

## International Law Perspective of The State's Preventive Role in Responding to Climate Refugees

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### **Abstract**

*Climate change is one of the primary issues widely discussed by the international community, particularly in relation to rising sea levels that threaten island nations. The submergence of state territories has become a major factor driving the emergence of climate refugees, who are forced to leave their home countries in search of shelter elsewhere. As coastal land becomes submerged and uninhabitable, populations are forced to relocate, giving rise to the phenomenon of climate refugees. However, current international legal frameworks do not explicitly recognize climate-induced displacement within the traditional refugee definition under the 1951 Refugee Convention and its 1967 Protocol. This research used the doctrinal method of legal research and is supported by secondary data based on available literature. This article examines the legal and geopolitical implications of disappearing state territory and explores the preventive role of states in responding to the emergence of climate refugees. Focusing on case studies such as Kiribati and Indonesia's involvement through regional cooperation, the paper analyzes how states can enact proactive policies, from relocation strategies to transnational partnerships to mitigate future risks. Through doctrinal legal analysis, this study proposes state-centered strategies for strengthening global governance in addressing climate-induced migration. It further explores how states can anticipate and address the potential loss of national territory due to sea level rise in the future.*

### **keywords:**

*Climate refugees; sea level rise; territorial loss.*

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### **A. Introduction**

Climate change has become one of the key concerns of the international community. Its impacts affect various aspects, one of which is the rise in sea levels. This phenomenon poses a

tangible threat<sup>1</sup> to countries whose territories predominantly consist of maritime areas, particularly small low-lying island nations in the Pacific region, such as Kiribati. In addition to its detrimental effects on coastal ecosystems,<sup>2</sup> sea level rise so directly impacts human populations, most notably in agriculture aspect<sup>3</sup>, public health<sup>4</sup>, and housing.<sup>5</sup> A legal and humanitarian issue arises when a state's territory becomes uninhabitable or can no longer be classified as "territory" under international law, forcing its inhabitants to relocate and seek residence elsewhere. The disappearance of state territory has implications for the nationality status of its displaced population, who may be categorized as refugees.

The term "climate refugee" refers to individuals who are compelled to leave their country of origin due to sudden and severe environmental changes linked to the effects of climate change. International law, however, does not explicitly recognize or define the term "climate refugee." The current legal framework only defines "refugees" under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which focus on persecution for specific reasons rather than environmental causes.<sup>6</sup>

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<sup>1</sup> Bayu Wahyudin, 'Ancaman Kenaikan Muka Air Laut Bagi Negara-Negara Di Kepulauan Pasifik', *Review of International Relations* 2, no. 1 (2020): 28; Putu Ratih Kumala Dewi, 'Climate Change Will Cause The Next Migrant Crisis: Studi Kasus Kiribati', *Jurnal PIR* 2, no. 1 (2017).

<sup>2</sup> Edward B. Barbier et al., 'Coastal Ecosystem-Based Management with Nonlinear Ecological Functions and Values', *Science* 319, no. 5861 (18 January 2008): 321–23, <https://doi.org/10.1126/science.1150349>; Paramita Roy et al., 'Effects of Climate Change and Sea-Level Rise on Coastal Habitat: Vulnerability Assessment, Adaptation Strategies and Policy Recommendations', *Journal of Environmental Management* 330 (15 March 2023): 117187, <https://doi.org/10.1016/j.jenvman.2022.117187>.

<sup>3</sup> M Karim and N Mimura, 'Impacts of Climate Change and Sea-Level Rise on Cyclonic Storm Surge Floods in Bangladesh', *Global Environmental Change* 18, no. 3 (August 2008): 490–500, <https://doi.org/10.1016/j.gloenvcha.2008.05.002>; Pia Schneider and Folkard Asch, 'Rice Production and Food Security in Asian Mega Deltas—A Review on Characteristics, Vulnerabilities and Agricultural Adaptation Options to Cope with Climate Change', *Journal of Agronomy and Crop Science* 206, no. 4 (2020): 491–503, <https://doi.org/10.1111/jac.12415>.

