Is an enhanced *non-refoulement* regime under the ICCPR the answer to climate change-related human mobility challenges in the Pacific?  
Reflections on *Teitiota v New Zealand* in the Human Rights Committee  

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1. Introduction

The October 2019 decision of the Human Rights Committee (HRC) in the case of *Teitiota v New Zealand*\(^1\) has been hailed throughout the global human rights community as a landmark ruling which, as one commentator has put it,\(^2\) together with the August 2019 decision in *Portillo Cáceres v Paraguay*.\(^3\)

> ‘crystallise[s] a deeper and wider body of jurisprudence and practice on the existence of an “undeniable relationship” between environmental protection and the right to life in dignity.’

The *Teitiota* HRC decision did not result in an outcome in favour of the complainant. However, in a first for the HRC, it affirmed the potential for *non-refoulement* obligations on the part of a ‘sending state’\(^4\) arising from article 6 of the International Covenant on Civil and Political

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\(^{1}\) Human Rights Committee, *Teitiota v New Zealand* UN Doc CCPR/C/127/D/2728/2016 (24 October 2019) [hereinafter HRC *Teitiota*].  
\(^{4}\) Used in the HRC *Teitiota* decision (and this article) to refer to a state which has, or proposes to, ‘send’ a foreign national to their country of nationality or other location, thereby disavowing *non-refoulement* obligations (in that case, New Zealand).
Rights (ICCPR)\(^5\) in circumstances where, for reasons associated with climate change, the physical, infrastructural and security environment of a ‘receiving state’\(^6\) can be regarded as suffering from a level of degradation that:

(i) in the case of lack of access to fresh water, would ‘produce a reasonably foreseeable threat of a health risk that would impair [a person’s] right to enjoy a life with dignity or cause [their] unnatural or premature death’;\(^7\)

(ii) in the case of violence during land disputes, represent ‘a real, personal and reasonably foreseeable risk of a threat to [their] right to life.’\(^8\)

A body of academic commentary on the decision has already emerged within the relatively short period since its formal publication in January 2020.\(^9\) Scholars have criticized aspects of the decision (including identifying gaps and apparent errors in its reasoning)\(^10\) as well as examining the decision’s significance for future cases including, more generally, its contribution to evolving international human rights law in the context of climate change-related human mobility.\(^11\) One commentator is on record for suggesting that the decision:\(^12\)

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\(^6\) A state to which a person has been ‘sent’, in the HRC *Teitiota* decision, Kiribati.

\(^7\) HRC *Teitiota* (n 1) para 9.4.

\(^8\) ibid para 9.7.


\(^10\) McAdam is particularly critical of the HRC’s conflation of concept of ‘imminence’ and likelihood of harm resulting from removal in its decision which she describes as ‘highly problematic’: McAdam (n 9) 720.

\(^11\) Le Moli (n 2) 737, 741, 750; McAdam (n 9) 709, 724–25.

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‘represents a legal “tipping point” and a moment that “opens the door-
way” to future protection claims for people whose lives and wellbeing
have been threatened due to global heating…’

For that category of people in scenarios examined in the Teitiota
HRC decision (now, and in the future), the decision is, of course, signif-
icant. There is no obvious sign yet of an upsurge in non-refoulement
claims against New Zealand authorities from Pacific nationals seeking to
rely on article 6 of the ICCPR. However, it seems likely that more claims
of this nature will be advanced as the effects of climate change on vulner-
able states in the region increase. No doubt, the detailed reasoning of the
HRC and associated academic commentary will be carefully considered
by domestic authorities in relevant future cases.

As Professor McAdam has noted:13

‘Cases such as Mr. Teitiota’s enable the boundaries of existing law to be
tested. They help to highlight legal gaps and uncertainties and stimulate
the development of jurisprudence. They may also raise public awareness
and exert political pressure on states to act.’

