



Teitiota: A Case Study for Climate Asylum

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Literature

Review define the “limiting language” that defines a refugee in the 1951 Convention and how these terms or concepts are traditionally interpreted in a judicial setting:

Persecution

The term, persecution, applies to those who are fleeing their countries “due to conflicts, threats, situations of violence or human rights violations;” as the convention explicitly states, it “applies to cases where it is possible to demonstrate a form of persecution.” Persecution, as currently defined, does not include “natural disasters, environmental degradation, and climate change” (Inonesco *et al.*, 2017, p. 19).

Well-Founded Fear

A “well-founded fear” cannot be generalized fear. It must be a particularized harm that an individual can be “singled out” for (Hathaway, 1991, p. 171). Climate change effects are not viewed as persecution because the infringement on “human rights” are not “particularly serious” (McAdam, 2010, p. 43). Therefore, they elude the threshold of well-founded fear.

Social Group

Of all the five grounds of persecution, the social group category has the most flexibility since its meaning is relatively ambiguous (Hathaway, 1991). A social group can be applied to a variety of different situations. Families, women, tribes and even occupational groups can be considered a social group (UNHCR, 2002). However, climate change migrants cannot be easily defined as a social group within the confines of the 1951 Convention because one of the criteria is that the group must be bound by a characteristic other than their persecution (Hathaway, 1991).

Socio-Economic Factors

The language of persecution requires an executor of harm (Price, 2009). One who can be assigned intentional blame and be held responsible within a society (Gündoğdu, 2014). This language excludes systemic harms that face “burdened societies,” who do not have strong enough “infrastructure to offset food shortages or lack of resources to redress poverty” (Price, 2009, p. 73). Instead the 1951 Convention protects against “outlaw states” that violate the fundamental human law rights (Price, 2009, p. 73).

Case Study

Mr. Teitiota and his wife came to New Zealand in 2007 from Kiribati, a small island nation. He wanted to start his family in a nation where they would have a future. He had three children in New Zealand. He left his native island nation because of rising sea levels. The relatively rapid of sea levels is a direct consequence of climate change. Mr. Teitiota feared that over time he would be forced to leave his island due to the consequences of climate change: environmental degradation and climate change. Climate change threatens already scarce resources such as freshwater and arable soil. The New Zealand Supreme Court denied his asylum claim for three main reasons: no imminent threat to life, no serious harm and the government had not abandoned him. The UNCHR also heard Mr. Teitiota’s appeal and came to a landmark decision. They rejected Mr. Teitiota’s asylum case based on the subjective nature of serious harm and the government’s willingness to provide support but the UNCHR also rejected that danger must be “imminent.” In doing that, they acknowledged the substantial threat to life from the “slow onset” effects of climate change. The UNCHR left the door open for later cases of climate refugees.

Conclusion

Social groups are a broader category which has been adapted to humanitarian needs through time. This begs the question: *Can social groups be reframed to include climate migrants as refugees?* One of the Teitiota case’s shortcomings was an inability to establish a discriminated social group that shared an immutable trait. However, I argue that instead of an immutable trait that climate migrants are united by a shared history of discrimination. Climate refugees are part of a globally persecuted social group. In order to establish climate change discrimination, one must expand the 1951 Refugee Convention to consider structural burdens on societies. In an ever-increasing global world, it seems fair that adjudicators abandon constrained judicial interpretation in favor of a broader humanitarian understanding of the Convention. In the international structure, the global south has often been subjugated and trapped in poverty cycles. In contrast, the global north has disproportionately benefited from this system. The history and lasting effects of colonialism exemplify this disparity. Climate change will disproportionately afflict the global south (poor nations). These nations have least benefitted from or contributed to pollution. From this framework, one can establish climate refugees as a social group united by their perpetual subjugation under the international power structure.



The 1951 Convention Relating to the Status of Refugee defines a refugee as:

“who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”

Abstract

Climate change is one of the most pressing and global problems the international community is facing. There is wide scientific acceptance that there could be up to 200 million climate migrants by 2050. Despite these realities, the United Nations High Commissioner on Refugees (UNHCR) does not recognize climate migrants as refugees. This leads one to implore: *why have environmentally displaced persons not been recognized as refugees under international refugee law?* I argue that the limitations of international refugee law come from constrained judicial interpretation, definitional language and inattentiveness to structural socioeconomic harm as a form of persecution. I explore these concepts in this paper and apply them to an international climate refugee case (Teitiota vs. New Zealand). For this refugee case, I read the document using an inductive theory to support my argument. The case shows the limitations of the 1951 Convention Relating to the Status of Refugees since it upholds narrow interpretations of “persecution” and “well-founded fear”. Mr. Teitiota’s asylum case was rejected based on the subjective threshold of “serious harm” and his government’s intent to provide support. The UNCHR rejected the New Zealand Supreme Court’s finding that danger must be “imminent,” and established a substantial threat to life from the “slow onset” effects of climate change. The UNCHR has stated an openness to climate refugees in the future. One way to expand refugee status to climate migrants is to take a broad humanitarian approach to defining persecution and social group. From this framework, one can establish climate refugees as a social group united by their perpetual subjugation under the international power structure.