

SUBMERGING ISLANDS:

**TUVALU AND KIRIBATI AS CASE STUDIES
ILLUSTRATING THE NEED FOR A CLIMATE
REFUGEE TREATY**

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INTRODUCTION

The effects of global climate change are being felt around the world.¹ The U.N. Human Rights Council has recognized that climate change will significantly impact vulnerable populations.² The Intergovernmental Panel on Climate Change (IPCC) has confirmed that anthropogenic sources affect climate change.³ Research has shown that climate change is caused in part through human activities that cause the release of greenhouse gas emissions (GHGs).⁴ GHGs mainly come from the burning of fossil fuels.⁵ When GHGs become trapped in the atmosphere, they cause the Earth to warm.⁶ The Earth's temperature has

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¹See Mary-Elena Carr, Madeleine Rubenstein, Alice Graff & Diego Villareal, *Sea Level Rise in a Changing Climate*, in THREATENED ISLAND NATIONS 15 (Michael B. Gerrard & Gregory E. Wannier eds., 2013).

² See U.N. Human Rights Council Res. 10/4, U.N. Doc. A/HRC/RES/10/4 (Mar. 25, 2009), available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf.

³ Samadu Atapattu, *Climate Change, Human Rights and Forced Migration: Implications for International Law*, 27 WIS. INT'L L.J. 607 (2009).

⁴ Intergovernmental Panel on Climate Change 4th Assessment Report, *Synthesis Report: Summary for Policymakers*, at 6, available at http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf (discussing that GHG emissions will continue to increase in the future).

⁵ *Causes of Climate Change*, EPA, <http://www.epa.gov/climatechange/science/causes.html> (last visited Nov. 9, 2013).

⁶ *Id.*

risen due to the additional GHGs in the atmosphere.⁷ The effects of climate change cannot be ignored.⁸

Climate change has impacted the environment in many different ways such as affecting the amount of rainfall per year and causing changes to agriculture and forests.⁹ Climate change has also caused a rise in sea levels.¹⁰ As a consequence of sea level rise, many island states are experiencing coastal erosion.¹¹

Small island developing states (SIDS) are particularly vulnerable to the rise in sea level due to low elevations.¹² The loss of territory is not the only concern for SIDS as infrastructure and food sources are also at risk.¹³ Unfortunately, many SIDS do not have the financial and technological resources to effectively handle these issues.¹⁴ Many SIDS are in danger of complete submersion.¹⁵

Many island indigenous peoples are connected to the land as it provides them both their identity and livelihood.¹⁶ The loss of land for indigenous peoples also means a loss of identity.¹⁷ Many island nations will soon succumb to rising sea levels, causing indigenous populations to be without homes; therefore, effective action must be taken soon.¹⁸

⁷ *Id.*

⁸ See, e.g., Atapattu, *supra* note 3, at 608 (discussing the impact of climate change on forced migration).

⁹ *Climate Change Impacts and Adopting to Change*, EPA, <http://www.epa.gov/climatechange/impacts-adaptation/> (last visited Dec. 30, 2013).

¹⁰ See *Coastal Areas: Climate Impacts on Coastal Areas*, EPA, <http://www.epa.gov/climatechange/impacts-adaptation/coasts.html> (last visited Dec. 30, 2012).

¹¹ Mary-Elena Carr et al., *supra* note 1, at 40.

¹² *Id.*

¹³ *Saving Paradise: Ensuring Sustainable Development*, WMO (Dec. 30, 2012), available at <http://www.wmo.int/pages/publications/showcase/documents/WMO973.pdf> [hereinafter *Saving Paradise*].

¹⁴ Ana Weinbaum, *Unjust Enrichment: An Alternative to Tort Law and Human Rights in the Climate Change Context*, 20 PAC. RIM. L. & POL'Y J. 429, 430, 431 (2011).

¹⁵ *Saving Paradise*, *supra* note 13.

¹⁶ Keely Boom, *The Rising Tide of International Climate Litigation: An Illustrative hypothetical of Tuvalu v. Australia*, in CLIMATE CHANGE AND INDIGENOUS PEOPLES: THE SEARCH FOR LEGAL REMEDIES, 409, 411 (Randall S. Abate & Elizabeth Ann Kronk eds., 2013).

¹⁷ *Id.*

¹⁸ See Jane McAdam, *Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer*, 23 INT'L J. OF REFUGEE L., 2, 8 (2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1714714

Tuvalu and Kiribati are examples of states in the Pacific Ocean that are being affected by climate change.¹⁹ They are both projected to disappear by 2050.²⁰ SIDS, such as Tuvalu and Kiribati, are utilizing adaptation and mitigation strategies to cope with the effects of climate change.²¹ The process of adaptation, as it is related to environmental issues, refers to people's ability to adjust to changes caused by climate change.²² Adaptation measures include creating new ways to harvest crops, water storage, relocating inland from the coast, and changing governmental policies on climate change.²³ Some states have formed national adaptation programmes of action (NAPAs), which identify and prioritize adaptation needs.²⁴ Both Tuvalu²⁵ and Kiribati²⁶ have implemented NAPAs. Adaptation measures will not help some island nations in the long term because total submersion into the ocean is inevitable.²⁷

In 2009, it was estimated that there are twenty-five to thirty million environmentally displaced persons also known as climate change refugees.²⁸ This number is expected to increase to approximately 200 million by 2050.²⁹ Climate refugees were first recognized in 1987 when it was determined that many people were going to have to leave their

¹⁹ *Our Pacific Neighbours on the Frontline*, OXFAM AUSTRALIA <https://www.oxfam.org.au/explore/climate-change/impacts-of-climate-change/our-pacific-neighbours-on-the-frontline/> (last visited Nov. 7, 2013).

²⁰ McAdam, *supra* note 18, at 8.

²¹ See Ryan Jarvis, *Sinking Nations and Climate Change Adaptation Strategies*, 9 SEATTLE J. FOR SOC. JUST. 447, 460 (2010). A discussion of climate change mitigation is outside the scope of this paper.

²² *Id.*

²³ *Vulnerability and Adaptation to Climate Change in Small Island Developing States*, CLIMATE CHANGE SECRETARIAT, 72 and 83, available at https://unfccc.int/files/adaptation/adverse_effects_and_response_measures_art_48/application/pdf/2007_02_sids_adaptation_bg.pdf.

²⁴ *Id.*

²⁵ *Tuvalu's National Adaptation Programme of Action*, MINISTRY OF NATURAL RESOURCES, ENVIRONMENT, AGRICULTURE AND LANDS 22 (2007), available at <http://unfccc.int/resource/docs/napa/tuv01.pdf>.

²⁶ Government of Kiribati, *Republic of Kiribati National Adaptation Program of Action (NAPA), 1* (2007), available at <http://unfccc.int/resource/docs/napa/kir01.pdf>.

²⁷ McAdam, *supra* note 18, at 8.

²⁸ Atapattu, *supra* note 3, at 610.

²⁹ *Id.* at 611.

homes in their native countries due to environmental factors.³⁰ Citizens of Tuvalu and Kiribati will have to leave their native countries because the islands on which they reside are at risk of submersion.³¹

Although there is a growing recognition that climate displacement is occurring, there is no comprehensive legal framework in place that currently protects climate refugees.³² Unfortunately, there is no legal instrument in existence under international law that provides climate refugees the rights and protections they need for survival.³³

Part I of this paper will address climate change, its effects on SIDS, and the strategies utilized by Tuvalu and Kiribati to adapt to changes caused by climate change. Part II will analyze the existing legal framework used to address the problems associated with island nations losing its statehood and the rights and protections available to climate refugees. Part III will address the need for a comprehensive climate change refugee treaty that includes provisions for sovereignty, relocation and funding. Tuvalu and Kiribati's circumstances will be used to illustrate this necessity by showing the effects of climate change on island nations, the loss of territory and the need to relocate, and the issues associated with financing the relocation process.

I. THE PLIGHT OF CLIMATE REFUGEES

A. CLIMATE CHANGE IMPACTS

Climate is changing and Earth's temperature is increasing.³⁴ According to the Environmental Protection Agency (EPA), the Earth's temperature has increased 1.4°F in the last century, and it is estimated that it will rise an additional 2°F to 11.5°F in the next century.³⁵

³⁰ *Id.*

³¹ See Jenny G. Stoutenburg, *When Do States Disappear? Thresholds of Effective Statehood and the Continued Recognition of "Deterritorialized" Island States*, THREATENED ISLAND NATIONS 57, 58 (Michael B. Gerrard & Gregory E. Wannier eds., 2013).

³² Jeremy Kelley, *Climate Change and Small Island States: Adrift in a Raising Sea of Legal Uncertainty*, 11 SUSTAINABLE DEV. L. & POL'Y, no. 2, 56, (2011), available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1474&context=sdlp>.

³³ *See id.*

³⁴ *Climate Change: Basic Information*, EPA, <http://www.epa.gov/climatechange/basics/> (last visited Nov. 8, 2013). [hereinafter *EPA*].