Clarifying application and scope of non-refoulement obligations is im-
portant, especially in states such as New Zealand where there are sizable
communities of people from low-lying Pacific states, not all of whom will
have permanent residence status.14 But this dimension of international
law and policy is not the only area where attention is needed. It would be
unfortunate if a focus on enhanced opportunities for non-refoulement
claims stimulated by the Teitiota HRC decision became the primary in-
ternational legal and policy response to climate change-related human
mobility challenges in the Pacific region. I explain why I consider other
responses are necessary in this article.

13 McAdam (n 9) 724.
14 The 2018 New Zealand census reported a population of 3255 who identify with
the Kiribati ethnic group and 4653 who identify with the Tuvaluan ethnic group usually
resident in New Zealand; see Stats NZ ‘2018 Census ethnic group summaries’
<www.stats.govt.nz/tools/2018-census-ethnic-group-summaries>. For a discussion on
irregular migration from Pacific countries to New Zealand, see R Bedford, G Hugo,
Population Movement in the Pacific: A Perspective on Future Prospects (New Zealand
First, by definition, *non-refoulement* claims can only be made by those persons who, like Mr Teitiota, have already been able to cross borders and (at least temporarily) relocate to countries such as New Zealand. Assuming the (still-challenging from a legal and evidential perspective) HRC criteria for article 6 ICCPR protection are able to be satisfied, the mechanism would only be available for a small proportion of climate change-challenged persons in the Pacific. As noted above, for those people already in countries such as New Zealand whose status is irregular, or who are on temporary visas, clarification of their legal rights is important. But on its own, an enhanced scope of application of article 6 ICCPR such as that adopted in the *Teitiota* HRC decision would make only a confined contribution to wider climate change-related human mobility issues in the region.

Second, although Mr Teitiota has been described by one journalist as ‘a stand-in for the thousands of people in Kiribati...expected to be forced from their homes due to rising seas and other disruptions on a warming planet’,[15] it is by no means apparent that all communities in vulnerable Pacific nations such as Kiribati wish to be regarded as persons in need of international protection, whether as ‘environmental refugees’ or otherwise as objects of protection under articles 6 or 7 of the ICCPR or other human rights instruments. Assumptions that the complete solution to residents of Pacific states facing challenges associated with climate change lies in enhanced *non-refoulement* protection may be at worst, offensive, but at the least, misplaced.

Third, a realistic assessment of the medium-long term implications of enhanced *non-refoulement* protection for persons in scenarios similar to Mr Teitiota requires a pragmatic consideration of the potential implications for the domestic immigration settings of ‘sending states’ such as New Zealand concerning nationals from Pacific states such as Kiribati and Tuvalu. New Zealand has a generally positive record of respect for human rights and decisions of the HRC[16] and has publicly committed to

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supporting climate change-vulnerable states in the Pacific. But it is not inconceivable that domestic political responses to a material increase in successful climate change-related non-refoulement claims from Pacific nationals in sending states would include a careful review, and perhaps restriction, of existing temporary labour migration schemes which, through remittances, provide significant sources of income to residents of those states. A more restrictive approach to the grant of short-term visitor permits – important for the maintenance of family and other connections – could also have adverse impacts on social cohesion and interstate relations.

For all of these reasons, my suggestion is that other solutions – to be arrived at collaboratively with affected nations – offer important opportunities for meaningful responses to climate change-related human mobility issues alongside the development of international and domestic law concerning non-refoulement. That, in fact has been the focus of the New Zealand government attention since 2018. The resources, attention, and support of the international community should not exclude these broader policy initiatives and considerations.

