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Shifting responsibility and denying justice: New Zealand's contentious approach to Pacific climate mobilities

Andreas Neef[1] · **Lucy Benge**[1]

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Abstract

It is increasingly evident that climate change is intersecting in complex ways with the more traditional drivers of migration, such as poverty and conflict. Yet there remains a startling lack of international agreement on how to address the issue. This article examines the problem climate change-related migration poses in terms of international responsibility and provides a review of two approaches to addressing this challenge. First, the idea that migration in the context of climate change requires the development of a new international protection agreement and, second, the argument that migration should be managed and mitigated through in situ adaptation and development programmes. These approaches differ in terms of how they understand the relationship between migration and climate change and thus differ also in terms of how they situate responsibility and address issues of climate justice. This paper explores these differences and outlines the benefits and challenges of both. Following this, we turn to the case of New Zealand's immigration tribunal appeals involving claims for climate-refugee status and look at how in situ adaptation, development narratives and arbitrary risk thresholds have been used to legitimise the denial of these claims. Throughout the article, we ask to what extent these approaches acknowledge climate justice, and we conclude by looking at ways that climate (mobility) justice might be better incorporated into solutions that prioritise the needs of migrants in the context of rapid climate change.

Keywords Climate mobilities · Climate justice · Migration · Climate change adaptation · South Pacific

Introduction

In 2013, a case was brought to the New Zealand Immigration and Protection Tribunal when a citizen of Kiribati, a small Pacific Island atoll country, unsuccessfully attempted to claim refugee status due to the impact climate change was having upon his country. This case demonstrated the failure of international law to offer protection to the appellant and to hold external, high-greenhouse-gas-emitting states accountable for their contribution to climate change-related migration. In this paper, we use the terms 'climate change-related migration' and 'climate migrants' to refer to people whose mobility is driven to a substantial part by the adverse impacts — both direct and indirect — of climate change (cf. Warren 2016; Kupferberg 2021). For example, the real threat of the impending uninhabitability and — in the longer run — even complete disappearance of low-lying atoll island nations in the South Pacific, the Indian Ocean and the Caribbean is expected to provide a strong influence on the decision of many island dwellers to leave their countries in search for safe havens overseas (IPCC 1990; Burkett 2011; Campbell 2014; Yu 2021).

Two key issues allow third-party states to justify the lack of protection offered to climate migrants: (1) the primacy of sovereignty and the lack of extraterritorial obligations of states generated by human rights law (referred to in this paper as 'the issue of sovereignty'), and (2) the blurry line between 'forced' and 'voluntary' movement, and the equally contested question of what causes migrants to move (referred to in this paper as 'the issue of causality'). New Zealand's decision to label the appellant's movement as 'voluntary

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✉ Andreas Neef
a.neef@auckland.ac.nz

Lucy Benge
lucyalicebenge@gmail.com

[1] Development Studies, School of Social Sciences, The University of Auckland, Auckland, New Zealand

adaptive migration' (Talwar 2020, p. 21) will be examined through a review of the international discourse which has linked migration to adaptation, as well as a look at the arguments academics make for including climate change-related migration under the banner of adaptation. These arguments will be compared to those made by scholars who, for the most part, reject voluntary adaptation narratives and who look for protection within new or expanded international legal mechanisms and treaties.

Then — through closer reference to the case histories of New Zealand immigration tribunal appeals relating to 'climate refugee' status — this paper explores how these narratives have been utilised to justify the rejection of 'climate-refugee' claims and shift responsibility for climate-related migration to its small Pacific islands neighbours and what this says about the in/ability for these narratives to recognise climate (mobility) justice.