³⁵ *Id.*

Climate change is causing a rise in sea level.³⁶ Rises in sea level occur when the mass or volume of water increases in the Earth's oceans.³⁷

Sea level is measured by tide gauges and satellite altimeters.³⁸ Tide gauges measure changes in sea level relative to a height reference such as land.³⁹ According to Elena-Carr, the author of *Sea Level Rise in a Changing Climate*, she has determined that there has been a rise in sea level at a rate of 1.8 (± 0.3) mean sea level/year "mm/y" between 1930 and 2000.⁴⁰ Between 1993 and 2009, there has been an estimated rise in sea level at a rate of 3.1 mm/y (± 0.4).⁴¹ The rise in sea level has also been caused by melting glaciers and thermal expansion in the ocean.⁴² Studies have indicated that these two sources have caused the sea level to rise 0.4-0.5 mm/y.⁴³

There are conflicting projections on how much the sea level will rise in the future.⁴⁴ The Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) has projected that sea level will rise between .17m and .82m by 2100.⁴⁵ However, another study has indicated that sea level will rise between 75cm and 190cm by 2100 when taking into consideration the melting of polar ice sheets.⁴⁶

The rise in sea level has impacted the environment in many different ways.⁴⁷ Studies have proven that rising sea levels create a higher flood risk, causing coastal erosion and salt-water intrusion into

³⁶ Mary Elena-Carr et al., *supra* note 1, at 15.

³⁷ *Id.*

³⁸ *Id.* at 17.

³⁹ *Id.*

⁴⁰ *Id.* at 19.

⁴¹ *Id.*

⁴² *Id.* at 21.

⁴³ *Id.* (melting glaciers and thermal expansion is primarily occurring in Antarctica and Greenland).

⁴⁴ *Id.* at 32.

⁴⁵ Intergovernmental Panel on Climate Change 5th Assessment Report, *Climate Change 2013: Summary for Policymakers*, at 21, available at http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_SPM_FINAL.pdf

⁴⁶ Martin Vermeer & Stefan Rahmstorf, *Global Sea Level Linked to Global Temperature*, 106 PROCEEDINGS OF THE NAT'L ACAD. SCI. 21527, 21530 (2009).

⁴⁷ Mostafa Naser, *Climate Change, Environmental Degradation, and Migration: A Complex Nexus*, 36 WM. & MARY ENVTL. POL'Y REV. 713, 724 (2012), available at <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1550&context=wmelpr>

ground water.⁴⁸ These impacts can threaten the island populations by destroying food sources such as crops and access to fresh water.⁴⁹ Rise in sea level is also causing the degradation of coastal ecosystems, which has a direct effect on island indigenous populations since their survival is connected to the land on which they reside.⁵⁰

B. SMALL ISLAND DEVELOPING STATES

SIDS are especially vulnerable to the effects of climate change due to the locations.⁵¹ Climate change has impacted SIDS in many different ways such as altering the weather by increasing storms like cyclones and hurricanes.⁵² These types of weather events can cause damage to crops and fisheries that not only affect the local economy, but also the indigenous peoples' livelihood as well.⁵³ SIDS are vulnerable to rising sea levels as it increases shoreline erosion, which in turn places island states at risk of losing their homes and infrastructure.⁵⁴ Many SIDS are at risk of becoming uninhabitable.⁵⁵ High population densities and limited financial resources make it difficult for islands to take effective action against the effects of climate change.⁵⁶

Rising sea levels are causing islands to become completely submerged by the ocean.⁵⁷ Consequently, many island nations are at risk of losing their territory.⁵⁸ Island nations have taken adaptation measures to combat this risk of their territories becoming

⁴⁸ Mary-Elena Carr et al., *supra* note 1, at 42.

⁴⁹ Naser, *supra* note 47, at 724.

⁵⁰ See Mary-Elena Carr et al, *supra* note 1, at 42.

⁵¹ See *id.* at 41.

⁵² *Climate Change: Small Island Developing States*, CLIMATE CHANGE SECRETARIAT (2005), available at http://www.unfccc.int/resource/docs/publications/cc_sids.pdf.

⁵³ *The Impact of Climate Change on the Development Prospects of the Least Developed Countries and Small Island Developing States*, UN-OHRLLS 29-30 (2009), available at <http://www.unohrlls.org/UserFiles/File/LDC%20Documents/The%20impact%20of%20CC%20on%20LDCs%20and%20SIDS%20for%20web.pdf>

⁵⁴ Mary-Elena Carr et al., *supra* note 1, at 43.

⁵⁵ See, e.g. Stoutenburg, *supra* note 31, at 57 (arguing that a State can still exist under international law even when they no longer meet the traditional requirements of statehood).

⁵⁶ Naser, *supra* note 47, at 724.

⁵⁷ Kelley, *supra* note 32, at 56.

⁵⁸ *Id.*

uninhabitable.⁵⁹ Scholars have suggested that island nations use both hard and soft protection measures to protect against rising sea levels.⁶⁰ For example, a hard protection measure could include the building of a seawall, whereas a soft protection measure could include artificial elevation of an island.⁶¹ The implementation of these measures can be very problematic, however, especially in terms of cost as they are very expensive.⁶² For example, it will cost the Marshall Islands \$100 million dollars to construct a sea wall.⁶³ Migration is another adaptation measure.⁶⁴ Under this measure, people may migrate out of their home countries, or within their country, which is internal migration.⁶⁵ Since 1987, the issues surrounding climate refugees have been brought to the public's attention with increasing regularity.⁶⁶

C. CASE STUDIES IN PROSPECTIVE CLIMATE REFUGEES

1. Tuvalu

Tuvalu is located in the Pacific Ocean between Hawaii and Australia.⁶⁷ Tuvalu is less

than 2 meters above sea level and consists of nine islands.⁶⁸ The name, Tuvalu, actually means "eight islands together."⁶⁹ Tuvalu's total area is 26 square kilometers and ranks as the fourth smallest country in the world.⁷⁰ It has approximately 10,000 citizens.⁷¹ Its primary source

⁵⁹ Stoutenburg, *supra* note 31, at 62 (stating that SIDS should use protection measures to keep from submerging completely into the ocean).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Erika J. Techera, *Climate Change, Legal Governance and the Pacific Islands*, CLIMATE CHANGE AND INDIGENOUS PEOPLES: THE SEARCH FOR LEGAL REMEDIES, 339, 351 (Randall S. Abate & Elizabeth Ann Kronk eds., 2013).

⁶³ *See id.* at 615.

⁶⁴ Attapattu, *supra* note 3, at 613.

⁶⁵ *Id.*

⁶⁶ *See id.* at 610.

⁶⁷ *World Factbook: Tuvulu*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/tv.html> (last visited Nov. 17, 2013).

⁶⁸ Boom, *supra* note 16, at 410.

⁶⁹ *See, e.g., About Tuvalu*, <http://www.tuvaluislands.com/about.htm> (last visited Nov. 10, 2013).

⁷⁰ *Id.*

of living is through fishing and farming.⁷² Tuvaluans are connected to their land.⁷³ Their land represents not only their home, but also their identity.⁷⁴ They live by the maxim, “land is life, without land there is no life.”⁷⁵ This connection between the people of Tuvalu and their land means that the effects of climate change will not only mean a loss of territory, but also a loss in cultural and social identity.⁷⁶ Tuvaluans have contributed very little to GHG emissions that cause climate change.⁷⁷

Yet, Tuvalu is profoundly affected by climate change.⁷⁸ Flooding is a serious issue that has caused massive destruction to homes.⁷⁹ It has also caused saltwater contamination in inland soil and has resulted in the death of coconut trees.⁸⁰ In addition, drought has resulted in limiting the supply of water.⁸¹ Tuvalu can desalinate the seawater, but it is too expensive for Tuvalu to pursue by itself.⁸² In 2011, fresh water was in such short supply that it caused local schools and hospitals to shut down.⁸³ New Zealand and Australia had to provide aid to Tuvalu during that period.⁸⁴

⁷¹ Boom, *supra* note 16, at 410.

⁷² *Id.*

⁷³ *Id.* at 411.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 410.

⁷⁸ Amelia H. Krales, *As Danger Laps at Its Shores, Tuvalu Pleads for Action*, GREEN BLOG (Oct. 18, 2011, 5:00 AM), http://green.blogs.nytimes.com/2011/10/18/as-danger-laps-at-its-shores-tuvalu-pleads-for-action/?_r=0 (Tuvaluan business owner stated, “I have been to the islets to get some coconuts from a piece of land there and three-quarters had been taken away by the sea” [hereinafter *Tuvalu Pleads*]).

⁷⁹ *Id.*

⁸⁰ *Tuvalu’s Views on Possible Security Implications*, U.N. SECRETARY GENERAL (2009), available at http://www.un.org/esa/dsd/resources/res_pdfs/ga-64/cc-inputs/Tuvalu_CCIS.pdf [hereinafter *Tuvalu’s Views*].

⁸¹ *See id.*

⁸² *Id.*

⁸³ *See Australia, New Zealand in a Airlift to Drought-Hit Tuvalu*, BBC NEWS ASIA-PACIFIC (Oct. 7, 2011, 3:15 AM), <http://www.bbc.co.uk/news/world-asia-pacific-15210568>.