2. Climate change-related human mobility challenges in the Pacific: An empirical overview

There is a tendency in some of the academic commentary on international law responses to climate change-related displacement to engage in detailed legal analyses of instruments such as the Refugee Convention, ICCPR, Convention Against Torture and so on against the background of assumed ‘model’ factual scenarios which imperfectly capture the complex and nuanced circumstances in the real world. The risk of regarding
the facts of one claim (such as Mr Teitiota’s) as representative of all, or many, or the most pressing of cases requiring international legal intervention is present when – as with this article – the focus is on a particular outcome of an international body such as the HRC. To counter that risk, in this section I provide a brief empirical overview of climate change-related human mobility challenges in the Pacific drawing on recent research.

The Pacific region encompasses over 25 countries and territories with starkly contrasting geological landforms, terrestrial and marine habitats, exposure to meteorological forces/conditions but which nevertheless share several physical, cultural and increasingly economic connections. During the past three decades, significant research has been undertaken on both observed effects of climate change and predicted future effects.21

Recent literature highlights the variability in both observed historic sea level rise and projected sea level rise (including an observation at sea level varies across the Pacific Ocean by up to 1 m in part due to meteorological cycle such as the El Niño/Southern Oscillation, and impact on sea level of varying strengths of trade winds and currents). CSIRO et al. report that according to satellite records, sea level within the Pacific Ocean has risen at up to approximately three times the global average,

Handbook on Climate Change, Migration and the Law (Edward Elgar Publishing 2017). Nicholson’s critique has force in relation to some of the early – widely cited – analyses such as N Myers, J Kent, Environmental Exodus: An Emergent Crisis in the Global Arena (The Climate Institute 1995), but in my view is less compelling concerning more recent works such as, for example, B Burson and others, ‘The Duty to Move People Out of Harm’s Way in the Context of Climate Change and Disasters’ (2018) 37 Refugee Survey Quarterly 379.

21 A 2019 review by Klöck and Nunn of academic research on adaptation to climate change in small island developing states found that there was ‘a geographical bias toward the Pacific and Caribbean, independent states, and core or near-core areas’: C Klöck, PD Nunn, ‘Adaptation to Climate Change in Small Island Developing States: A Systematic Literature Review of Academic Research’ (2019) 28 J of Environment & Development 196, 208. Obokata et al.’s 2014 broader review of empirical research on international environmental migration found that the number of articles on the Pacific Islands was just one less than the number on African countries: R Obokata and others, ‘Empirical Research on International Environmental Migration: A Systematic Review’ (2014) 36 Population and Environment 111, 115.
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and is projected to rise over the course of the 21st century to between 0.26-0.82m by 2100, depending on the emissions scenarios.22

The consequences of projected sea level rise within Pacific countries include: the inundation of coastal areas, including airports, seaports, road infrastructure and local communities, many of which are tend to be located in coastal areas; increased susceptibility to storm surges and the effects of king tides; and saltwater intrusion into freshwater lenses with associated impacts on agriculture and water resources.23

There are many documented instances of displacement, migration or relocation within the Pacific which, at least on their face, have a direct connection with climate change. Many of the documented instances of climate change-related relocation have involved internal relocation. An example, (acknowledging some dispute as to the proximate cause of the relocation), is the ongoing process of relocation of Carteret Islanders which began in the 1960s and has continued into the 1990s and 21st century.24 In Fiji, relocation of the Vunidogoloa village, Fiji in response to sea-level rise and extreme weather events has been widely documented.25

Supplementing examples of internal relocation are instances of cross-border climate change-related migration from both Kiribati and Tuvalu to New Zealand and Australia documented by Campbell, Bedford and Bedford.26

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23 ibid 1623.
26 John Campbell and others, ‘Migration and Climate Change in Oceania’ in E Piguet, F Laczko (eds), People on the Move in a Changing Climate, vol 2 (Springer Netherlands 2014) 192. See also the decision of the New Zealand Immigration and Protection Tribunal Re AD (Tuvalu) [2014] NZIPT 501370, discussed in Vernon Rive
Despite limitations on data and contrasting facets of some aspects of projections, there are a number of points which are broadly accepted, even if the details, pathways, and projected timing of migration/displacement responses remain unsettled.

