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STATE OBLIGATIONS TO PROTECT THE RIGHT TO LIFE OF ENVIRONME NTALLY DISPLACED MIGRANTS BEYOND THE 1951 REFUGEE CONVENTION

Taty Sugiarti
Universitas Pasundan, Bandung, Indonesia
E-mail: taty.sugiarti@unpas.ac.id

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Abstract

Cross-border displacement caused by environmental disasters raises protection concerns when individuals fall outside the 1951 Refugee Convention but face serious threats upon return. This article examines the legal basis of state obligations to protect the right to life, the risk threshold governing removal, and protection measures beyond refugee status determination. Normative legal research employs statutory, conceptual, and case approaches, examining instruments and developments through 2025. The analysis finds that the absence of refugee status does not eliminate obligations under the International Covenant on Civil and Political Rights. Teitiota v. New Zealand and the International Court of Justice's 2025 advisory opinion confirm the relevance of environmental risks to non-refoulement obligations. However, protection requires an assessment of real, reasonably foreseeable risks and does not automatically confer refugee status or permanent residence. The article proposes individualized assessment, suspension of removal where necessary for effective risk review, access to life-preserving assistance, and periodic evaluation of return conditions. It concludes that protection requires substantive right-to-life obligations to be connected with procedures capable of preventing irreparable harm.

Keywords: Cross-border migration; Environmental disasters; Non-refoulement; Right to life; State obligations.

INTRODUCTION

National borders may determine whether a person receives permission to enter, but they do not independently determine whether that person's life deserves protection. This issue becomes particularly important when individuals leave territories experiencing freshwater shortages, destruction of housing, or recurring disasters that threaten their safety. Upon reaching another country, they may fail to satisfy the refugee definition while facing dangerous conditions if returned. In such circumstances, the legal inquiry cannot end with status determination. States must also assess whether returning the individual would conflict with their obligations to protect the right to life.

Migration associated with environmental disasters takes different forms. Some movements follow sudden events, while others result from environmental deterioration developing over an extended period. Decisions to move may also reflect economic circumstances, family relationships, and the capacity of the country of origin to provide protection. Accordingly, this article uses environmentally displaced migrants as an analytical description of the circumstances of movement, rather than as a uniform international legal status. The analysis focuses on cross-border movement because internal displacement involves different relationships of jurisdiction and protection. This distinction prevents the application of international protection standards without considering the legal circumstances in which individuals move.

The 1951 Refugee Convention remains important, but it does not automatically cover every situation involving environmental displacement. Article 1A(2) requires a well-founded fear of persecution connected with specified grounds. A disaster or environmental deterioration, considered independently, may not satisfy those requirements. Nevertheless, it would also be incorrect to assume that every disaster-related claim necessarily falls outside the Convention. Discrimination in assistance, persecution of particular groups, or interaction with armed conflict may

affect the assessment. UNHCR (2020) therefore emphasizes examination of the specific circumstances rather than rejection based solely on the environmental context of the claim.

A broader foundation for protection can be found in international human rights law, particularly the right to life. Article 6 of the International Covenant on Civil and Political Rights, hereafter the ICCPR, protects every human being against arbitrary deprivation of life. This obligation is not restricted to citizens or individuals already recognized as refugees. In removal cases, attention focuses on the reasonably foreseeable consequences of state action for an individual within the relevant jurisdiction. Refusal of refugee status and assessment of the safety of return are therefore connected legal questions, but they are not identical. Resolving the former does not necessarily determine the latter.

Ioane Teitiota v. New Zealand marks an important development in this relationship. The United Nations Human Rights Committee found no violation of the right to life on the facts, but recognized that climate change impacts could generate risks engaging non-refoulement obligations under the ICCPR. This reasoning received further support on July 23, 2025, when the International Court of Justice connected climate-related risks with obligations against return involving irreparable harm to the right to life. Both sources require careful interpretation so that recognition of the principle is not mistakenly presented as the automatic creation of refugee status.

This article examines the relationship between state sovereignty, risk assessment, and protection obligations. It addresses three questions: the legal foundation for protection beyond the 1951 Convention, the nature of threats relevant to removal decisions, and the measures through which states can fulfil their obligations. Its contribution lies in connecting the right to life with protection procedures while maintaining a distinction between existing legal duties and policy arrangements requiring further development. The analysis considers developments through the end of 2025 and examines their implications for Indonesia.