⁸⁴ *Australia, New Zealand in a Airlift to Drought-Hit Tuvalu*, BBC NEWS ASIA-PACIFIC (Oct. 7, 2011, 3:15 AM), <http://www.bbc.co.uk/news/world-asia-pacific-15210568>. *Id.*

Shoreline erosion has caused a loss of farming land and a loss in income.⁸⁵ Farming in the inner part of the island has been affected negatively because of the high level of salt in the soil and groundwater.⁸⁶ In addition, there are concerns that the number of Tuvaluans that suffer from illness and disease will increase in the future because of the lack of drinking water and adequate food production in that country.⁸⁷

Tuvalu is projected to disappear by 2050.⁸⁸ In 2000, the Tuvaluan government asked Australia and New Zealand to accept their citizens as refugees.⁸⁹ However, Australia is not accepting climate refugees at this time, and New Zealand only accepts 75 citizens every year between the ages of 18-45 through its labor migration program.⁹⁰ New Zealand's policies regarding climate change refugees are insufficient.⁹¹ By 2050, New Zealand will have only accepted 2,275 of Tuvalu's 10,000 citizens.⁹² Furthermore, that does not include the number of Tuvaluans that do not meet the requirements of New Zealand's labor migration program.⁹³ Therefore, New Zealand's labor migration program is not an effective solution to climate displacement and other more effective proposals need to be considered.⁹⁴

In 2002, Tuvalu announced that it was considering a possible suit against the United States and Australia in the International Court of Justice (ICJ) over the negative effects of climate change stating that these two countries are the most liable for releasing GHGs that are contributing to climate change.⁹⁵ However, Tuvalu will most likely find it difficult to litigate this issue, as there are numerous issues with such a case before the ICJ.⁹⁶ For instance, the United States has not accepted compulsory jurisdiction under the ICJ.⁹⁷ If jurisdiction is established,

⁸⁵ Krales, *supra* note 78.

⁸⁶ *Id.*

⁸⁷ *Tuvalu's Views*, *supra* note 80.

⁸⁸ McAdam, *supra* note 18, at 8.

⁸⁹ *World Factbook: Tuvalu*, *supra* note 67.

⁹⁰ Atapattu *supra* note 3, at 633.

⁹¹ *Id.*

⁹² *See id.*

⁹³ *See id.*

⁹⁴ *See id.*

⁹⁵ Boom, *supra* note 16, at 412; *See also Tiny Pacific Nation Takes on Australia*, BBC NEWS (Mar. 4, 2002), <http://news.bbc.co.uk/2/hi/asia-pacific/1854118.stm>.

⁹⁶ *Id.* at 417-32

⁹⁷ *Id.* at 421.

Tuvalu will have difficulty proving breach and causation.⁹⁸ For example, Tuvalu will have to prove that Australia and the U.S. had an obligation under the Kyoto Protocol to reduce emissions, but since it failed to do so it has caused Tuvalu to suffer effects from climate change.⁹⁹ Tuvalu will have to resolve complex issues to bring a suit against the United States and Australia in front of the ICJ.¹⁰⁰

In 2009, the Tuvaluan Prime Minister Apisai Ielemia stated that Tuvalu was not considering migration as a solution to their submerging islands.¹⁰¹ He stated,

“[W]hile Tuvalu faces an uncertain future because of climate change . . . it is our view that Tuvaluans will remain in Tuvalu. We will fight to keep our country, our culture and our way of living. We are not considering any migration scheme. We believe if the right actions are taken to address climate change, Tuvalu will survive.”¹⁰²

However, without an adequate legal framework to address climate change, Tuvalu will not survive.¹⁰³

2. Kiribati

Kiribati is also located in the Pacific Ocean between Hawaii and Australia.¹⁰⁴ It has a population size of 103,248 and half of the residents live on the island of Tarawa.¹⁰⁵ Kiribati is one of the impoverished nations.¹⁰⁶ For example, tourism and foreign aid combined amount to 40% to 45% of Kiribati's GDP.¹⁰⁷ Further, only 20% of Kiribatians have access to sewer systems and 64% do not have bathroom

⁹⁸ *Id.* at 417-32.

⁹⁹ *Id.* at 427, 433.

¹⁰⁰ *Id.* at 417-32.

¹⁰¹ *Only if the Right Actions are Taken Will We Survive - Tuvalu PM Issues Call to Save His Country From Extinction*, LA TREIZIÈME ÉTOILE (Dec. 10, 2009), http://www.andrewjburgesseu.blogspot.com/2009_12_06_archive.html (meetings took place at the Parliament's Committee on Development).

¹⁰² *Id.*

¹⁰³ See Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Climate Refugee Treaty*, 33 HARV. ENVTL. L. REV. 349, 357 (2009).

¹⁰⁴ *World Factbook: Kiribati*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/kr.html> (last visited Nov. 17, 2013).

¹⁰⁵ *Id.*

¹⁰⁶ Holly D. Lang, Comment, *Climate Refugees Require Relocation Assistance: Guaranteeing Adequate Land Assets Through Treatises Based on the National Adaptation Programmes of Action*, 19 PAC. RIM L. & POL'Y J. 613, 617 (2010).

¹⁰⁷ See *id.*

facilities.¹⁰⁸ Only 25% of the Kiribatian population is employed.¹⁰⁹ Kiribatians earn approximately \$2,800 dollar a year.¹¹⁰ Kiribati is deeply affected by climate change and yet has contributed a very insignificant amount to the emissions of GHGs.¹¹¹

Kiribati is deeply affected by climate change.¹¹² Two Kiribati islands were already victims of rising sea levels in 1999.¹¹³ Additionally, there has been both coastal and inland erosion in Kiribati.¹¹⁴ Due to this erosion, some Kiribatians have lost their homes.¹¹⁵ Saltwater contamination has caused loss of crops¹¹⁶ and livelihood.¹¹⁷ In addition, droughts have caused a loss of drinking water and in some instances have affected fruit trees as well.¹¹⁸

Many Kiribatians have internally migrated to the capital of Kiribati, Tawara, because of the effects of climate change.¹¹⁹ The population increase in Tawara has caused a concern that illness and disease will spread amongst the citizens in that area.¹²⁰ Some Tawara residents live in areas where they are not permitted to live, such as above freshwater

¹⁰⁸ McAdam, *supra* note 18, at 9.

¹⁰⁹ *Id.*

¹¹⁰ *See Id.*

¹¹¹ Davina Wadley, *Kiribati: Climate Change and Inequity*, REFUGEES INT'L BLOG (June 6, 2013), <http://refugeesinternational.org/blog/kiribati-climate-change-and-inequity>.

¹¹² Lang, *supra* note 106 at 617.

¹¹³ *Id.*

¹¹⁴ *Kiribati: Climate Change*, OFFICE OF THE PRESIDENT OF THE REPUBLIC OF KIRIBATI, <http://www.climategov.ki/category/effects/coastal-erosion/> (last visited Nov. 11, 2013).

¹¹⁵ *Id.*

¹¹⁶ *Time Running Out for Kiribati As Seas Rise: President*, TERRA DAILY (Nov. 30, 2012), http://www.terradaily.com/reports/Time_running_out_for_Kiribati_as_seas_rise_president_999.html.

¹¹⁷ *See* Wadley, *supra* note 111.

¹¹⁸ *Drought Impacts Kiribati Southern Islands*, RADIO AUSTRALIA (May 27, 2008, 1:12 PM), <http://www.radioaustralia.net.au/international/radio/onairhighlights/drought-impacts-kiribati-southern-islands>.

¹¹⁹ *See* Wadley, *supra* note 111.

¹²⁰ *Id.*

containment areas, which results in the contamination of drinking and bathing water, which is of great concern.¹²¹

Kiribati is also projected to disappear by 2050 due the loss of land created by rising sea levels.¹²² The absence of high land in the Kiribati islands makes the solution of long-term internal migration an impossibility.¹²³ President Anote Tong is attempting to utilize different measures to find effective solutions to these issues rather than adopting the strategies that the President of Tuvalu is currently implementing.¹²⁴ The President of Kiribati would like to involve the international community, by having other states recognize that climate change is occurring, have these states take responsibility that they have contributed to it, and help affected nations like Tuvalu and Kiribati with financing relocation.¹²⁵ President Tong has considered purchasing land on Fiji's main island and relocating Kiribatians to that specific location.¹²⁶ East Timor has also made an offer as a possible location for Kiribatians relocation.¹²⁷ Another potential solution for Kiribati's survival would be to purchase and relocate to Japan's floating islands.¹²⁸ Currently, the Kiribati government has not made a firm decision on the actions they will take. However, President Tong has stated that migration is not a choice, but is necessary for survival.¹²⁹

¹²¹ Bernard Lagan, *Kiribati: A Nation Going Under*, THE GLOBAL MAIL (Apr. 15, 2013), <http://www.theglobalmail.org/feature/kiribati-a-nation-going-under/590/>.

¹²² McAdam, *supra* note 18, at 8.

¹²³ *Id.* at 9.

¹²⁴ *Id.* at 20 and 21.

¹²⁵ *Id.*

¹²⁶ Brigitte Leoni, *Migration not a matter of choice but survival, says Kiribati President*, THE U.N. OFF. FOR DISASTER RISK REDUCTION (Mar. 15, 2012), <http://www.unisdr.org/archive/25649>.

¹²⁷ *East Timor Could Become Home to Kiribati's Climate Refugees*, RESPONDING TO CLIMATE CHANGE (Sept. 20, 2012, 3:40 PM), <http://www.rtcc.org/2012/09/20/east-timor-could-become-home-to-kiribati%E2%80%99s-climate-refugees/#sthash.uzjpvR9k.dpuf> [http](http://www.rtcc.org/2012/09/20/east-timor-could-become-home-to-kiribati%E2%80%99s-climate-refugees/#sthash.uzjpvR9k.dpuf).