<sup>4</sup> M. Becker, M. Karpytchev, and A. Hu, 'Increased Exposure of Coastal Cities to Sea-Level Rise Due to Internal Climate Variability', *Nature Climate Change* 13, no. 4 (April 2023): 367–74, <https://doi.org/10.1038/s41558-023-01603-w>; M.A. Rakib et al., 'An Investigation of Coastal Vulnerability and Internal Consistency of Local Perceptions under Climate Change Risk in the Southwest Part of Bangladesh', *Journal of Environmental Management* 231 (February 2019): 419–28, <https://doi.org/10.1016/j.jenvman.2018.10.054>; Sajjad Kabir et al., 'Sea-Level Rise and Mental Health among Coastal Communities: A Quantitative Survey and Conditional Process Analysis', *SJM - Population Health* 25 (1 March 2024): 101640, <https://doi.org/10.1016/j.ssmph.2024.101640>.

<sup>5</sup> Carol Farbotko and Heather Lazrus, 'The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu', *Global Environmental Change*, Adding Insult to Injury: Climate Change, Social Stratification, and the Inequities of Intervention, 22, no. 2 (1 May 2012): 382–90, <https://doi.org/10.1016/j.gloenvcha.2011.11.014>; Jan C Semenza and Kristie L Ebi, 'Climate Change Impact on Migration, Travel, Travel Destinations and the Tourism Industry', *Journal of Travel Medicine* 26, no. 5 (11 June 2019): taz026, <https://doi.org/10.1093/jtm/taz026>; Abdulaziz I. Almulhim et al., 'Climate-Induced Migration in the Global South: An in Depth Analysis', *Npj Climate Action* 3, no. 1 (14 June 2024): 1–12, <https://doi.org/10.1038/s44168-024-00133-1>.

<sup>6</sup> United Nations, '1951 Convention Relating to the Status of Refugees' (1951); United Nations, '1967 Protocol Relating to the Status of Refugees' (1967).

Kiribati, a low-lying Pacific atoll nation, is indeed on the front lines of climate change, as highlighted by its former president, Anote Tong. The country faces significant threats from rising sea levels, increased storminess, and coastal erosion, which jeopardize its habitability and infrastructure.<sup>7</sup> The slow-onset nature of sea-level rise, combined with the geographic and economic vulnerability of Kiribati, means that migration is increasingly becoming not a choice, but a necessity. The Government of Kiribati has made efforts to demonstrate that its citizens possess the necessary skills and qualifications to contribute meaningfully to host states.

This is part of a broader strategy to prepare its population for eventual relocation by investing in education and vocational training, thereby improving their integration prospects abroad. A symbolic and strategic example of this policy was the 2014 purchase of 6,000 acres of land in Fiji, a move that signaled both the seriousness of Kiribati's predicament and the inadequacy of the global response to climate migration. While the government initially presented the purchase as a potential agricultural investment, it was widely interpreted as a contingency plan for national relocation.

Various academic writings have explored the concept of climate refugees, but these discussions often highlight the absence of explicit legal recognition for those displaced by climate-induced events within existing international legal instruments. One such scholar, Bayu Wahyudin, emphasizes the seriousness of sea level rise as a threat to the survival of Pacific island nations.<sup>8</sup> This article aims to systematically examine the role of the state in preventive efforts to address the phenomenon of climate refugees resulting from climate change. The first section discusses the regulation of climate refugees in international law and its relation to the legal status of disappearing state territories. The second section analyzes the proactive role that states may play in responding to the emergence of climate refugees, particularly in the context of vanishing territorial boundaries. The article concludes with a summary of findings and final reflections.

## B. Research Method

This research used the doctrinal method of legal research. This study concentrates on doctrines which are syntheses of rules, principles, norms, or interpretative guidelines and values,

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<sup>7</sup> Andrea Vicini, 'Roman Catholic Contributions to Address the Current Ecological Crisis', in *Protecting Nature, Saving Creation* (Palgrave Macmillan, New York, 2013), 113–37, [https://doi.org/10.1057/9781137342669\\_10](https://doi.org/10.1057/9781137342669_10); Lachlan McIver et al., 'Assessment of the Health Impacts of Climate Change in Kiribati', *International Journal of Environmental Research and Public Health* 11, no. 5 (May 2014): 5224–40, <https://doi.org/10.3390/ijerph110505224>.