LITERATURE REVIEW

Environmental Migration and the Limits of Status-Based Approaches

Debates about environmentally related movement frequently focus on creating a new refugee category. McAdam (2011) cautions that concentrating solutions on a dedicated treaty may overlook the diversity of movement, community preferences, and difficulties concerning implementation and state participation. This argument does not suggest that legal development is unnecessary. Rather, it demonstrates that introducing a category does not automatically produce effective protection. For individuals facing dangerous removal, the immediate questions concern existing mechanisms, the authority responsible for examining risk, and interim measures capable of preventing threats to life.

UNHCR's (2020) guidance complements this debate by examining the interaction between disasters, vulnerability, and failures of protection. Disasters do not necessarily operate as the sole cause of movement, meaning that legal assessment cannot ask only whether a person left an environmentally affected area. It must also consider discrimination, violence, or restricted access to protection that may engage the refugee definition. This article adopts that approach by maintaining two analytical pathways: possible Convention protection must still be examined, while human rights obligations require separate assessment when the requirements for refugee status are not satisfied.

The Right to Life and Protection against Removal Risks

General Comment No. 36 explains that the right to life should not be interpreted narrowly as a prohibition of direct killing. The Human Rights Committee connects it with protection against life-threatening conditions, including environmental degradation and barriers to essential needs. This interpretation matters because environmental threats may operate through inadequate access to water, food, shelter, or health care. However, the connection does not mean that every difficult living condition automatically satisfies the threshold for preventing removal. The analysis must establish the seriousness of the risk and its relationship with the circumstances of the individual concerned (Human Rights Committee, 2018).

McAdam (2020) examines the significance of Teitiota for protecting people displaced by climate change impacts. A central point concerns the possibility of relying on human rights non-refoulement without extending the refugee definition beyond its legal requirements. This protection has its own legal basis and conditions. Scott (2014), examining the European human rights system, likewise demonstrates the complexity of resisting removal in disaster-related cases. Comparative scholarship helps identify evidentiary difficulties, but it should not be treated as establishing that all regional standards apply identically to every state.

Foreseeable Risk and the Question of Imminence

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Foster and McAdam (2022) critically examine the use of imminence in international protection claims. Difficulties arise when future risks are treated as legally relevant only if death or serious harm will occur immediately. In the context of gradual environmental deterioration, such an approach may weaken protection before threats become irreversible. Nevertheless, rejecting an excessively narrow temporal standard does not eliminate evidentiary requirements. Assessment still requires substantial grounds connecting conditions in the receiving country with a real risk to the individual. The relevant question concerns a substantiated danger rather than either immediate catastrophe or an abstract possibility.

The distinction between foreseeability and certainty is therefore important. Protection law does not require authorities to wait until a person has actually suffered irreparable harm, but neither does it justify decisions based solely on speculative possibilities. This article uses that distinction to develop an analytical framework connecting environmental information with health, actual access to basic needs, family support, and available protection. General information about environmental hazards provides a starting point for examination. The legal conclusion must nevertheless consider the circumstances relevant to the person facing return and the protective measures realistically available in the destination country.

Complementary Protection and International Cooperation

The Nansen Protection Agenda offers a policy approach for people displaced across borders in the context of disasters and climate change. It supports the development of practices within national and regional frameworks, including measures to reduce displacement risks and establish protection arrangements responsive to particular needs. Its legal position must be distinguished from that of a binding treaty. The Agenda can guide policy development, but it does not independently create an enforceable entitlement to residence in every country. Maintaining this distinction allows humanitarian recommendations to inform state practice without attributing legal force that the instrument does not possess (The Nansen Initiative, 2015).

METHOD

This study employs normative legal research using statutory, conceptual, and case approaches. Its temporal scope extends through December 31, 2025, allowing consideration of the International Court of Justice's 2025 advisory opinion while excluding subsequent developments. The statutory approach identifies obligations arising under the 1951 Refugee Convention, the ICCPR, and relevant national instruments. The conceptual approach examines the right to life, jurisdiction, non-refoulement, and complementary protection. The case approach primarily considers the Human Rights Committee's Views in Teitiota and the International Court of Justice's explanation of state obligations concerning climate change.

The principal legal materials include the ICCPR, General Comment No. 36, the Teitiota decision, the advisory opinion of July 23, 2025, and UNHCR's 2020 legal guidance. The Indonesian context is examined through Law No. 12 of 2005 ratifying the ICCPR and Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad. Scholarly articles support analysis of the boundaries of refugee status, environmental risk, and imminence. Policy documents such as the Nansen Protection Agenda are treated as sources of recommendations rather than equated with treaty obligations.