¹²⁸ Stoutenburg, *supra* note 31, at 63.

¹²⁹ Leoni, *supra* note 126.

II. EXISTING INTERNATIONAL LAW FRAMEWORK FOR CLIMATE REFUGEES

There is no comprehensive legal framework that exists that can effectively protect the rights of climate refugees.¹³⁰ Island nations like Tuvalu and Kiribati have a very limited time frame to resolve these issues before their territories become completely submerged. None of the legal frameworks discussed below fully addresses the situation that island nations now face.

A. SOVEREIGNTY

The Montevideo Convention on the Rights and Duties of Man (Montevideo Convention) is a treaty signed in Uruguay on December 26, 1934 at the International Conference of American States in Montevideo, which addresses the criteria for statehood.¹³¹ Article one of the Montevideo Convention requires that states have: “(1) a permanent population, (2) a defined territory, (3) a government, and (4) the ability to enter into relations with other states.”¹³² Island nation states like Tuvalu and Kiribati will lose their territory (some states will become uninhabitable before submerged); therefore, they will fail to satisfy all four of the criteria that make them states under international law.¹³³

Article one of the Montevideo Convention requires that a, “state possess a permanent population.”¹³⁴ A permanent population could be defined as an infrastructure system that provides for the survival of human life and for the desires of its citizens to live in an organized and communal society.¹³⁵ If an island state is slowly disappearing into the sea, as long as the state retains enough citizens to keep a community, it

¹³⁰ Kelley, *supra* note 32, at 56 (stating that the two possible solutions to this problem is to expand the legal definition to include climate refugees or create a new convention).

¹³¹ Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19., available at <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897> [hereinafter Montevideo Convention].

¹³² *Id.*

¹³³ See Stoutenburg, *supra* note 31, at 57.

¹³⁴ Montevideo Convention, *supra* note 131, at art. 1.

¹³⁵ Stoutenburg, *supra* note 31, at 64.

will still meet the criteria for a permanent population under the Montevideo Convention.¹³⁶ The Montevideo Convention does not require a specific number of residents to meet the permanent population requirement.¹³⁷

Article one of the Montevideo Convention also requires that a state possess, “a government.”¹³⁸ The requirement of an effective government has lessened after decolonization.¹³⁹ The right to exercise control is more important than the ability of actual control.¹⁴⁰ Island nations that keep a qualifying population on their islands will also meet the criteria for effective government.¹⁴¹

The last requirement of article one of the Montevideo Convention is that a State possess, “the capacity to enter into relations with other states.”¹⁴² Many scholars have argued that there is an additional requirement that states need to fulfill in this regard.¹⁴³ This requirement is a state’s independence.¹⁴⁴ This independence requirement has both factual and legal components.¹⁴⁵ A state is factually independent if it is self-sustaining and it is legally independent if it is not bound to another State’s rule.¹⁴⁶ However, some scholars contend that only legal independence is needed.¹⁴⁷ Nevertheless, under either interpretations, once an island state is completely submerged, it will not meet this requirement or any of the other criteria listed under the Montevideo Convention.¹⁴⁸

Island states have several options that would allow them to keep their traditional statehood qualifications.¹⁴⁹ Islands states could acquire substitute territory as Kiribati desires to do or merge with other states.¹⁵⁰ Island states also have the option of relocating to an artificial

¹³⁶ *Id.*

¹³⁷ *See id.*

¹³⁸ Montevideo Convention, *supra* note 131, at art. 1.

¹³⁹ Stoutenburg, *supra* note 31, at 67.

¹⁴⁰ *Id.*

¹⁴¹ *See Id.*

¹⁴² *Montevideo Convention*, *supra* note 131, at art. 1.

¹⁴³ Stoutenberg, *supra* note 31, at 70.

¹⁴⁴ *Id.* at 71.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 61.

¹⁵⁰ *Id.*

installation.¹⁵¹ Artificial installations utilize structures such as stilts and moorings to indirectly connect them to the seafloor.¹⁵² It appears that many states would consider these artificial installations as new territories based upon ideas of fairness since many island nations are facing submersion.¹⁵³ In order to avoid potential problems, it would be best if island states acquire new territory, so they can still be considered states under the Montevideo Convention.¹⁵⁴ If island states do nothing and become victims to rising sea levels, they will no longer be considered States under international law.¹⁵⁵

B. REFUGEE STATUS

The Convention relating to the Status of Refugees (CRSR) was adopted on July 28, 1951 in Geneva, Switzerland.¹⁵⁶ It defines the term “refugee” and outlines the different types of legal protections they receive under this Convention.¹⁵⁷ The subsequent 1967 Protocol expanded the geographic location of the problem beyond Europe.¹⁵⁸

Article one of the CRSR defines refugee as:

“A person who owing to a 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

¹⁵¹ *Id.* at 63.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *See id.* at 61.

¹⁵⁵ *See id.* at 57.

¹⁵⁶ *The 1951 Refugee Convention*, U.N. REFUGEE AGENCY, <http://www.unhcr.org/pages/49da0e466.html> (last visited Nov. 13, 2013).

¹⁵⁷ *The 1951 Convention Relating to the Status of Refugees and Its 1961 Protocol*, U.N. REFUGEE AGENCY 1, (2011), available at <http://www.unhcr.org/4ec262df9.html> (describing the background of the Refugee Convention and the rights and protections it grants refugees).

¹⁵⁸ *Id.*

residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it . . .”¹⁵⁹

The CRSR does not apply to climate refugees. They do not meet the legal definition stated in the Convention because they do not have a fear of prosecution.¹⁶⁰ Moreover, when there is a national disaster, like a hurricane or tsunami, international law still requires states to maintain responsibility over its citizens.¹⁶¹

The Maldives proposed amending the CRSR and expanding the definition of refugee to include climate refugees in 2006.¹⁶² However, there was opposition to this proposal as the UN High Commissioner for Refugees argued that if the definition of refugees was expanded it would compromise present standards.¹⁶³ The UN Refugee Agency is concerned that by expanding the current refugee definition it might suggest that there is a connection between persecution and climate change; under international law, climate refugees are not afforded the same rights and protections as traditional refugees.¹⁶⁴ Scholars have advocated that the lack of protections and rights for climate refugees in the current legal framework be analyzed instead.¹⁶⁵ Additionally, the UNHCR is facing pressure from host nations to limit the number of climate refugees coming into their borders, but yet still the agency still needs to find areas of relocation for these individuals.¹⁶⁶

There are some regional instruments that have expanded the term “refugee” to include climate refugees.¹⁶⁷ The Cartagena Declaration on Refugees (Cartagena Declaration) was adopted on November 22, 1984. It expands the definition of refugee from the CRSR to include:

“[P]ersons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign

¹⁵⁹ U.N. Convention Relating to the Status of Refugees, art. 1, July 28, 1951, 189 U.N.T.S. 150, [hereinafter *CRSR*]. available at <http://www.unhcr.org/3b66c2aa10.html>.

¹⁶⁰ Atapattu, *supra* note 3, at 617.

¹⁶¹ *Id.* at 616.

¹⁶² Kelley, *supra* note 32, at 56.

¹⁶³ *Id.*

¹⁶⁴ Benjamin Glahn, ‘Climate Refugees’? *Addressing the International Legal Gaps*, ABA, <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=B51C02C1-3C27-4AE3-B4C4-7E350EB0F442> (last visited Nov. 13, 2013).

¹⁶⁵ *Id.*

¹⁶⁶ See Kelley, *supra* note 32, at 56.

¹⁶⁷ Atapattu, *supra* note 3, at 617.

aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”¹⁶⁸

Climate refugees would fall under the, “seriously disturbed public order.”¹⁶⁹ The refugee definition was expanded because it was found that these individuals needed certain protections that weren’t afforded to them at that time in Latin America.¹⁷⁰ However, the Cartagena Declaration is soft law and not binding.¹⁷¹ Even though this declaration is soft law, it may provide a basis for the development of law that will provide climate refugees in Latin America with lasting protection.¹⁷²

A binding instrument, the Convention Governing the Specific Aspects of Refugee Problems in Africa, was adopted on September 10, 1969.¹⁷³ It also expands the definition of refugee, stating “the term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order...”¹⁷⁴ Climate refugee would fall under the category of “seriously disturbing public order.”¹⁷⁵ Although this Convention reflects the evolution of the term refugee, it is a regional instrument so it only applies to certain African countries such as Algeria, Chad, and Gambia to name a few.¹⁷⁶

The Guiding Principles on Internal Displacement (Guiding Principles) were drafted in 1998.¹⁷⁷ These principles were adopted as a

¹⁶⁸ See Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, art. 3(3), Nov. 22, 1984, available at http://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf [hereinafter *Cartagena Declaration*].

¹⁶⁹ Atapattu, *supra* note 3, at 617.

¹⁷⁰ *Cartagena Declaration*, *supra* note 168, at art. 1.

¹⁷¹ *See id.*

¹⁷² *Id.*

¹⁷³ See Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, art. 2(2), Sept. 10, 1984, 1001 U.N.T.S. 45 available at <http://www.refworld.org/docid/3ae6b36018.html>-Convention [hereinafter *African Convention*].

¹⁷⁴ *Id.* at art. 1(2).

¹⁷⁵ See Atapattu, *supra* note 3, at 617.

