

By: **Fakeha Jamil**

Independent Directed Research, University of Saskatchewan
Supervisor: Professor Dwight Newman

INTRODUCTION

Rising sea levels threaten both the physical existence and legal identity of citizens of Small Island Developing States (SIDS).

Climate migration is an urgent global issue, with projections estimating 50 to 300 million displaced individuals due to climate change. Among the most vulnerable are Small Island Developing States (SIDS), whose citizens face not only forced migration but also the unprecedented risk of statelessness as their homelands submerge. Current international law lacks clear frameworks to protect climate migrants, highlighting the need for legal reform. The loss of territory challenges fundamental legal concepts such as sovereignty, nationality, and statehood, raising concerns about legal identity, human rights, and international stability.

OBJECTIVES

1. Examine legal challenges faced by SIDS populations regarding migration and statelessness.
2. Assess the effectiveness of existing legal frameworks, including refugee law, statelessness conventions, and international human rights instruments.
3. Explore the role of international statelessness laws in providing protections and potential gaps in enforcement mechanisms.
4. Propose enhancements to the current legal system to address climate-induced displacement, including amendments to existing treaties and new policy initiatives.

BACKGROUND

Climate Migration Trends: In 2020, 30 million people were displaced due to hazardous weather events. Countries like Bangladesh and Pakistan have seen entire communities relocate due to rising sea levels and catastrophic flooding. Climate migration is expected to accelerate, particularly in low-lying island states that face complete submersion.

SIDS Vulnerability: Rising sea levels threaten the habitability of SIDS by damaging infrastructure, contaminating water supplies, and eroding sovereignty. The Pacific Islands, Maldives, Tuvalu, and the Bahamas are particularly at risk.

Statelessness: Statelessness can arise through disappearing territory, loss of documentation, prolonged residence abroad, and difficulties in birth registration. Climate change also disproportionately affects already stateless populations, excluding them from disaster relief, healthcare, and national climate adaptation plans. For instance, the Moken, a stateless group residing in Burma and Thailand's waters, face systemic deprivation of medical care, education, and employment.

Legal Gaps: International law does not adequately recognize climate migrants, leaving them without formal protection under the 1951 Refugee Convention. Many displaced individuals fall into legal limbo, unable to claim refugee status or secure alternative legal protections.

CASE STUDY: REPUBLIC OF VANUATU AND THE ICJ

The Republic of Vanuatu, an island state in the Pacific, has taken the lead in demanding the concerns of small island states as they face the adverse effects of climate change be taken seriously at the international level. As a low-lying island state, it is predicted to be uninhabitable by 2050 and is the most “disaster-risk” country to the Institute for Environment and Human Security. Thus far, displacement due to climate disasters in Vanuatu has been internal. Six villages on four of its islands have been entirely relocated due to sea-level rise rendering water supplies undrinkable.

CURRENT FRAMEWORKS & CHALLENGES

MIGRATION AS ADAPTATION

The UNFCCC’s 2010 Cancun Adaptation Agreement recognized migration as a climate adaptation strategy. Some scholars advocate for resettlement agreements as a form of reparations, arguing that high-emission countries should bear responsibility for displaced populations.

Others emphasize the importance of preserving national sovereignty, with governments like Tuvalu rejecting migration as a primary solution, viewing it as a last resort.

Local perspectives show resistance to migration, as many SIDS citizens fear loss of cultural and political identity. Migration policies must consider community agency and dignity, rather than treating relocation as an inevitability.

REFUGEE REGIME

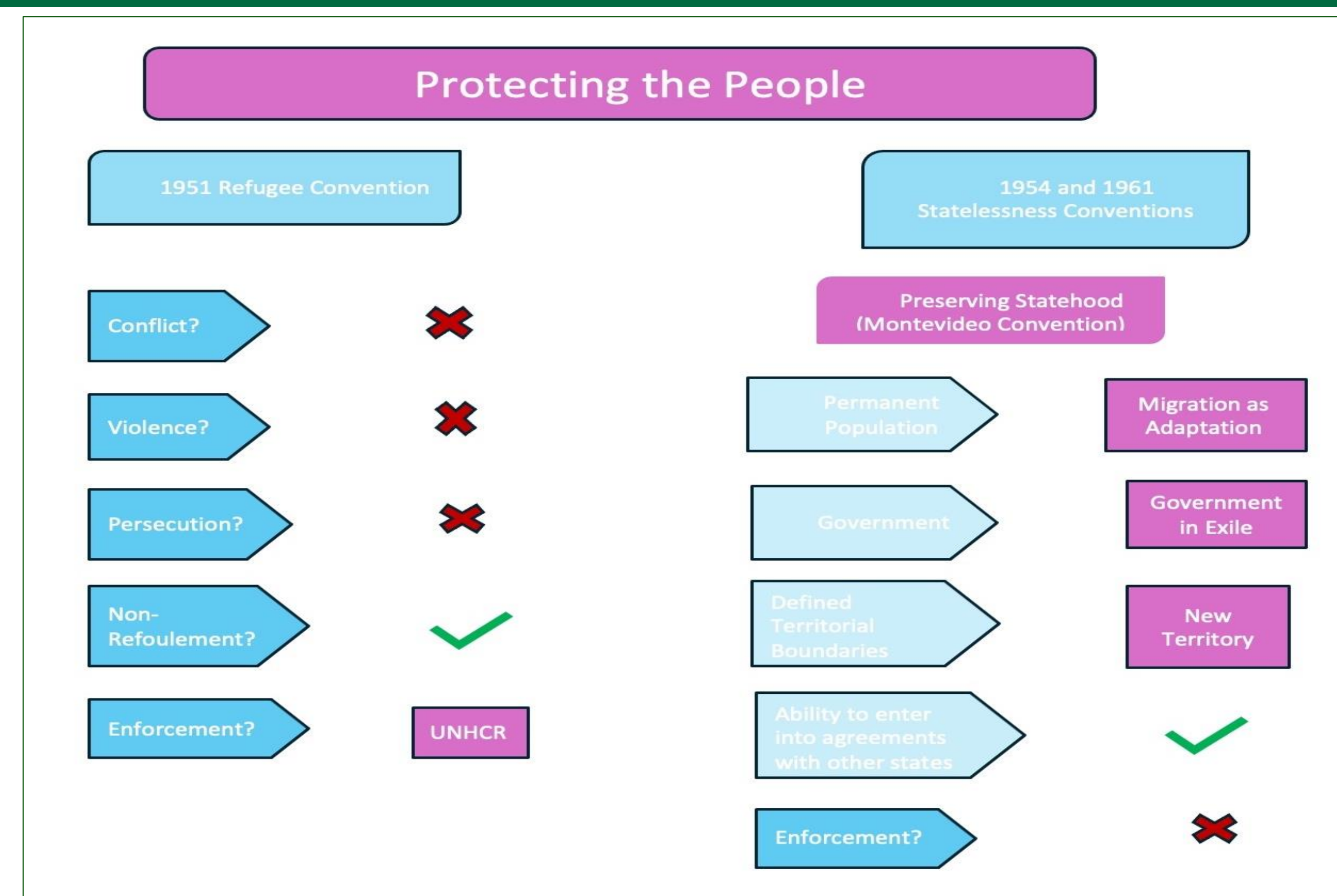
The 1951 Refugee Convention protects those fleeing persecution but does not recognize climate change as grounds for asylum. The case of *Ioane Teitiota v New Zealand* highlighted the difficulty of securing protection under current refugee frameworks. The UN Human Rights Committee acknowledged that climate-related migration could, in extreme cases, justify protection, but the legal threshold remains high.