In doing so, we seek answers to the following questions:

- How have the issues of sovereignty and causality complicated the ability to protect migrants in the context of rapid climate change? ('Complicating the protection of climate migrants: issues of sovereignty and causality' section)
- How do international legal protection arguments for addressing climate migration compare to approaches which argue for in situ adaptation as a solution? ('International protection mechanisms versus adaptation solutions' section)
- What does New Zealand's approach to addressing climate migration demonstrate about how these arguments are implemented in practice? ('Scrutinizing New Zealand's approach to Pacific climate mobilities' section)

The following section 'Complicating the protection of climate migrants: issues of sovereignty and causality' will discuss issues of sovereignty and causality in the context of climate migration. The 'International protection mechanisms versus adaptation solutions' section will examine the international legal norms that underpin how migration in the context of climate change is currently understood and responded to and scrutinises proposals for in situ adaptation and migration as development opportunity. The article then turns to New Zealand's approach to responding to climate-related migration in the Pacific in terms of its foreign policy strategies and legal system ('Scrutinizing New Zealand's approach to Pacific climate mobilities' section). The final section 'Conclusion' offers concluding remarks.

Complicating the protection of climate migrants: issues of sovereignty and causality

This section introduces the principle of 'common but differentiated responsibility and respective capabilities', which forms the backbone of the international climate change regime's approach to justice. It then looks at the problem 'sovereignty' and 'causality' pose in terms of putting this principle into practice, and how the United Nations Framework Convention on Climate Change (UNFCCC) has attempted to overcome these issues by framing migration as a form of 'adaptation'.

The principle of 'common but differentiated responsibility and respective capabilities' was established within the UNFCCC in 1992 (Althor et al. 2016). It introduced the ethical principle of equity to the climate change regime in its recognition that states have common responsibility for protecting the climate, but have made different historical contributions to climate change and are not equal in their capability to mitigate and manage the effects of climate change (Okereke and Coventry 2016). The principle recognises that developed countries, which have contributed the most to global emissions and have greater financial and technological capacity for climate change mitigation and adaptation, must take greater responsibility for dealing with the impacts (Althor et al. 2016).

Despite efforts to introduce a justice-based approach into the international climate regime, implementation of the principle has often posed a major challenge (Althor et al. 2016). To begin with, a concern over sovereignty and national self-determination has always posed a significant challenge to ensuring collectively binding emission reduction targets. In terms of international migration, this issue is even more problematic as it poses a direct threat to state borders and raises the question of who should be responsible for migrants who move across borders due to the effects of climate change (Kupferberg 2021). International protection agendas for migrants — particularly those based on the principle of common but differentiated responsibility — are unpopular as they challenge the 'control states like to assume over who can enter, and how people cross, political borders' (Kelly 2018: 71).

Furthermore, the issue of causality and the difficulty of distinguishing between 'voluntary' and 'forced' migration in the context of climate change has led to a significant challenge around how climate-related migrations should be treated under international law (Warren 2016; Kupferberg 2021; Yu 2021). This challenge is reflected in the paradoxical terminology that is used to refer to people who migrate in the context of climate change — with climate 'refugees' at one end of the spectrum (implying forced movement) and climate 'migrants' (implying a more voluntary form of movement) at the other (Boas et al. 2019; Scott 2020). Due to the difficulty of determining the extent to which climate change contributes to decisions to migrate, some scholars have argued that notions of 'climate migration', 'climate migrants' and 'climate refugees' are inherently flawed (e.g. Nicholson 2014; Mayer 2017; Boas et al. 2019). While Nicholson (2014) maintains that

it is futile to establish a direct causal link between climate change and migration and calls for a focus on the rights violations suffered by migrants irrespective of what causes their movement, Mayer (2017: 37) recognises the 'strong political currency' of climate migration, despite its being a 'weak analytical concept'. To avoid line-drawing discussions, many scholars are increasingly opting for less contentious terms, such as 'climate change-related human mobility' (Dumaru and Paisley 2020), 'migration in the context of a changing climate' (Schwerdtle et al. 2020) or 'climate mobilities' (e.g. Boas et al. 2019).

The contested issue of causality poses a significant problem when it comes to the ability of international law to uphold the principle of 'common but differentiated responsibility'. Ferris and Bergmann (2017) argue that climate change acts as a threat multiplier rather than being the sole reason for people's mobilities. Consequently, this makes it very difficult to locate responsibility and liability, and even more difficult to create international consensus on a binding legal requirement for the protection of migrants (Ferris and Bergmann 2017).