<sup>8</sup> Bayu Wahyudin, 'Ancaman Kenaikan Muka Air Laut Bagi Negara-Negara DI Kepulauan Pasifik', *Review of International Relations* 2, no. 1 (2020): 29.

and proceeds with both locating the sources of law and interpreting or analysing the text.<sup>9</sup> Normatively, this research includes the study of legal principles, legal systematic structure, and the degree of legal synchronization,<sup>10</sup> using both a conceptual and statutory approach<sup>11</sup>. Doctrinal research involves rigorous analysis and creative synthesis, the making of connection between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials. It makes a unique blend of deduction and induction so that conceptual analysis of law and creative synthesis together build up the legal proposition which engages in theoretical discussion.<sup>12</sup> This article examines the legal and geopolitical implications of disappearing state territory and explores the preventive role of states in responding to the emergence of climate refugees.

### **C. Discussion and Analysis**

#### **Climate Refugees in International Law and Their Relation to Climate-Affected State Territory**

Under international law, the definition of a refugee is set out in Article 1(A)(2) of the 1951 Refugee Convention, which states:

*“(2) 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. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”*

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<sup>9</sup> B. C. Nirmal and Rajnish Kumar Singh, *Contemporary Issues in International Law: Environment, International Trade, Information Technology and Legal Education* (Springer, 2018); P. Ishwara Bhat, *Idea and Methods of Legal Research* (New Delhi: Oxford University Press, 2019), 28.

<sup>10</sup> Soerjono Soekanto, *Pengantar penelitian hukum* (Jakarta: Penerbit Universitas Indonesia (UI-Press), 1986), 51; Soerjono Soekano and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali, 1986), 15.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2014), 133.

<sup>12</sup> Terry Hutchinson, ‘Doctrinal Research: Researching the Jury’, in *Research Methods in Law*, 2nd ed. (New York: Routledge, 2013), 7–8; Dennis Pearce, Enid Campbell, and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: Australian Government Publishing Service, 1987), 6; P. Ishwara Bhat, *Idea and Methods of Legal Research*, 29.

Based on the article above, there are several elements that define a person as a refugee. First, the person must be outside their country of origin, having crossed an international border. Second, there must be a fear of persecution based on race, religion, nationality, membership in a particular group, or political opinion, and such fear must be well-founded and provable. Therefore, based on the definition of refugee under the 1951 Refugee Convention, it cannot be concluded that a climate refugee falls within this category, as displacement due to climate change does not meet these elements.

The United Nations High Commissioner for Refugees (UNHCR), as the UN body mandated to deal with refugees, has recognized the possibility that the refugee criteria in the 1951 Refugee Convention or broader refugee definitions under regional legal frameworks may be applicable in situations arising from the adverse impacts of climate change. In this regard, the UNHCR provides its interpretation of climate-related displacement by referring to such individuals as “persons displaced in the context of disasters and climate change.”<sup>13</sup> Lembaga Riset The European research body affiliated with the Global Governance Project provides a definition of climate refugee<sup>14</sup> as: “persons who leave their habitat, either immediately or in the future, due to sudden and dramatic environmental changes in their natural surroundings, at least related to one of the following three impacts of climate change: sea level rise, extreme weather events, and drought and water scarcity.”

The existence of climate refugees is closely related to the impacts of climate change, particularly the near loss of a state’s territory. Territory is one of the essential elements required for statehood. According to Article 1 of the Montevideo Convention, the criteria for the formation of a state include a permanent population, a defined territory, a sovereign government, and the capacity to enter into relations with other states.<sup>15</sup> Recognition of a state as a subject of international law refers to these elements.

A problem arises when the territory of a state is submerged as a result of sea level rise caused by climate change: whether such an entity may still be recognized as a state. This has been explained in the Montevideo Convention, which establishes that the existence of a defined territory is an absolute requirement for statehood. The issue of territory is also linked to the place where the administration of the state will be conducted.

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<sup>13</sup> United Nations High Commissioner for Refugee, ‘Focus Area Strategic Plan for Climate Action 2024-2030’, 2024.