The first is that populations in the Pacific are rising, from an estimated regional total (excluding New Zealand and Australia) of just over 10 million in 2016 to approximately 19.5 million by 2050.\textsuperscript{27} Existing and projected growth rates of both small and larger island states well exceed global averages, with projected population densities in countries such as Nauru, Guam, Tuvalu and American Samoa exceeding 300 persons/km\textsuperscript{2}.\textsuperscript{28} In combination with existing land and resources pressures, the increased populations will have a direct impact on numbers of migrants and displaced persons in the future.

Second, in almost all of the developing states within the Pacific, there are well-documented environmental pressures which create baseline vulnerabilities which will be amplified by climate change-related effects. Some existing pressures such as poor waste disposal and treatment facilities, are not obviously a result of climate or climate change.\textsuperscript{29} Others, such as degraded and deteriorating freshwater resources, are clearly connected with climatic changes. Additional environmental stress associated with climate change will exacerbate existing environmental issues which, in turn, will influence human movement.

Third, beyond small atoll states, it is broadly accepted that climate change impacts will significantly contribute to human movement pressures in other countries in the Pacific, even if cross-border relocation of entire communities is not required. Apart from a number of larger Melanesian islands, New Zealand and Australia, most settlements in the Pacific region are at or near sea level. Internal displacement is and will be,
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A feature of patterns of human movement in these countries, together, in some cases, with increased pressure for international migration.30

A final point made by a number of commentators is that it is important not to focus solely on migrants and displaced persons, but also to consider the position of vulnerable populations who, for economic, cultural, or other reasons lack the means of relocating, even where that is the desired and rational adaptive response to climate change-related pressures.31 I return to the relevance of ‘trapped populations’ in section 3 below.

3. An enhanced scope of application of article 6 ICCPR is only one component of a comprehensive meaningful response to climate change-related human mobility issues in the region

Climate change-related pressures in Kiribati were addressed in some detail in evidence called on behalf of Mr Teitiota in his non-refoulement claims before New Zealand authorities,32 and before the HRC. As well as direct evidence from Mr Teitiota, the New Zealand Immigration and Protection Tribunal (IPT) heard from an academic expert accepted as ‘appropriately qualified…on these issues’. The expert evidence was also presented before the HRC. It addressed existing and future environmental, socio-economic and security challenges facing the 110,000-strong population of Kiribati describing Kiribati ‘as a society “in crisis” as the result of population pressure and climate change’.33 The unchallenged

32 AF (Kiribati) [2013] NZIPT 800413 (New Zealand Immigration and Protection Tribunal); Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment [2013] NZHC 3125 (New Zealand High Court); Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment [2014] NZCA 173 (New Zealand Court of Appeal); Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment [2015] NZSC 107 (New Zealand Supreme Court).
33 AF (Kiribati) [2013] NZIPT 800413 [13].
evidence referred to the ‘slum-like conditions on the outskirts of established settlements’ on the state’s largest population centre; social tension resulting in knife fights, injuries and deaths; limitations on the availability of freshwater; frequent breaches of sea-walls and inundation of land as a result of sea-level rise and storm surges; health problems for young children; and difficulty in growing crops.\textsuperscript{34}

As with the IPT, the HRC accepted the factual and scientific evidence on the effects of climate change on Kiribati led by the complainant. Specifically, the HRC accepted ‘the author’s claim that sea level rise is likely to render the Republic of Kiribati uninhabitable’,\textsuperscript{35} and observed that:\textsuperscript{36}

‘given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.’