The above issues have meant that efforts by developing states to have migration acknowledged as a 'loss and damage' within the UNFCCC have been unsuccessful (Kelly 2018). The Loss and Damage mechanism was formulated at the Conference of Parties (COP) in Warsaw in 2013 (Wewerinke-Singh and Van Geelen 2018). This mechanism allows states to invoke compensation claims for damages caused by climate change (Okereke and Coventry 2016). Okereke and Coventry (2016) recognise that claims for compensation under the banner of 'loss and damage' will be much narrower than claims made under the banner of 'adaptation' because of the challenge of proving a direct causal link to climate change and due to the lack of political will on behalf of developed states.

This may explain how migration has come to be framed under the more politically acceptable banner of 'adaptation'. In 2010, the Cancún Adaptation Framework saw migration included as a form of adaptation, with paragraph 14f calling for: 'measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation […] at the national, regional and international levels' (UNFCCC 2010: 5). Responding to this call for greater international cooperation, the Advisory Group on Climate Change and Human Mobility was established and recommended in 2015 that the international community work to: 'increase the resilience of vulnerable populations to enable them to remain where they live while at the same time helping to plan for and facilitate voluntary and dignified internal and cross border migration as an adaptation strategy' (Advisory Group on Climate Change and Human Mobility 2015: 2). Kelly (2018: 68) makes the point that these recommendations continue to 'work within the state-based system' by 'casting the issue in terms states deem appropriate, such as 'facilitated' and 'planned''.

The language of adaptation has facilitated a move away from the use of the term 'climate refugee' which has been criticised for its reduction of migrant autonomy, its oversimplification of the drivers of migration and — perhaps most importantly — for its lack of grounding in the 1951 Geneva Convention (McNamara and Gibson 2009; McAdam 2016; Warren 2016; Mayer 2017). The Convention only offers protection to refugees 'with a well-founded fear of persecution on the basis of race, religion, nationality, membership of a particular social group or political opinion, and who no longer enjoy the protection of their governments' (cited in Ferris and Bergmann 2017: 8). Consequently, it is widely accepted that refugee law, as it currently stands, is inappropriate for addressing climate change-related migration. Nonetheless, some authors continue to argue for use of the term 'climate refugee' and have looked at ways to develop new or amended legal protection mechanisms and international treaties (e.g. Docherty and Giannini 2009; Gemenne 2015; Berchin et al. 2017; Biermann 2018; Behrman and Kent 2018).

International protection mechanisms versus adaptation solutions

This section examines the arguments made for modifying existing international law and developing new legal protection frameworks (section 'Proposals for new and amended international protection mechanisms') and compares this to arguments made for adaptation solutions (section 'Proposals for in situ adaptation and migration as development opportunity'). This involves exploring to what extent these approaches employ the principle of 'common but differentiated responsibility and respective capabilities' and how they address the challenges posed by sovereignty and causality discussed in the previous section.

Proposals for new and amended international protection mechanisms

The debate on appropriate international protection mechanisms for people on the move as a consequence of climate change has been controversial. Biermann (2018: 267) holds that the 1951 Geneva Convention should allow 'novel types of refugees', including environmental and climate refugees, to be covered under its protection mechanism. In a similar vein, Behrman and Kent (2018: 10) have argued that it is incorrect to assume that there is a 'single immutable legal category of 'refugee' in international law'. To demonstrate this, examples from the Organization of African Unity Convention (OAU) and Cartagena Declaration are frequently

referred to. The OAU expanded the definition of refugee in 1969 to include those fleeing 'events seriously disturbing public order' and Latin American States adopted this same definition with the Cartagena Declaration in 1984 (Warren 2016: 2123). This expanded definition, while not directly mentioning 'climate refugees' or 'climate-displaced people', has the potential to extend protection to people that are forced to flee from climate change impacts (Yu 2021).