The analysis distinguishes the legal basis of an obligation, its applicable threshold, the relevant jurisdictional scope, and the consequences for state decisions. Systematic interpretation connects the right to life with non-refoulement, while argumentative analysis evaluates implications for examination procedures and protection measures. No interviews, surveys, or independently collected accounts of migrant experiences form part of the research. Accordingly, the tables and conclusions constitute normative syntheses rather than findings concerning the number of individuals eligible for protection, claim success rates, or violations by particular states beyond the facts established in the sources discussed.

RESULTS AND DISCUSSION

The Absence of Refugee Status Does Not Eliminate Protection Obligations

The first finding is that recognition as a refugee and protection against dangerous return must be distinguished analytically. The 1951 Convention establishes specific requirements, meaning that the influence of environmental disasters on movement does not independently establish refugee status. However, rejection under that definition does not resolve every question about the safety of return. States parties to the ICCPR must still assess whether action within their authority would expose an individual to a risk of violating the right to life. This protection arises from human rights obligations rather than from creating a new status through terminology.

Conversely, protection beyond the Convention should not be understood as an instruction to bypass refugee status examination. Where relevant persecution elements exist, the claim must still be assessed according to the applicable standards. UNHCR (2020) explains that disaster impacts can interact with human conduct and unequal protection. The appropriate reasoning is therefore not that environmental causes necessarily exclude Convention protection, but that all potentially applicable grounds must be examined. Where Convention requirements are not satisfied, right-to-life assessment continues to perform an independent protective function.

This distinction affects the form of protection available. A prohibition against returning someone to conditions violating the right to life does not automatically confer refugee status, nationality, or permanent residence. States must determine lawful and effective arrangements through which their obligations can be fulfilled while the relevant risk persists. The form may differ according to domestic law and individual circumstances. This article proposes temporary administrative certainty and periodic review as policy methods for implementing protection, rather than presenting them as uniform consequences automatically prescribed by every international instrument.

The Right to Life as the Foundation of State Obligations

Article 6 of the ICCPR provides the substantive foundation, while Article 2 connects it with duties to respect and ensure rights and provide effective remedies. Application depends on the relevant jurisdictional relationship, meaning that obligations cannot be restricted solely by nationality. At the same time, this article does not assume that every state bears identical responsibility toward every disaster-affected person worldwide. A state deciding whether to remove an individual exercises a different form of authority from a state participating only in international funding or disaster cooperation. The legal relationship must therefore be identified rather than inferred from a general humanitarian concern (United Nations, 1966).

General Comment No. 36 clarifies that protection of life includes attention to conditions threatening life with dignity. In environmental contexts, danger can arise before an entire territory becomes uninhabitable. Authorities must therefore consider actual access to water, food, physical protection, and urgent services rather than relying only on the continued existence of land or formal government institutions. Nevertheless, this interpretation still requires examination of the level of risk. Difficult conditions should not be minimized, but a conclusion preventing removal must rest on the applicable legal standard and adequately supported facts (Human Rights Committee, 2018).

Table 1. Legal Sources and Their Implications for Migrant Protection

Source	Legal position	Principal relevance	Interpretive limitation
1951 Refugee Convention	Treaty binding on states parties	Establishes protection through the refugee definition	Environmental disasters do not automatically establish refugee status.
ICCPR	Treaty binding on states parties	Protects the right to life and establishes related removal obligations	Application depends on relevant obligations, jurisdiction, and risk thresholds.
General Comment No. 36	Authoritative interpretation by the Human Rights Committee	Explains connections between life, environmental conditions, and removal	It is neither a new treaty nor a court judgment.
Teitiota Views	Treaty-body Views in an individual communication	Recognizes that climate risks may engage non-refoulement	No violation was found on the facts; no automatic status was created.
ICJ advisory opinion of 2025	Judicial advisory opinion, distinct from a binding judgment in an interstate dispute	Clarifies obligations arising under international law	It does not grant individual residence permits or automatic compensation.
Nansen Protection Agenda	Nonbinding policy instrument	Supports protection practices and international cooperation	It does not directly establish uniform admission obligations.

Source: Author's synthesis of the instruments and documents examined.