It is clear, then, that the HRC accepted the fundamental proposition underlying most international legal and policy responses to human mobility challenges in the Pacific – that, although the timing of impacts cannot be identified with certainty, ‘without robust national and international efforts, the effects of climate change in receiving states’ may, in the future, be so parlous that to send someone back to such risks would breach their rights affirmed by the ICCPR. Within the Pacific, potentially hundreds of thousands of people living in low-lying island states such as Kiribati and Tuvalu will be exposed to those conditions.\textsuperscript{37}

\textsuperscript{34} Ibid [15]-[21].
\textsuperscript{35} Ibid para 9.12.
\textsuperscript{36} Ibid para 9.11.
\textsuperscript{37} The authors of the 2014 Working Group II contribution to the IPCC Fifth Assessment Report observed that ‘[t]he causal chains and links between climate change and migration are complex and can be difficult to demonstrate’ with the result that ‘projecting future climate-related migration remains a challenging research topic’; VR Barros and others (eds), Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (CUP 2014) 1175. In 2009, Waikato University geographer John Campbell estimated that there would be between 665,000 and 1.7m climate-displaced people in the Pacific by 2050; J Campbell ‘Climate Change and Population Movement in Pacific Island Countries’ in B Burson (ed), Climate Change and Migration: South Pacific Perspectives (Institute of Policy Studies 2010) 38.
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By definition, non-refoulement protection such as that affirmed in article 6 ICCPR applies to persons who have already crossed borders. I have noted above that there are communities of Kiribati and Tuvaluans currently in New Zealand, not all of whom will have permanent residence status. However, a far greater number are, and will remain, situated in their home states – in time, potentially exposed to a range of serious environmental, infrastructural, health and other challenges associated with climate change; for whom no current legal migration pathways are available. Oakes and other scholars refer to some in this situation as ‘trapped’ populations: they are ‘in a double-bind; [in which] those with the greatest need to move are also the least able to’. The Pacific Network on Climate Change Migration, Displacement and Resettlement has implicitly acknowledged the shortcomings of confining the development of responses to climate change-related displacement pressure to ad hoc, reactive, individual cases (of which Mr Teitiota’s HRC complaint – and indeed the HRC’s approach to the question of imminence in its decision – may be an example).

‘Delaying policy development and other decision-making until the impacts of climate change on migration are more clearly understood or actually eventuate could result in hasty arrangements for emergency migration and relocation. This scenario is likely to result in poorly managed migration, “trapped populations” that are unable to migrate and increased human rights concerns for Pacific people.

I discuss the scope for more comprehensive, proactive responses in section 6 below.

38 See J McAdam, Climate Change, Forced Migration, and International Law (OUP 2012) 268. (“The international protection regime, based on refugee and human rights law, is remedial in nature. It is “triggered” only once a person has crossed an international border, and it provides protection from the prospect of relatively imminent harm on return”).


40 See in particular, HRC Teitiota (n 1) para 9.6 and the critical commentary on this point by McAdam, referred to at note 10.

4. A narrow focus on refugee and protected person status is not what climate change-affected Oceanic nations want

Underlying many legal analyses on climate change-related displacement is an assumption that the majority of nationals from affected states: (i) wish to escape the difficult conditions of their places of residence; and (ii) would pursue and use any legal mechanism to facilitate their relocalization. For people such as Mr Teitiota who have overcome the practical, legal and financial challenges involved in travelling thousands of kilometres to another country, obtained employment, established family and community connections, it is completely understandable that they are concerned about the existing and future challenges to life in Kiribati, including those connected with climate change – their strong preference is to settle permanently in sending states not subject to those challenges.

Empirical studies such as that conducted by Oakes also confirm that a proportion of residents of climate change-challenged states such as Kiribati would, if an opportunity were available, migrate to another country. However, the assumption that the majority of the population of low-lying states such as Kiribati and Tuvalu wish to depart from their ancestral lands for locations which are less vulnerable to the impacts of climate change is not supported by empirical research. To the contrary, a repeated message from many community members as well as leaders is that they wish to remain in their countries of residence for as long as possible.