¹⁷⁶ See *African Convention*, *supra* note 173.

¹⁷⁷ Roberta Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, GLOBAL GOVERNANCE 10 (2004), at 459, available at <http://www.refworld.org/cgi->

response to the growing awareness of internal displacement that is often the result of violence and family ties.¹⁷⁸ It lists the rights and protections afforded to the internally displaced.¹⁷⁹ For instance, the internally displaced are also defined as those who leave their homes, because of “natural or human-made disasters”¹⁸⁰ however, in its application it does not include environmental devastation unless it is considered a disaster.¹⁸¹ For example, certain effects of climate change like desertification might not be considered a disaster under this definition, so the Guiding Principles would not apply.¹⁸² Overall, there are no binding legal instruments regarding climate refugees that will protect inhabitants of island nations like those in Tuvalu and Kiribati.¹⁸³

C. CLIMATE CHANGE TREATY SYSTEM

The objective of both the United Nations Framework Convention (UNFCCC) and the Kyoto Protocol is to mitigate the effects of climate change.¹⁸⁴ They were not created to address the issues surrounding climate change refugees.

1. *United Nations Framework Convention on Climate Change*

The UNFCCC was adopted by the United Nations on May 9, 1992.¹⁸⁵ Since the UNFCCC is a framework convention, it does not list

bin/texis/vtx/rwmain?page=search&docid=4c51531f2&skip=0&query=UN%20Guiding%20Principles%20on%20Internal%20Displacement.

¹⁷⁸ Representative U.N. Secretary-General, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of the Work of the Commission*, ¶ 1, U.N. DOC. E/CN.4/1998/53/ADD.2 (FEB. 11, 1998), available at <http://www.refworld.org/docid/3d4f95e11.html> [hereinafter *Guiding Principles*].

¹⁷⁹ *See id.* at ¶ 3.

¹⁸⁰ *Id.* at Annex ¶ 2.

¹⁸¹ Atapattu, *supra* note 3, at 618.

¹⁸² *Id.*

¹⁸³ *See Kelley, supra* note 32, at 56.

¹⁸⁴ *Kyoto Protocol*, U.N. FRAMEWORK ON CLIMATE CHANGE, http://unfccc.int/kyoto_protocol/items/2830.php (last visited Nov. 14, 2013).

¹⁸⁵ *Status of the Ratification*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, http://unfccc.int/essential_background/convention/status_of_ratification/items/2631.php (last visited Nov. 14, 2013) (listing the Parties to the Convention).

specific responsibilities.¹⁸⁶ The objective of this treaty is to stabilize greenhouse gases in the atmosphere.¹⁸⁷ The UNFCCC adopted the precautionary principle and proposed returning to 1990 GHG emission levels.¹⁸⁸ In addition, the UNFCCC incorporates the principle of common but differential responsibilities whereby developed countries must assist developing countries that are being devastated by the effects of climate change.¹⁸⁹ Based on this principle, states give different amounts of funds based on how much each nation contributed to environmental problems.¹⁹⁰ It also states that developed countries must finance, facilitate, and provide access to technology to developing nations to help them address the effects of climate change.¹⁹¹ Overall, the UNFCCC does not place any legal obligations on those that are parties to it.¹⁹²

The UNFCCC does not contain any provisions regarding the protection and rights of climate refugees.¹⁹³ Island nations such as Tuvalu and Kiribati cannot rely on this legal instrument as they try to mitigate and adapt to the effects of climate change.¹⁹⁴

¹⁸⁶ Svitlana Kravchenko, *Right to Carbon or Right to Life: Human Rights Approaches to Climate Change*, 9 VT. J. ENVTL. L. 513, 516 (2007-2008).

¹⁸⁷ United Nations Framework on Climate Change, art. 2, entered into force May 9, 1992, 1771 U.N.T.S. 102, available at <http://unfccc.int/resource/docs/convkp/conveng.pdf> [hereinafter *UNFCCC*].

¹⁸⁸ *Id.* at art. 3 & art. 4.

¹⁸⁹ Ruth Gordon, *Climate Change and the Poorest Nations: Further Reflections on Global Inequality*, 78 U. COLO. L. REV. 1559, 1584 (2007).

¹⁹⁰ See Bonnie Docherty & Tyler Giannini, Symposium, *Confronting a Rising Tide: A Proposal for a Climate Refugee Treaty*, 33 HARV. ENVTL. L. REV. 349, 385 (2009) (arguing that a climate refugee treaty is needed).

¹⁹¹ *UNFCCC*, *supra* note 187, at art. 4(5).

¹⁹² Gordon, *supra* note 189, at 1583.

¹⁹³ Michele Klein Solomon & Koko Warner, *Protection of Persons Displaced as a Result of Climate Change: Existing Tools and Emerging Frameworks*, in THREATENED ISLAND NATIONS 243, 245 (Michael B. Gerrard & Gregory E. Wannier eds., 2013); See also, *UNFCCC*, *supra* note 187.

¹⁹⁴ See *id.*

2. Kyoto Protocol

The Kyoto Protocol is part of the UNFCCC.¹⁹⁵ It was adopted in Japan on December 11, 1997.¹⁹⁶ The Kyoto Protocol's purpose is to legally bind industrialized nations to reduce GHGs and carbon dioxide (CO₂) levels.¹⁹⁷ It provides for a 5% reduction below 1990 levels in GHG emissions between the years of 2008-2012.¹⁹⁸ It appears that the Kyoto Protocol has proved successful in various instances. For example, in 2011 it was reported by the European Environmental Agency that the EU's current emissions was 18.4% lower than their emissions levels had in 1990, which was attributed to their commitment under the Kyoto Protocol.¹⁹⁹ However, the United States has never ratified the Kyoto Protocol, so it is not legally binding on the U.S.²⁰⁰ Furthermore, developing countries that are leading emitters of GHGs, such as China, India, and Brazil, were not included in the Kyoto Protocol.²⁰¹ Some scholars have argued that the Kyoto Protocol failed to provide the solution on climate change that it was created to address.²⁰²

The Kyoto Protocol does not contain any provisions regarding the protection and rights of climate refugees either.²⁰³ This Protocol may legally cap emissions levels, but it does not make provisions that will assist in the survival of submerging island nations.

D. HUMAN RIGHTS

Human rights law may be applied to climate change; however, there are challenges when utilizing a human rights framework to address

¹⁹⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change, U.N. Doc. FCCC/CP/1997/7/Add1, Dec. 11, 1997, available at <http://unfccc.int/resource/docs/convkp/kpeng.html> [hereinafter *Kyoto Protocol to UNFCCC*].

¹⁹⁶ *Kyoto Protocol*, *supra* note 184.

¹⁹⁷ See *Kyoto Protocol to UNFCCC*, *supra* note 195, at art. 3(1).

¹⁹⁸ *Id.*

¹⁹⁹ John Parnell, *EU Greenhouse Gas Emissions Lowest Since 1990*, RESPONDING TO CLIMATE CHANGE (May 29, 2013, 2:04 PM), <http://www.rtcc.org/2013/05/29/eu-greenhouse-gas-emissions-lowest-since-1990/>.

²⁰⁰ See *Status of the Ratification*, *supra* note 185.

²⁰¹ Jarvis, *supra* note 21, at 455.

²⁰² *Id.*

²⁰³ See *Kyoto Protocol to UNFCCC*, *supra* note 195; See also Solomon et al., *supra* note 193, at 245.

climate change issues.²⁰⁴ Although human rights treaties have been successful in many instances, these instruments do not adequately protect climate refugees.²⁰⁵

1. Treaties

Human rights treaties have been successful in many different situations.²⁰⁶ Thirty human rights treaties were adopted between the years of 1948 and 2010.²⁰⁷ They have been successful in bringing human rights abuses to light.²⁰⁸ For example, each year the UN High Commissioner for Human Rights (OHCHR) receives in excess of 7,500 human rights complaints in expectation that human rights violations will be made public, and efforts made to minimize them and facilitate positive change.²⁰⁹ Other achievements in the field of human rights have included additional protections to women, homosexuals, disabled peoples, and indigenous communities.²¹⁰ Additionally, the International Criminal Court was established in 2002, and it has been successful in holding individuals criminally liable for grave human rights abuses such as genocide.²¹¹ Furthermore, citizens have been holding their governments more accountable for human rights abuses in recent years as well.²¹²

²⁰⁴ Siobhan McInerney-Lankford, *Human Rights and Climate Change: Reflections on International Legal Issues and Potential Policy Relevance*, THREATENED ISLAND NATIONS 195, 228 (Michael B. Gerrard & Gregory E. Wannier eds., 2013).

²⁰⁵ *See id.*

²⁰⁶ *The 20th Anniversary of OHCHR: 20 Human Rights Achievements*, OFF. HIGH COMMISSION FOR HUM. RTS, http://www.ohchr.org/EN/NewsEvents/OHCHR20_Backup/Pages/Achievements.aspx (last visited Nov. 15, 2012) [hereinafter *Human Rights Achievements*].

²⁰⁷ Hurst Hannum, S. James Anaya & Dinah L. Shelton, *International Human Rights: Problems of Law Policy, and Practice* 86-88 (5th ed. 2011). HURST HANNUM, S. JAMES ANAYA & DINAH L. SHELTON, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW POLICY, AND PRACTICE* 86-88(5TH ed. 2011)

²⁰⁸ *Human Rights Achievements*, *supra* note 206.