Legal Lessons from Teitiota

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In Teitiota, the Human Rights Committee did not determine a universal category of climate refugees. The examination concerned whether New Zealand violated Article 6 of the ICCPR by returning the author to Kiribati. The Committee considered the circumstances presented concerning environmental conditions and life in the receiving country, but found insufficient grounds to establish a violation on the facts. Maintaining this outcome is essential to accurate analysis. The significance of the case should not be constructed around the incorrect statement that the author successfully obtained protection through the Committee's decision.

The case matters because the Committee recognized that climate change impacts could expose individuals to violations of Articles 6 or 7 of the ICCPR and thereby engage non-refoulement obligations. It also explained that living conditions might become incompatible with life with dignity before a country is entirely submerged. This reasoning creates space for examining gradual deterioration without removing the need for evidence. Teitiota consequently demonstrates both the availability of a protective legal basis and the demanding task of connecting that basis with the facts of an individual claim (Human Rights Committee, 2019).

McAdam (2020) emphasizes the importance of distinguishing the outcome from the development of principle. This article follows that approach by avoiding the assumption that every resident of a vulnerable territory is automatically protected against return. Decision-makers must consider how general conditions relate to an individual's access, health, support, and ability to survive. A risk affecting many people does not become irrelevant merely because it is widespread. Equally, the scale of a disaster cannot replace the entire assessment. The conclusion must explain the relationship between foreseeable post-return conditions and the right alleged to be at risk.

Reinforcement through the ICJ's 2025 Advisory Opinion

Developments through 2025 provide more direct reinforcement through the International Court of Justice's advisory opinion on state obligations concerning climate change. In paragraph 378, the Court explains that climate-related conditions may lead individuals to seek safety in another country or prevent their return. It connects these circumstances with non-refoulement obligations where substantial grounds exist for believing that return would create a real risk of irreparable harm to the right to life. The passage expressly refers to Article 6 of the ICCPR and Teitiota (International Court of Justice, 2025).

The position of the advisory opinion requires explanation without either minimizing or overstating its significance. It is not a contentious judgment determining responsibility toward an individual migrant, and it does not create a residence category directly applicable in every state. Its value lies in the judicial clarification of obligations arising under international law. For decision-makers, the development strengthens the justification for including climate risks in removal assessments. Application nevertheless requires attention to the relevant state obligations, individual circumstances, and available legal procedures. The legal conclusion cannot be inferred from the advisory opinion's existence alone.

The opinion must also be read within its subject matter. This article concerns environmental disasters more broadly, whereas the Court's explanation appears specifically within the climate change context. Conclusions concerning disasters unrelated to climate change cannot therefore rest solely on that paragraph. Their principal foundation must still be examined through the right to life and applicable removal standards. This distinction prevents the analysis from equating every environmental event with a climate case or extending a source beyond the issue it addresses. A coherent argument identifies both the relevance and the limits of each authority.

Individualized and Preventive Risk Assessment

Risk assessment must connect environmental information with the circumstances of the person facing return. Reports of drought or coastal deterioration may establish the presence of a hazard, but further examination must consider actual access to basic needs and available protection. A promise of assistance is not necessarily equivalent to assistance that can be obtained. Similarly, national availability of a service does not establish that a particular individual can use it. Age, health, disability, and children's needs may alter the consequences of otherwise similar conditions. These factors require evidence rather than assumptions based only on group membership.

Time also requires careful treatment. Foster and McAdam (2022) identify difficulties arising when imminence becomes a requirement that harm must occur immediately. For gradual environmental deterioration, that approach may effectively require individuals to wait until meaningful protection is too late. However, considering future conditions does not justify accepting every projection without examination. Decisions must distinguish abstract possibilities from real, reasonably foreseeable risks and explain whether protective measures in the receiving country can reduce the danger effectively. The analysis should remain preventive without becoming speculative.

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Table 2. Framework for Assessing Risk before Return

Assessment element	Central question	Relevant material	Error to avoid
Environmental conditions	What hazards would the person face after return?	Verifiable disaster and regional information	Assuming uniform risk across an entire country.
Basic needs	Can water, food, shelter, and urgent services actually be accessed?	Service information and individual circumstances	Equating programme existence with effective access.
Individual vulnerability	How do health, age, or specific needs affect safety?	Medical information and family circumstances	Replacing examination with general assumptions.
Development over time	How is the risk expected to evolve?	Updated information and assessable projections	Requiring immediate death or accepting unsupported speculation.
Protection at destination	Is assistance or a safe location realistic and accessible?	Evidence of protective capacity and access	Relying on purely theoretical relocation possibilities.
Reassessment	Can the decision be reviewed when information changes?	Decision reasons and updated evidence	Assuming an earlier assessment remains sufficient indefinitely.