The Kainaki II Declaration for Urgent Climate Change Action adopted at the Fiftieth Pacific Islands Forum Funafuti, Tuvalu in August 2019

\[\text{As an example only, see C Bailliet, ‘The Need for A New Instrument to Deal With “Environmental Refugees”’ (Unpublished thesis, University of Oslo 2007) at 7: ‘The main question is thus: what rights should ‘environmental migrants’ be recognized? Should this determination be framed around the refugee status determination? Should ‘environmental migrants’ have the possibility to acquire permanent status in a host country or should they only be temporarily protected, until they can return?’}.\]

\[\text{Oakes (n 39) 490-91.}\]

Acknowledges that ‘[a]ll around the world, people affected by disaster and climate change-induced displacement are losing their homes and livelihoods, particularly the most vulnerable atoll nations’ but does not call for the development of international law on non-refoulement or associated issues. Instead, the Declaration urges parties to the Paris Agreement to ‘meet or exceed their Nationally Determined Contributions (NDCs) in order to pursue global efforts to limit global warming to 1.5°C’, ‘the international community to continue efforts towards meeting their global climate finance commitment of USD 100 billion per year...and to complete work required to enable the Adaptation Fund to serve the Paris Agreement’; and ‘to immediately increase support and assistance for Pacific-led science-based initiatives intended to improve our understanding of risk and vulnerability... and responding to climate change-related economic and infrastructure impacts, and capacity building support for evidence-based decision-making and project development’.

I acknowledge that strong statements of preferences to remain do not imply that Pacific communities are necessarily opposed to the development of international law mechanisms to appropriately respond to human mobility challenges. Nor do they imply that the link between the right to life affirmed by article 6 ICCPR and effective measures to address climate change have no place in appropriate responses to displacement challenges in the region. Instead, I wish to highlight a consistent message from Pacific peoples – that their first ‘wish and intention is to continue to live in their home countries despite the mounting effects of climate

the wishes of Pacific Leaders who have told us that their people want to live in their own countries for as long as possible, and retain social and cultural identity’.


The Forum Communiqué does call for reform to the 1982 United Nations Convention on the Law of the Sea, so that the Members’ maritime zones could not be challenged or reduced as a result of sea-level rise and climate change: see para 26.

Note also the statement by the Tuvaluan Prime Minister at COP14 in 2008 recorded by McAdam: ‘We are not contemplating migration. We are a proud nation of people with a unique culture which cannot be relocated somewhere else. We want to survive as a people and as a nation’; J McAdam, “Disappearing States”, Statelessness and the Boundaries of International Law” in J McAdam (ed), Climate Change and Displacement: Multidisciplinary Perspectives (Hart 2010) 145.
change with dignity, in safety and prosperity’, and suggest that that priority should not be lost sight of when considering the implications of legal cases such as the Teitiota HRC decision.

5. Domestic immigration settings of sending states may be adjusted to the detriment of receiving states

New Zealand government and immigration officials carefully manage entry to the country through a combination of: legislative provisions (under the overarching framework of the Immigration Act 2009 (NZ)(IA)); ‘immigration instructions’ which include rules and criteria for entry visas and provide for processes to be followed to assess and verify visa applications; and formal and informal policies and practices.

Refugees and persons are legally and institutionally addressed in two primary ways:

(i) the New Zealand government maintains a ‘Refugee Quota’ under which the state accepts up to a set maximum number of refugees annually who have already had their refugee status assessed and confirmed by the United Nations High Commissioner for Refugees. The Quota was last adjusted in 2019 and currently provides for a maximum of 1500 refugees to enter New Zealand, receive assistance and support from New Zealand authorities for resettlement;

(ii) Outside of the Quota system, ‘informal’ asylum seekers who (through whatever means, whether legal or irregular) are in New Zealand are also able to request assessment as refugees and/or protected persons (thus obtaining immunity from refoulement) under provisions of the IA. The IA reflects and explicitly implements New Zealand’s international commitments under the Refugee Convention, ICCPR, and Convention Against Torture, all of which provide for non-refoulement protection, if claimants are able to establish that they fall within the relevant criteria.