²⁰⁹ *Id.* at ¶ 4.

²¹⁰ *Id.* at ¶ 4-10.

²¹¹ *Id.* at ¶ 6.

²¹² *Id.* at ¶ 14.

Notwithstanding all of these human rights achievements, there is still no explicit right to a healthy environment under international law.²¹³ The right to a healthy environment may be difficult to establish since it would require states to provide protections to its citizens against environmental degradation in order to ensure basic health standards.²¹⁴ The right to a healthy environment must be linked to an established right in order for it to be enforced.²¹⁵ This link may be difficult to establish as seen by the following human rights treaties.²¹⁶

The International Covenant on Civil and Political Rights (ICCPR) was adopted at the United Nations General Assembly on December 16, 1966.²¹⁷ It includes a provision for the right to life,²¹⁸ but it does not include any articles on climate change.²¹⁹ However, there is a link between an established right in this treaty to climate change that island states can attempt to utilize to bring forth complaints to the Human Rights Committee.²²⁰ For instance, island nations may be able to bring claims under articles six and twelve of the ICCPR.²²¹ Under article six, island nations such as Tuvalu and Kiribati can argue that their right to life is being violated due to the effects of climate change.²²² They can also argue that their right to liberty of movement and freedom to choose their residence is being violated under article twelve.²²³ Nonetheless, island states would most likely be more successful in litigation if there were an express right to a healthy environment in the ICCPR.²²⁴

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted at the United Nations General Assembly

²¹³ Melissa Fung, *The Right to a Healthy Environment: Core Obligations Under the International Covenant of Economic, Social, and Cultural Rights*, 14 WILLAMETTE J. INT'L L. & DISPUTE RES. 97, 99 (2006).

²¹⁴ *Id.* at 103.

²¹⁵ *Id.* at 98.

²¹⁶ *See id.* at 103.

²¹⁷ International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [hereinafter *ICCPR*].

²¹⁸ *Id.* at art. 6(1).

²¹⁹ *See id.*

²²⁰ Kravchenko, *supra* note 186, at 527.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *See id.*

on December 16, 1966.²²⁵ The ICESCR utilizes the progressive realization principle, which recognizes that it is the states' responsibilities to take measures that will fully implement the rights in the ICESCR.²²⁶ However, the ICESCR does not include a right to a healthy environment.²²⁷ The right to a healthy environment must be linked to an established right in order for it to be enforced²²⁸ such as the right to health.²²⁹ Island states can attempt to make a correlation between the right to a healthy environment and the right to health.²³⁰ If island nations find it difficult to make that link, it could be problematic.²³¹ There is no global human rights treaty that incorporates a right to a healthy environment.²³²

2. *Human Rights Resolutions*

In 2008, the OHCHR studied the effects of climate change on human rights.²³³ The OHCHR found that climate change impacted many rights such as the right to life, right to water, and right to health.²³⁴ However, the OHCHR did not report that climate change threatened to violate human rights; instead, it stated that there are three obstacles that

²²⁵ International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 933 U.N.T.S. 3, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> [hereinafter *ICESCR*].

²²⁶ *Frequently Asked Questions on Economic, Social and Cultural Rights*, OFF. U.N. HIGH COMMISSION ON HUM. RTS., 13 <http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf> (last visited Nov. 15, 2013).

²²⁷ See *ICESCR*, *supra* note 225.

²²⁸ Fung, *supra* note 213, at 98.

²²⁹ *ICESCR*, *supra* note 225 at art. 12; See also Fung, *supra* note 206, at 98.

²³⁰ See Fung, *supra* note 213, at 98 (arguing that the Committee on Economic, Social and Cultural Rights has acknowledged the link to a healthy environment).

²³¹ See McInerney-Lankford, *supra* note 204, at 228.

²³² Fung, *supra* note 213, at 104.

²³³ Human Rights Council Res. 7/23, Human Rights and Climate Change, at 1 (Mar. 28, 2008), available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf.

²³⁴ Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, U.N. Hum. Rts. Council, ¶¶ 20-34, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=498811532>.

must be overcome before it could be treated as a human rights violation.²³⁵ The three obstacles are: (1) proving that one country's emissions caused a specific effect on another nation, (2) showing that human rights issues are caused solely by global warming, and (3) the human rights framework is usually utilized in response to violations, whereas climate change regulation is concerned with the potential of future harm.²³⁶

In 2011, the OHCHR studied the correlation between human rights and the environment for a second time.²³⁷ In 2012, John Knox was chosen to be the first Independent Expert on Human Rights and the Environment.²³⁸ In this position, Knox will investigate human rights commitments relating to sustaining a healthy environment.²³⁹

Human rights frameworks cannot adequately address climate change.²⁴⁰ Human rights treaties are concerned with the protection of rights while climate change law is focused on solutions.²⁴¹ Moreover, the human rights framework was implemented before environmental issues emerged.²⁴² There is no legal framework in place currently that will effectively protect the rights of climate refugees.²⁴³

III. PROPOSAL FOR A CLIMATE CHANGE REFUGEE TREATY

It appears that climate refugees' rights are non-existent due to the gap in existing legal frameworks.²⁴⁴ A climate change refugee treaty will bridge that gap.²⁴⁵ This treaty needs to first define the term "climate refugee."²⁴⁶ The definition of this term has often been

²³⁵ *Id.* at ¶ 70.

²³⁶ *Id.*

²³⁷ Human Rights Council Res. 7/23, Human Rights and the Environment, 16th Session, Feb. 28-Mar. 25, 2011, U.N. Doc. A/HRC/RES/16/11 (Mar. 24, 2011), available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf.

²³⁸ *Independent Expert on Human Rights and the Environment*, OFF. HIGH COMMISSION ON HUM. RTS., <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/IEenvironmentIndex.aspx> (last visited Nov. 15, 2012).

²³⁹ *Id.*

²⁴⁰ McInerney-Lankford, *supra* note 204, at 230.

²⁴¹ *Id.*

²⁴² *Id.* at 229.

²⁴³ *See id.* at 230.

²⁴⁴ Docherty et al., *supra* note 190, at 357.

²⁴⁵ *Id.* at 361.

²⁴⁶ *Id.* at 368.

debated.²⁴⁷ The term “environmental refugee” has been advocated, but is too broad to encompass the realities of climate refugees.²⁴⁸ It has been advocated that the climate refugee definition should include the following parts: “forced migration, temporary or permanent relocation, movement across the borders, disruption consistent with climate change, sudden or gradual environmental disruption, and a more than likely standard for human contribution to the disruption.”²⁴⁹ This definition is inclusive as it defines the circumstances of climate refugees.²⁵⁰

A. SOVEREIGNTY

A climate refugee treaty should incorporate provisions regarding sovereignty. Submerging island nations are at risk of losing their sovereignty as they would no longer meet the criteria that establishes statehood by the Montevideo Convention.²⁵¹ International law permits one state to exist within another state; however, this is an unlikely alternative.²⁵² One of the criteria listed in article one of the Montevideo Convention is a state’s ability to govern.²⁵³ States that are within other states will most likely be unable to completely govern their new territory as the host state will still maintain governing power, therefore the Home state would not meet the government criteria listed in article one of the Montevideo Convention.²⁵⁴

There is a viable solution to this problem. Nations that will become victims to rising sea levels should purchase new territory and relocate to that area.²⁵⁵ The government of Kiribati has been considering this option in response to the conditions that they are suffering due to climate change.²⁵⁶ This alternative will allow a relocating state to meet

²⁴⁷ See Atapattu, *supra* note 3, at 627.

²⁴⁸ *Id.*

²⁴⁹ Docherty et al., *supra* note 190, at 372.

²⁵⁰ *Id.*

²⁵¹ See *Montevideo Convention*, *supra* note 131.

²⁵² See Jane McAdam, *Climate Change, Forced Migration, and International Law*, 145-46 (2012) [hereinafter *Jane*].

²⁵³ *Montevideo Convention*, *supra* note 131, at art. 1.

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 143-147.

²⁵⁶ Paul Chapman, *Entire Nation of Kiribati to be Relocated Over Rising Sea Level Threat*, TELEGRAPH (Mar. 7, 2012, 8:59 AM), <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/kiribati/9127576/E>

all the statehood criteria as defined in Article 1 of the Montevideo Convention.²⁵⁷ However, resettlement is not a popular alternative to many island states.²⁵⁸ Nevertheless, it appears the alternative to resettlement, in the future, is complete submersion of islands states like Tuvalu and Kiribati. Tuvalu is not even considering migration as an option.²⁵⁹ This is unrealistic especially when there have been scientific estimates that Tuvalu will be completely submerged by water by 2050.²⁶⁰ Due to these realities, a climate refugee treaty should contain a provision that when a state faces extinction and purchases territory and relocates their entire population, they should automatically be deemed a state again. A state that relocates to another territory would still meet all the requirements of Statehood as stated in the Montevideo Convention, so this treaty provision would be consistent with international law.²⁶¹

Alternatively, if relocation to a purchased territory is not an option, the climate refugee treaty should also include a provision that is similar to Professor Maxine Burkett's proposal of a Nation ex-situ.²⁶²

"Ex-situ nationhood would be a status that allows for the continued existence of a sovereign state, which would be afforded all the rights and benefits of sovereignty among the family of nation-states . . . It is a means of preserving the existing State and holding the resources and well-being of its citizens—in new and disparate locations."²⁶³

This would allow for the existence of a deterritorialized state.²⁶⁴ In this scenario, a decentralized state would still be considered a nation

ntire-nation-of-Kiribati-to-be-relocated-over-rising-sea-level-threat.html (describing the land in Fiji that Kiribati is interested in purchasing).

