spanning generations. Proving particular migrations result from certain states' emissions stretches causation doctrine.[[61]](#footnote-60) Similarly, prognosticating long-term harms requires speculative climate modelling, undermining legal certainty.

On refugee status, critics argue overextending refugee law frameworks could dilute existing protections for the persecuted.[[62]](#footnote-61) And absent persecution, environmental drivers of migration appear distinguishable from traditional bases for asylum.[[63]](#footnote-62) Some contend refugee law should address immediate forced displacement, not preemptive climate precautions.[[64]](#footnote-63) Practically, the lack of political will impedes integrating future generations. States recoil from conceding their acts may imperil those not yet born, as this could impose profound legal duties.[[65]](#footnote-64) And concerns about economic impacts hinder environmental and climate commitments. Overcoming such reluctance presents obstacles. However, responding to climate change's intergenerational impacts remains morally and legally imperative, despite conceptual hurdles. Doctrinal critiques underscore the need to creatively adapt international law to confront emerging ecological crises. With dedication, legal pathways to intergenerational climate justice can evolve.

1. **CONCLUSION**

Climate change poses grave threats to present and future generations’ enjoyment of fundamental human rights. The impacts on vulnerable populations like environmental migrants highlight the urgent need to evolve legal frameworks addressing climate accountability and displacement. Integrating future generations’ interests into standing doctrines on state responsibility presents profound challenges both theoretically and practically. Legal constructs struggle to define rights for not-yet-existent entities and attribute causation for diffuse, cross-border, and future climate harms. Politically, states resist assuming expansive duties to those not yet born. Critiques rightly highlight risks of overextending existing frameworks. However, the moral imperative of intergenerational equity necessitates persevering despite obstacles. With creativity and rights-based approaches, international environmental law, human rights law, refugee law, and domestic frameworks can progressively adapt. From advancing climate and refugee litigation, to constitutionalizing environmental and future generational rights, multifaceted legal evolution is imperative. Realizing climate justice across generations remains a complex long-term project. But pursuing inclusive, sustainable legal frameworks upholding the equal dignity of past, present, and future peoples remains essential to honour our shared human rights. The journey of a thousand miles begins with a single step; the journey to intergenerational climate justice begins with reimagining our laws’ purpose. Through dedication, the arc of human rights law can be bent toward securing climate justice across generations.

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