49 Rt Hon J Ardern, Hon I Lees-Galloway, ‘Refugee Quota Increases to 1500 in 2020’ (Government Release 19 September 2018).
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The IA provides for an assessment, review and appeal procedure for persons seeking assessment and protection under the non-refoulement provisions.

Because the country is geographically distant from most other states, the vast majority of entrants to New Zealand – including almost all travelers from Pacific states – arrive by airplane. Like other countries, New Zealand immigration authorities screen would-be entrants through ‘advance passenger processing’ arrangements which allow examination and assessment of applications for visas or entry permissions at ports of departure prior to boarding airplanes for the country, and powers to refuse boarding of craft destined for the country.

In a 2010 report, the New Zealand Human Rights Commission expressed concerns that advance passenger-screening processes being used by New Zealand immigration authorities to avoid New Zealand’s non-refoulement obligations. The issue was the subject of a question in the HRC’s List of Issues for comment by New Zealand as part of its Fifth Periodic Review in 2009. In a formal response, the government denied that passenger-screening processes were employed to identify passengers who may be potential asylum claimants. That may be the case, but nevertheless, the Human Rights Commission has observed that ‘the advance passenger screening process has contributed to a dramatic drop in the number of people claiming asylum in New Zealand’.

Since 2007, the New Zealand government has operated a temporary labour migration initiative known as the Recognised Seasonal Employer (RSE) scheme under which horticulture and viticulture industries may

50 In 2013, additional provisions were inserted to the Immigration Act 2009 (NZ) providing particular powers in respect of ‘mass arrival groups’ directed at ‘effectively manag[ing] a mass arrival of asylum seekers’, including arrivals by boat: M Woodhouse, ‘Mass Arrivals Bill Passes into Law’ (Government Release 14 June 2013).
51 Sections 96-100 Immigration Act 2009 (NZ).
53 Human Rights Committee, ‘List of Issues to Be Taken up in Connection with the Consideration of the Fifth Periodic Report of New Zealand (CCPR/C/NZL/5)’ (CCPR/C/NZL/Q/5 24 August 2009) 4.
54 Government of New Zealand, ‘Replies of the Government of New Zealand to the List of Issues (CCPR/C/NZL/Q/5) to Be Taken up in Connection with the Consideration of the Fifth Periodic Report of New Zealand (CCPR/C/NZL/5)’ (CCPR/C/NZL/Q/5/Add1 27 January 2010) 20–21.
55 Human Rights Commission (n 52) 339.
recruit up to 14,400 workers eligible Pacific countries, including Kiribati, Tuvalu and seven other island states. New Zealand’s RSE scheme, alongside a similar temporary labour migration scheme in Australia has been regarded as providing significant benefits not only to New Zealand and Australian employers, but importantly, for Pacific labour migrants through opportunities to earn wage incomes to supplement island-based livelihoods, and also ‘develop additional work and life skills…that may be transferable back to home communities’.

It is a matter for speculation how New Zealand (or the government of any sending state) might respond to a material increase in successful climate change-related non-refoulement claims from Pacific nationals. It is unlikely that this state of affairs will arise immediately, and other policy initiatives may be introduced at the domestic, regional or international level that could impact on human mobility patterns in the region. However, a pragmatic assessment of a scenario involving large numbers of successful climate change-related non-refoulement claims should take into account: the potential for review (and perhaps restriction) of existing temporary labour migration schemes such as the RSE; as well (through advance passenger-screening processes) as a tightening up of short-term visitor permits, with consequential adverse impacts on income for migrant workers and their families, social cohesion and inter-state relations.