²⁵⁷ See *Montevideo Convention*, *supra* note 131, at art. 1.

²⁵⁸ Nathaniel Gronewold, *Island Nations May Keep Some Sovereignty if Rising Seas Make Them Uninhabitable*, NEW YORK TIMES (May 25, 2011), <http://www.nytimes.com/cwire/2011/05/25/25climatewire-island-nations-may-keep-some-sovereignty-if-63590.html?pagewanted=>.

²⁵⁹ 'Only if the Right Actions are Taken Will We Survive: Tuvalu PM Issues Call to Save His Country From Extinction', LA TREIZIÈME ÉTOILE, (Dec. 10, 2009), http://andrewjburgess-eu.blogspot.com/2009_12_06_archive.html (stating that Tuvalu is not focusing on migration in order to survive, but utilizing other adaptation measures instead).

²⁶⁰ McAdam, *supra* note 18, at 8.

²⁶¹ See *Montevideo Convention*, *supra* note 131, at art. 1.

²⁶² See Maxine A. Burkett, *The Nation Ex-Situ*, in THREATENED ISLAND NATIONS 89, 90 (Michael B. Gerrard & Gregory E. Wannier eds., 2013).

²⁶³ *Id.*

²⁶⁴ *Id.* at 95.

under international law.²⁶⁵ This provision would apply to states whose citizens are migrating to different areas such as the Tuvaluans who have entered New Zealand's borders.²⁶⁶ However, given the novelty of this idea, relocation to a purchased territory should take precedence.

1. Human Rights

The climate refugee treaty would need to include provisions that incorporate human rights²⁶⁷ and property rights protections.²⁶⁸ The climate refugee treaty should include rights such as those delineated in the ICCPR and the ICESCR.²⁶⁹ A climate refugee treaty should incorporate the right to self-determination.²⁷⁰ It enables climate refugees to determine where and when they should relocate.²⁷¹ It also empowers climate refugees to make their own choices about their futures and enables them to keep a strong link with their cultural traditions.²⁷² A climate refugee treaty should include the right to freedom of religion. Climate refugees may not receive the same rights as those that are citizens to the Host Country so this right ensures that they have freedom to practice their religion. Climate refugees will be in a compromised position if they are unable to maintain their culture in their new relocated area.

A climate refugee treaty should incorporate rights that are in the ICESCR.²⁷³ For instance, climate refugee treaty should incorporate a right to work.²⁷⁴ Climate refugees need to work to support themselves and their families. Employment will help climate refugees adapt to a new area, and provides stability in the family and community life. A climate refugee treaty should include a right to an adequate standard of

²⁶⁵ *Id.* at 95-98.

²⁶⁶ *See id.* at 96-98 (providing examples of sovereign entities that are seen as States, although, they do not meet the traditional requirements of Statehood).

²⁶⁷ Docherty et al., *supra* note 190, at 376.

²⁶⁸ Lang, *supra* note 106, at 614.

²⁶⁹ *See ICCPR, supra* note 217; *See also ICESCR, supra* note 225.

²⁷⁰ David Hodgkinson & Lucy Young, "In the Face of Looming Catastrophe:" *A Convention for Climate Change-Displaced Persons*, in THREATENED ISLAND NATIONS 299, 326 (Michael B. Gerrard & Gregory E. Wannier eds., 2013).

²⁷¹ *Id.*

²⁷² *Id.* at 327.

²⁷³ *See ICESCR, supra* note 225.

²⁷⁴ *See id.* at art. 6(1).

living.²⁷⁵ If they are not afforded this right they will not be able to survive because their basic needs will not be met.

A climate refugee should include a right to culture.²⁷⁶ Climate refugees come from all parts of the world and will practice many different traditions. This right will enable all climate refugees, regardless of origin, to practice their traditions without the fear of prosecution. This right is especially important for island indigenous peoples because they have a special connection to their land.²⁷⁷

A climate refugee treaty should also include a right to safety and security. The citizens of the Host state may be resentful that climate refugees are residing in their territory, or host state citizens may think that climate refugees are vulnerable since they are new to the area. This right would offer physical protection to climate refugees. A right to safety and security would alleviate fears that climate refugees may have when relocating to a new area.

Property rights needs to be incorporated into a climate refugee treaty as well.²⁷⁸ They are essential to successful relocation.²⁷⁹ It promotes fiscal growth as it allows access for monetary lending, raises property values, and increases stability.²⁸⁰ It has been advocated that land should be sold on the private market to reduce complications between individuals and States.²⁸¹ Acquisition of property promotes self-determination as it allows for individuals to purchase property in areas that hold importance for them. “Ultimately, the quality of the resettlement location plays a major role in the success of the relocation.”²⁸²

2. Access to Social Services

Climate refugees will need social services once they relocate.²⁸³ Most home states will not be able to offer their citizens protections.²⁸⁴

²⁷⁵ See *id.* at art. 11(1).

²⁷⁶ See *id.* at art. 15(2).

²⁷⁷ See Boom, *supra* note 16, at 411.

²⁷⁸ Lang, *supra* note 106, at 614.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 620.

²⁸¹ *Id.* at 621-22.

²⁸² *Id.* at 622.

²⁸³ Nathan Stopper, *Adrift From Home and Neglected By International Law: Searching for Obligations to Provide Climate Refugees with Social Services* 12 (May 2011) (unpublished note) (on file with Columbia Law School), available at

In response, a climate refugee treaty should include provisions that provide climate refugees access to social services.²⁸⁵ Climate refugees will need to have access to medical and health care after relocation.²⁸⁶ Climate refugees will not live in functional communities without access to medical care. Furthermore, climate refugees that are ill due to limited access to medical centers will not be able to effectively pursue their right of self-determination as described in the ICCPR.²⁸⁷ They will be unable to make decisions that will positively impact their lives because they will not be healthy enough to do so. Access to medical care is a necessity.

Climate refugee treaty should also contain a provision that will provide access to language skills classes. Climate refugees may relocate to states whose citizens speak a different language than their own. It is important that climate refugees learn to speak the host states language, so they can thrive in their new environment. This provision is especially important since it is likely that educational and employment services will be in the host state's national language.

Climate refugees may have to accumulate to their new environment. A climate refugee treaty should contain a provision that provides services to help individuals with the transition into a new climate. For instance, many Tuvaluans and Kiribatians are used to the island weather, and it may difficult for them to adjust to a much colder climate. A climate refugee treaty should contain a provision that allow for clothing and other items that are necessary to adjust to the new relocation area.

Climate refugees need to have access to education and job training.²⁸⁸ They need to be employed to support themselves and their families. A climate refugee treaty that contains an employment provision will help climate refugees pursue the right to work article in the ICESCR.²⁸⁹ Employment is necessary in order for climate refugees to have the ability to pursue their right to self-determination as the funds

https://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=59708.

²⁸⁴ *Id.*

²⁸⁵ *See id.*

²⁸⁶ *Id.* at 13.

²⁸⁷ *See ICCPR supra* note 217, at art. 1(1).

²⁸⁸ Stopper, *supra* note 283, at 15.

²⁸⁹ *See ICESCR, supra* 225, at 6.

that employment provides will assist climate refugees in making choices that will benefit their lives.

A climate refugee treaty should include a provision providing climate refugees with transportation. Many climate refugees may not have the means after relocation to purchase a vehicle or afford transportation services, so it is important that a climate refugee treaty address this issue. This is important since it is likely that climate refugees will need transportation to carry out their daily activities.

B. LOGISTICS OF RELOCATION

The relocation of climate refugee will be a complicated process. The proposed treaty should include the principle of proximity, which states that people should be as close as possible to their native location.²⁹⁰ This is especially important in the island nations context; because many residents of SIDS have a special connection with their land.²⁹¹ Kiribati appears to be following the proximity principle since they are considering the purchasing of land in Fiji,²⁹² which is also located in the South Pacific Ocean between Hawaii and New Zealand.²⁹³

A climate change treaty will need to have a relocation council that will oversee relocation of climate refugees.²⁹⁴ It could be entitled, "Climate Change Relocation Advisory Board," also known as the Advisory Board. The Advisory Board will have many duties. Its primary purpose will be to help climate refugees' transition from one area to another.²⁹⁵ It would also provide guidance pertaining to the appropriate location that climate refugees should relocate to.²⁹⁶ It will help States decide what land to purchase.²⁹⁷ If climate refugees are relocating to a host state and not to a territory that their home state purchased, the Advisory Board can make recommendations on which

²⁹⁰ Hodgkinson et al., *supra* note 270, at 325.

²⁹¹ *See Boom*, *supra* note 16, at 411.

²⁹² *Kiribati President*, *supra* note 126.

²⁹³ *World Factbook: Fiji*: CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/fj.html> (last visited Nov. 17, 2013).

²⁹⁴ *See Maxine Burkett, In Search of Refuge: Pacific Islands, Climate Induced Migration, and the Legal Frontier*, ASIA PACIFIC (East-West Center), Jan. 2011, at 5, available at <http://www.eastwestcenter.org/system/tdf/private/api098.pdf?file=1&type=node&id=32472>.