Source: Author's analytical framework based on Human Rights Committee (2018, 2019), UNHCR (2020), and Foster and McAdam (2022).

Responsibilities of Countries of Origin, Transit, and Destination

Countries of origin have a primary role in protecting people within their jurisdiction through prevention, preparedness, and responses to threats to life. These obligations must be interpreted according to the relevant legal sources and standards of appropriate conduct, rather than as a guarantee that every disaster can be prevented. Inability to provide protection does not necessarily eliminate all responsibility. Assessment should consider available measures, capacity, knowledge of risks, and action undertaken. International cooperation can assist implementation, particularly where impacts exceed national capacity, but its role must be connected to the obligations and arrangements applicable to the states concerned.

Transit and destination states bear obligations according to the relevant jurisdictional relationship and their conduct. Where a state controls a removal decision, the assessment must address the foreseeable risks arising from that action. Describing a country as a transit state does not independently justify disregarding the right to life, but neither does the label determine every obligation without further analysis. This article does not infer a uniform extraterritorial responsibility for all state action. Control and applicable duties require explanation, particularly where movement involves several countries or arrangements for transferring individuals between them.

Procedural Guarantees and Protection Arrangements

Substantive obligations cannot operate effectively if an individual is removed before the alleged risk receives meaningful examination. The relationship between Articles 2 and 6 of the ICCPR supports procedures capable of preventing irreparable consequences. The normative implication developed here is that removal should be suspended where necessary to preserve effective examination of a relevant risk claim. This is not a proposal for automatic suspension following every unsupported objection. Procedures should identify legally relevant claims, provide an opportunity to submit information, and produce reasoned decisions subject to review by a competent authority.

While a risk preventing return persists, administrative arrangements must allow protection to function in practice. Temporary residence, deferred removal, or humanitarian protection may be considered according to domestic law. These are possible regulatory forms requiring clear design, rather than uniform entitlements automatically created by the Nansen Agenda. Arrangements should also address life-preserving needs and avoid prolonged administrative uncertainty. Periodic review should examine return safety against updated conditions,

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ensuring that the expiry of an administrative document is not treated as evidence that environmental danger has disappeared.

Implications for Indonesia

For Indonesia, ratification of the ICCPR through Law No. 12 of 2005 makes the right to life an important foundation for examining treatment of individuals within the scope of its obligations. Presidential Regulation No. 125 of 2016 provides a framework for handling refugees from abroad, but should not automatically be described as a dedicated regime covering every environmentally displaced migrant. Eligibility under the regulation and institutional authority require examination according to its provisions. Protection needs grounded in the right to life may therefore raise operational questions that cannot be resolved merely by describing the individual as a refugee.

This article recommends developing guidance for assessing return risks where environmental claims are relevantly raised. Such guidance should address the receipt of information, urgent needs assessment, coordination among authorities, reasoned decisions, and review of changed circumstances. It should complement applicable status determination rather than unilaterally replace institutional responsibilities. This proposal follows from the obligations analyzed and remains a normative recommendation. The study does not establish particular Indonesian violations or procedural deficiencies through examination of individual case files. Those conclusions would require further institutional and empirical evidence.

Research Contribution and Limitations

The principal contribution is to distinguish refugee status, protection against removal, and residence arrangements within a connected legal framework. This distinction allows protection arguments to develop without promising legal consequences unsupported by the relevant sources. The study is limited by its normative design and lack of independently collected migrant experiences or national decision files. Further research should examine risk assessment in practice, including the quality of environmental evidence and access to review. Such empirical material is necessary to assess the effectiveness of protection rather than only the coherence of its legal foundations.

CONCLUSION

State obligations to protect environmentally displaced migrants' right to life do not depend entirely on satisfaction of the 1951 Refugee Convention definition. The ICCPR provides a basis for assessing removal involving a real risk of irreparable harm to life, while Teitiota and the ICJ's 2025 advisory opinion clarify its relevance in the climate change context. Protection nevertheless requires a substantiated assessment of real, reasonably foreseeable risk and does not automatically confer refugee status or permanent residence. States should connect individualized examination, updated information, reasoned decisions, and effective review with protective measures while the relevant danger persists. For Indonesia, this framework supports the development of return-assessment guidance attentive to right-to-life obligations without obscuring the limits of existing instruments and institutional authority. These conclusions remain normative and do not establish the effectiveness of implementation in individual cases.

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