6. The preferred alternative focus: Emissions reductions; In-situ adaptation; Planned migration contingency arrangements, developed in close consultation with affected states

If a narrow focus on enhanced non-return mechanisms such as the HCR’s approach to article 6 ICCPR articulated in the Teitiota decision is not the only appropriate policy response to the climate change-related issues of human mobility in the Pacific, what should be the focus of the international community? Consistent with Pacific positions outlined in section 4 above, I suggest that three key objectives might be pursued.

The first is for developed states to radically increase their ambition in terms of emissions reductions. Pacific states, along with other small island states, were instrumental in securing the inclusion of the 1.5°C target in the Paris Agreement – a target that according to the IPCC can only be met with major, urgent emissions reductions.57

The second key objective is to secure the support (including financial support) of the international community that would enable communities in low-lying states such as Kiribati and Tuvalu to remain in safety and dignity on their home territory for as long as possible.

Third, although Pacific states have made clear their desire to remain on their homeland for the foreseeable future, statements from Pacific leaders acknowledge the potential ultimate need for planned and managed migration and relocation of populations in the event that current projections for global emissions rises and consequential effects on island states eventuate.58 Migration and relocation in this manner would be neither ad hoc nor reactive. It is unlikely to be arranged in reliance on non-refoulement rights, but rather, would be implemented as part of comprehensively planned migration-as-adaptation measures.59

The approach, and the priorities identified above are broadly reflected in a 2018 Cabinet-approved New Zealand policy document setting out a proposed overall strategy and approach to Pacific climate change-related displacement and migration.60 There is much to be done to advance that strategy, and the need for far more urgency in progressing its objectives. However, the strategy – and the approach that it embodies – represents a significant and potentially far-reaching policy framework.

57 Generally, O Hoegh-Guldberg and others, ‘Impacts of 1.5°C Global Warming on Natural and Human Systems’ in Global Warming of 1.5°C An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (IPCC 2018).

58 Rt Hon W Peters, Minister of Foreign Affairs (n 44). Former President Anote Tong of Kiribati frequently articulated the objective of securing pathways that would enable people of Kiribati ‘to migrate with dignity to other countries voluntarily and in the worst case scenario, when our islands can no longer sustain human life.’; see, for example, Statement By H.E President Anote Tong to the 69th United Nations General Assembly, New York, 26 September 2014, 5.

59 See, for example, L Yamamoto, M Esteban, ‘Migration as an Adaptation Strategy for Atoll Island States’ (2017) 55 Intl Migration 144.

which, I suggest, appropriately complements the work of the HRC in this critical issue area.

7. Conclusion

As a number of scholars have noted, it is critical that international, regional, and state-level responses to the human mobility dimensions of climate change are attentive to human rights norms and principles.\textsuperscript{61} Non-refoulement obligations which flow from an appropriately expansive interpretation of article 6 of the ICCPR are an important aspect of a broad set of human rights obligations for sending states when considering the protection status of nationals facing deportation to locations severely impacted by the effects of climate change. The \textit{Teitiota} HRC decision represents a notable milestone in the international jurisprudence in this regard.

In this article, I have advanced the position that an enhanced non-refoulement regime under the ICCPR such as that recently promoted by the HRC – important as it is – should not be regarded as a complete answer to climate change-related human mobility challenges in the Pacific. Other regional and domestic responses such as those being tentatively progressed by the New Zealand government in conjunction with affected Pacific states remain vital elements of an effective and comprehensive response to issues of climate change-related displacement in the region. Amid the heightened interest in the potential for new approaches that inevitably follows trailblazing litigation such as the \textit{Teitiota} case, those – perhaps legally more pedestrian – initiatives should not be overlooked.

\textsuperscript{61} For example, J McAdam (n 38) 267-70. S McInerney-Lankford, ‘Climate Change, Human Rights and Migration: A Legal Analysis of Challenges and Opportunities’ in B Mayer, F Crépeau (eds), \textit{Research Handbook on Climate Change, Migration and the Law} (Edward Elgar Publishing 2017).