²⁹⁵ *See id.*

²⁹⁶ *See id.*

²⁹⁷ *See id.*

host states would be the most appropriate for that climate refugee and his or her families.²⁹⁸ The Advisory Board will act as a coordinator as it will provide assistance with the preparation of relocation between individuals, communities and states.²⁹⁹ Additionally, the Advisory Board would help with the relocation itself by providing information to the home state and its citizens on how to relocate efficiently.³⁰⁰

The Advisory Board will also help to solve issues that arise between home and host states.³⁰¹ It will act as an impartial mediator between states so that it can take into account each state's individual needs.³⁰² It will offer advisement on what the best course of action will be for each state.³⁰³ For example, the Advisory Board might try to convince the President of Tuvalu that not considering relocation as an option to their survival problem is an unrealistic solution since the nation will cease to exist in the near future.

C. FUNDING

A climate refugee treaty will need a source for funding. Currently, there are different types of funds in place that can be utilized as a model for this treaty.

1. *The Green Climate Fund (GCF) under the Kyoto Protocol*

The GCF's purpose is to promote the realization of the goals of the UNFCCC.³⁰⁴

It was adopted during the Conference of the Parties³⁰⁵ between November 29, 2010 and December 10, 2010 in Durban, South Africa.³⁰⁶

²⁹⁸ See *id.*

²⁹⁹ See Burkett, *supra* note 294.

³⁰⁰ See *id.*

³⁰¹ See *id.*

³⁰² See *id.*

³⁰³ See *id.*

³⁰⁴ *Governing Instrument, GREEN CLIMATE FUND*, <http://www.gcfund.org/about/the-fund.html> (last visited Mar. 28, 2015) [hereinafter *Governing Instrument*].

³⁰⁵ See *id.*

³⁰⁶ *Green Climate Fund, UNFCCC*, (Nov. 7, 2013), http://unfccc.int/cooperation_and_support/financial_mechanism/green_climate_fund/items/5869.php.

It was established in accordance with Article 11 of the UNFCCC and it provides for developed nations to supply financial support to developing nations.³⁰⁷ This financial support helps developing countries mitigate and adapt to climate change.³⁰⁸ GCF has a goal to raise one billion dollars a year until 2020.³⁰⁹ The GCF board, which consists of twenty-four members,³¹⁰ has the responsibility to make decisions on how the funds are appropriated.³¹¹ Revenue for the GCF is dependent on private sources, developed nations, and other programs such as the carbon market.³¹² The GCF should be in full effect by the end of 2013.³¹³ It is believed that the GCF will replace other climate change funds in existence such as the Adaptation Fund.³¹⁴ Tuvalu and Kiribati have both ratified the Kyoto Protocol; therefore, once it is operational, the GCF should help both the island nations finance adaptation measures.³¹⁵

A climate refugee treaty will take time to develop, and climate refugees need assistance now. Until a climate refugee treaty can be developed, the GCF should include a sub-fund that provides monetary assistance to climate refugees. This sub-fund can be called the, “Global Refugee Fund” also known as the GRF. A portion of the revenue that the GCF receives can be utilized by the GRF. The GRF will specifically help to finance relocation of climate refugees. Relocation to a new area is expensive, and many countries such as Tuvalu and Kiribati need financial support. The GRF can help them finance it, until a climate refugee treaty is developed.

³⁰⁷ UNFCCC, *supra* note 187, at art. 11.

³⁰⁸ *Governing Instrument*, *supra* note 304.

³⁰⁹ John Parnell, *Green Climate Fund Set to Open for Business in 2014*, RESPONDING TO CLIMATE CHANGE (July 2, 2013, 2:12 PM), <http://www.rtcc.org/2013/07/02/green-climate-fund-set-to-open-for-business-in-2014/#sthash.uxQXNmEJ.dpuf>.

³¹⁰ *Composition*, GREEN CLIMATE FUND, <http://gcfund.net/board/composition.html> (last visited Nov. 17, 2013) [hereinafter *Composition*].

³¹¹ *Mandate and Governance*, GREEN CLIMATE FUND, <http://gcfund.net/about-the-fund/mandate-and-governance.html> (last visited Nov. 17, 2013).

³¹² Richard Lattanzio, *International Climate Change Financing: The Green Climate Fund (GCF)*, CONGRESSIONAL RESEARCH SERVICE 1, at 2, (2013), available at <http://www.fas.org/sgp/crs/misc/R41889.pdf>.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Status of Ratification of the Kyoto Protocol*, UNFCCC, http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php (last visited Nov. 17, 2013).

2. *Climate Change Refugee Relocation Fund*

A Climate Refugee treaty will need to have a fund that will provide monetary assistance to

those that need to relocate. It could be entitled, “Climate Change Relocation Fund,” also known as the Relocation Fund. It can be modeled after the GCF.³¹⁶ Revenue can come from various sources such as from Parties to the Convention and private donations. Parties to the refugee treaty could contribute based on the principle of differentiated responsibilities.³¹⁷ This may also act as a deterrent for nations that do not wish to lower their GHG emissions; they will be heavily subsidizing this treaty. Each nation should receive funding based on need, as many nations are suffering varying degrees of problems due to climate change. For example, many island nations such as Tuvalu and Kiribati are facing submersion and their need to relocate may be greater than other States that have additional survival time. Additionally, funds should not only be distributed to relocating states but to host states as well. Host states should receive a flat rate per climate refugee that enters into its borders. This would ensure fairness between host states and would lower the probability of host states deciding not to admit climate refugees into its borders due to funding limitations.

The Relocation Fund would need to be overseen by two different Boards. The first Board, could be modeled after the GCF Board which would oversee the management and distribution of funds.³¹⁸ The Relocation Fund Financial Board (Financial Board) would be comprised of Parties from both developed and developing nations.³¹⁹ The Relocation Fund would create the Scientific Experts Board (SEB) that would work closely with the Financial Board.³²⁰ The SEB would be comprised of unbiased scientific experts who would monitor the effects of climate change and provide recommendations to the Financial Board on the nations that have the greatest need for funds based upon the imminent need for relocation.³²¹

³¹⁶ See *Governing Instrument*, *supra* note 304.

³¹⁷ Docherty et al., *supra* note 190, at 386.

³¹⁸ See *Composition*, *supra* note 310.

³¹⁹ See *id.*

³²⁰ See Docherty et al., *supra* note 190, at 389.

³²¹ *Id.* at 389-90.

CONCLUSION

The establishment of a climate refugee treaty is necessary to create a more comprehensive legal framework for the protection of climate refugees. The existing legal framework was structured during a period when climate change had not been determined to be a problem, thus making those existing laws inapplicable to the issues surrounding climate change. The 1951 Refugee Convention only applies to refugees that fear prosecution.³²² Human rights law does not specifically apply to environmental issues, and the existing climate change treaty system is concerned with GHG's in the atmosphere and not the protection of climate change refugees.³²³ Unfortunately, the current international legal system appears to offer no effective assistance to solving Tuvalu's and Kiribati's significant survival problems related to climate change.

A climate refugee treaty can be a possible solution to protect climate refugees. A climate refugee treaty will need to contain three sections. These three sections would focus on sovereignty, logistics of relocation, and funding. Sovereignty is important because a state that becomes a victim to rising sea levels will no longer be considered a nation under international law if it is submerged under water. States that purchase territory and relocate its populations will still be deemed nations under international law.³²⁴ Alternatively, if this is not an option, a climate refugee treaty should also contain a provision that allows a state to govern its people that are in different locations.³²⁵

Climate refugees' rights need to be adequately protected under international law especially once relocated. A climate refugee treaty needs to explicitly state what rights refugees have in order to prevent the possibility that their rights will be violated.³²⁶ It should also contain provisions that grant climate refugees the right to access social services.³²⁷ These provisions are essential to a climate refugee treaty, so as to assist climate refugees in living happy and self-filling lives once they are relocated.

A climate refugee treaty should incorporate the Relocation Fund, which would be utilized to finance climate change relocation, and it can

³²² *CRSR*, *supra* note 159, at art. 1.

³²³ *See, e.g.,* Docherty et al., *supra* note 190, at 357-60.

³²⁴ *See Montevideo Convention*, *supra* note 131, at art. 1.

³²⁵ *See* Burkett, *supra* note 262, at 90.

³²⁶ *See* Hodgkinson et al., *supra* note 270, at 325.

³²⁷ *See* Stopper, *supra* note 283, at 12.

be modeled after the Green Climate Fund.³²⁸ Revenue will primarily be obtained from Parties to the treaty. Parties will contribute funds based upon the principle of common but differentiated responsibilities.³²⁹ This Fund will be utilized to make relocation a viable solution for all States whose very survival is in danger. It will also provide monetary assistance to host states that allow climate refugees into their borders. This will allow for fairness amongst all nations. However, until the time a climate refugee treaty is adopted, the GCF should incorporate the GRF to help climate refugees relocate presently.³³⁰

The international community cannot ignore the problems associated with climate change. The issues associated with climate change will continue and a climate refugee treaty is a viable option. It will provide a legal framework that will protect climate refugees and will provide structure to States as well.

³²⁸ See *Governing Instrument*, *supra* note 304.

³²⁹ Docherty et al., *supra* note 190, at 386.

³³⁰ See *Governing Instrument*, *supra* note 304.