<sup>14</sup> Muhammad Riza Hanafi, ‘Majuro Declaration: “Kudeta” Kepemimpinan Isu Perubahan Iklim’, *Jurnal Transformasi Global* 3, no. 1 (2017): 38.

<sup>15</sup> Hendrik Sompotan, ‘Tanggungjawab Negara Yang Belum Mendapat Pengakuan Internasional Menurut Hukum Internasional’, *Lex et Societatis* 5, no. 4 (2017): 128.

In the context of this research, the near disappearance of a state's territory due to rising sea levels becomes a matter that must be further examined in relation to the policies of the respective government regarding preventive measures that will be taken. Several policy options may be considered for states whose territory is affected by climate change. One of them is the temporary relocation of the state's territory to uninhabited areas or leasing territory from another state. From another perspective, the legal status or recognition of a state as a subject of international law does not change as long as other members of the international community continue to recognize its existence. This is based on the principle that a state which already exists cannot simply be dissolved. Thus, while the state may lose its physical territory, it does not lose its legal status as a state and as a subject of international law.

### **The Role of the State as a Preventive Measure in Responding to the Existence of Climate Refugees Due to the Near Disappearance of State Territory**

Kiribati, as one of the low-lying island nations, is facing a serious problem related to sea level rise.<sup>16</sup> This is due to the fact that the sea level has continued to rise over the years, causing parts of its territory to become submerged and uninhabitable. The severity of this threat is not theoretical Kiribati people who now face the gradual loss of ancestral lands, freshwater contamination, and compromised food security. As the nation continues to grapple with coastal erosion and saltwater intrusion, the prospects for sustaining life on its atolls diminish, compelling residents to consider relocation. In such circumstances, those forced to flee not because of conflict or persecution, but due to environmental degradation. Residents of Kiribati who flee the country due to the loss of territory resulting from rising sea levels are legally undefined category of climate refugees.

The Government of Kiribati has adopted several policy measures related to climate change and its impact on the country's territory.<sup>17</sup> One such policy is the declaration of the Majuro Declaration, made jointly with other Pacific Island nations. Through this declaration, Pacific Island countries have committed to taking leadership in addressing climate change by reducing

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<sup>16</sup> Paulina Tandiono, Suhaidi, and Arif, 'Status Kenegaraan (Statehood) Negara-Negara Kepulauan Berdataran Rendah (Low-Lying Island Nations) Yang Seluruh Wilayahnya Terendam Air Laut', *Sumatra Journal of International Law* 2, no. 3 (2014): 13.

<sup>17</sup> Nabil Iqbal, Syeda Mehar Ejaz, and Mohd Altmash, 'Climate Change as a Key Contributor to Migrant Crisis: A Case Study of Developmental & Environmental Challenges to Kiribati People', *OIDA International Journal of Sustainable Development* 13, no. 9 (2020): 43.

greenhouse gas emissions.<sup>18</sup> The Majuro Declaration represents a collective initiative by Pacific Island states to take a stance on climate change outside the framework of international agreements such as the Kyoto Protocol. This declaration reflects the region's moral position and its active advocacy for global climate justice. In addition to its international diplomatic efforts, Kiribati implemented the Migration with Dignity policy, a national strategy aimed at preparing its citizens for potential long-term relocation. This policy focuses on capacity building through education and vocational training, enabling individuals to migrate in a manner that preserves their dignity and ensures access to employment opportunities abroad. While the Majuro Declaration emphasizes Kiribati's leadership in global climate negotiations, the Migration with Dignity policy directly addresses the social and humanitarian impacts of rising sea levels. Together, these initiatives illustrate how Kiribati integrates international advocacy with pragmatic, people-centered planning in response to the existential threat of climate change.

One of the key policies adopted by the Government of Kiribati is the "Migration with Dignity" policy. This is a long-term relocation program that includes education initiatives enabling local citizens to acquire new skills, thereby facilitating their migration in a dignified manner, such as through obtaining decent employment. The implementation of the "Migration with Dignity" policy is supported by various institutions and countries around the world. The Asian Development Bank (ADB), in cooperation with the Pacific Islands Forum Secretariat (PIFS), has provided support through Technical-Vocational Education and Training (TVET)<sup>19</sup> programs in fields such as automotive and furniture-making.