The populations of Small Island Developing States (SIDS) are not protected under the Convention because (a) they do not meet the traditional refugee definition, (b) even with an expanded definition, proving persecution and meeting the high legal threshold for protection would be difficult, and (c) their displacement often occurs internally.

However, the principle of non-refoulement—the prohibition of returning individuals to situations of serious harm—could serve as a foundation for developing stronger legal protections. Given the Refugee Convention’s broad acceptance in domestic laws, adapting its framework to include climate migrants could provide access to well-established protection mechanisms. Still, significant challenges remain, particularly in addressing those who are displaced internally or those who remain in their sinking states, awaiting inevitable relocation.

DISAPPEARING STATEHOOD & DISAPPEARING LEGAL IDENTITY

Not all climate migrants are stateless, but SIDS populations face both displacement and the risk of statelessness, making them uniquely vulnerable under international law. They are invisible in refugee and migration frameworks and risk losing legal identity as their states disappear. The 1951 and 1961 Statelessness Conventions aim to prevent statelessness, but international law lacks clarity on state extinction. While some argue that de jure statehood can survive territorial loss, SIDS face unique challenges as there is no possibility of return once submerged. Historical cases, such as the Baltic states and the Holy See, suggest that statehood can endure without territory, but SIDS present an unprecedented legal gap. Political factors beyond the Montevideo Convention’s criteria further complicate recognition. Some scholars propose maintaining deterritorialized statehood, while others warn it could hinder resettlement efforts. Countries like Australia and New Zealand, which accept SIDS migrants, may resist recognizing sovereignty without land. Ultimately, the legal future of SIDS remains unresolved, requiring urgent international action.



PROPOSED SOLUTIONS

Expansion of International Refugee Law

1. Redefining “refugee” to include climate displacement.
2. Strengthening the principle of non-refoulement for climate migrants.
3. Developing new regional agreements to protect climate-displaced individuals, similar to the expanded refugee definitions in the 1969 OAU Convention

Recognition of Climate-Induced Statelessness

1. Ensuring continued legal recognition of SIDS populations even after territorial loss.
2. Exploring the feasibility of non-territorial statehood models, such as governments-in-exile or virtual states.
3. Encouraging dual nationality agreements to provide displaced SIDS populations with alternative legal protections.

Human Rights-Based Approaches

1. Utilizing the ICCPR and UN Human Rights Committee rulings for legal protections, particularly under the right to life provisions.
2. Strengthening erga omnes obligations to hold high-emission states accountable for displacement-related human rights violations.
3. Expanding legal mechanisms for displaced individuals to seek remedies through international courts and human rights bodies.

International Climate Litigation & ICJ Precedents

1. The upcoming ICJ Advisory Opinion on climate obligations may set important legal precedents.
2. Drawing from *Netherlands v Uganda* for climate accountability.
3. Encouraging states to recognize climate displacement as a global human rights crisis and develop legally binding frameworks for protection.

CONCLUSION

The people of Small Island Developing States (SIDS) face a significant legal gap as they confront potential loss of statehood and displacement. Existing refugee and statelessness frameworks provide limited protection, and mechanisms to preserve their legal identity remain underdeveloped. The upcoming ICJ Advisory Opinion may strengthen state obligations regarding climate change and offer enforcement pathways. However, current legal approaches primarily focus on preserving sovereignty rather than addressing the rights and needs of displaced populations. The 1951 Refugee Convention does not adequately protect climate migrants, but principles like *non-refoulement* and human rights instruments such as the ICCPR show promise.

With climate change intensifying extreme weather events, urgent legal and policy interventions are needed. The UN Sustainable Development Goals, particularly Goal 13, emphasize strengthening resilience to climate hazards. A coordinated, multi-disciplinary approach—including legal frameworks—is essential to addressing climate migration and ensuring displaced populations receive protection.