Australia, as a developed country and a neighbor to the Pacific Islands, has responded positively to this policy by providing assistance to Kiribati in the form of scholarships through the Kiribati Australia Nursing Initiative (KANI). This program aims to provide nursing education to Kiribati citizens with qualifications that meet international standards. The program is expected to generate mutual benefits for both countries: while helping to address the issues faced by Kiribati, it also addresses Australia's domestic problem<sup>20</sup> of labor shortages and declining numbers of workers in productive age groups.

Indonesia, although not a party to the 1951 Refugee Convention, has its own regulations concerning refugees who enter its territory, as provided under Government Regulation No. 125

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<sup>18</sup> Muhammad Riza Hanafi, 'Majuro Declaration: "Kudeta" Kepemimpinan Isu Perubahan Iklim', *Jurnal Transformasi Global* 3, no. 1 (2017).

<sup>19</sup> Lady Chintya, 'Peran Australia Dalam Bidang Pendidikan Untuk Mendukung Kebijakan Migration with Dignity Oleh Pemerintah Kiribati (2006-2014)', *JOM FISIP* 3, no. 2 (2016): 4.

<sup>20</sup> Dewi Nawar and Baiq, 'Bantuan Australia Kepada Kiribati Melalui Program Kiribati Australia Nursing Initiative', *Insighnia Journal of International Relations* 8, no. 1 (2021): 3–8.

of 2016 on the Handling of Refugees from Abroad. In addition to domestic regulation, Indonesia has actively participated in preventive efforts regarding the near loss of Kiribati's state territory through regional cooperation, specifically through the Melanesian Spearhead Group (MSG) in 2018. MSG is a regional organization composed of Pacific nations with Melanesian ethnic ties. Indonesia's geographical position between the Indian and Pacific Oceans strengthens its strategic role as a driving force for peace and security in the Asia-Pacific region, as mandated in Article 1 of Law No. 37 of 1999 on Foreign Relations.

The Pacific Island region also holds strategic importance for Indonesia, particularly regarding the issue of West Papua. Pacific nations and Melanesian groups have often provided a platform for parties seeking independence for Papua, due to shared ethnic backgrounds with member states of MSG.<sup>21</sup> These countries are thus critical for Indonesia, considering that the issue of West Papuan independence is a sensitive matter internationally, especially in relation to human rights concerns. The Indonesian government is concerned that poorly managed relations with Pacific nations could result in their support for the Papuan independence movement.

On the other hand, Indonesia's membership in the Melanesian Spearhead Group (MSG) is also significant for Pacific Island countries. This is because Indonesia possesses vast forest areas, which are often referred to as the "lungs of the world." In light of the increasingly evident impacts of climate change, Pacific Island nations hope that Indonesia will pay greater attention to environmental and forest preservation, in order to help curb the rate of sea level rise caused by climate change. These circumstances reflect mutual interests: Indonesia seeks support from MSG regarding the separatist armed groups in Papua, while MSG expects Indonesia to enhance its environmental commitments in order to help prevent the submergence of Pacific Island states. These respective interests form the foundation of the diplomatic relationship that has been established.

#### **D. Conclusion**

The loss of state territory due to rising sea levels constitutes a real and imminent threat, particularly for Pacific Island nations, and is one of the driving factors behind the emergence of climate refugees who leave their country of origin in search of residence in another state. Preventive efforts to respond to the existence of climate refugees as a consequence of global climate change have been undertaken by several countries through the adoption of policies and

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<sup>21</sup> Lia Kartika Tampubolon, 'Kerjasama Teknik Indonesia - Melanesian Spearhead Group Terhadap Keutuhan NKRI Di Papuas Tahun 2011-2014', *JOM FISIP* 2, no. 2 (2015): 2.



through bilateral as well as regional cooperation. Indonesia, although not a party to the 1951 Refugee Convention, has established cooperative relations with Pacific Island countries by joining the Melanesian Spearhead Group (MSG), with the expectation that these countries will refrain from intervening in the situation in Papua. Conversely, the Pacific Island countries hope that Indonesia will become more attentive to environmental and forest issues within its national territory.

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