Despite recognition of the fluidity of the term 'refugee' and the need for this term to better reflect contemporary and future challenges, many authors have argued that 'climate refugees' will require a different kind of protection than that offered by the Geneva Convention (e.g. Warren 2016). Similarly, some scholars have warned that expanding the Geneva Convention's definition of 'refugee' could 'potentially further limit admission and reception policies for those qualifying under the current regime and lead to even more restrictive interpretations in the future' (Ferris and Bergmann 2017: 8).

Rather than arguing for an expansion of the Geneva Convention, Biermann and Boas (2010), Warren (2016) and Behrman and Kent (2018) have called for the creation of a protection mechanism or protocol within the UNFCCC. The reasons they provide are twofold: first, the ability to utilise pre-established normative principles — such as 'common but differentiated responsibility' — and, second, the ability to utilise existing financial mechanisms. Biermann and Boas' (2010) proposal focuses on expanding the normative principles of the climate change regime in order to create a protocol which promotes: the principle of planned relocation, resettlement over temporary asylum, collective rights over individual rights, international assistance for governments to protect their people in situ and the principle of international burden sharing to acknowledge the moral responsibility of industrialised countries.

Other proposals for international protection mechanisms have, however, argued that the UNFCCC is not the best suited for this task. Docherty and Giannini (2009: 402) reject suggestions of developing a legal protection mechanism within the UNFCCC, as this framework is 'neither people-centred nor remedial in nature'. Instead, they argue for a new convention that borrows useful concepts from refugee law, environmental and human rights law but adapts them to meet the protection needs of 'climate refugees'. These authors contend that the new legal protection mechanism should utilise the legal principle of 'international cooperation' but break out of the traditional state-to-state model so as to include community and civil society. The proposal also establishes guarantees of human rights protections but builds on human rights law to ensure responsibility for meeting those guarantees is placed not only with home states but also with host states and the wider international community generally (Docherty and Giannini 2009: 350).

The benefits of developing an independent mechanism clearly relate to the ability to draw from a range of legal norms to suit the needs of migrants in the context of climate change (Docherty and Giannini 2009). This is important because of the different ways that migration manifests itself (planned vs forced) as well as the different triggers of migration (slow onset vs sudden onset climatic events). Van der Vliet (2018) explores how the timing and cause of migration affects the protection different legal norms are able to provide. For example, human rights law is not able to adequately provide protection for movement across borders, while refugee law is unable to offer assistance for planned or pre-emptive movement. Yet, when human rights norms are coupled with principles derived from environmental law such as 'common but differentiated responsibility', this adds to the obligation to protect (van der Vliet 2018).

It is important to note, however, that while both these proposals clearly demonstrate an effort to call for international accountability, they avoid the issue of multi-causality and rely on convincing states that a 'climate refugee' protection mechanism is also an agreement to 'invest in global security' (Biermann and Boas 2010: 83). Arguments that look towards international legal protection mechanisms often reinforce the belief that climate change will lead to mass migration, thereby threatening international peace and security. Although this securitization narrative can help prompt greater international action, it has also been heavily criticised for oversimplifying the drivers of migration (Boas et al. 2019), assuming migration to be 'forced' and thus undermining migrant autonomy and self-determination. Kelly (2018: 64) argues, for example, that 'rather than viewing movement (…) as an aberration, we need instead to view it as a historical constant'.

In the Pacific context, Farbotko and Lazrus (2012: 388) reinforce this perspective by recognizing the long-established histories of 'seafaring, oceanic and mobile cosmologies', previously invoked by Pacific scholar Epeli Hau'ofa's concept of 'sea of islands' (1994). Other authors similarly argue for the empowering potential of migration for Pacific peoples (Barnett and Chamberlain 2010; Farbotko et al. 2016; McNamara and Gibson 2009). Yet, with regard to climate-related migration and planned relocation, several Pacific scholars have called for learning important lessons from colonial-time resettlement schemes that forcefully relocated Pacific Island people from their homelands to make way for environmentally and socially destructive practices, such as phosphate mining and nuclear testing, which caused considerable intergenerational trauma, anxieties and grief (e.g. Teaiwa 2015, 2018; Tabe 2019). Teaiwa (2018) emphasises the importance of Pan-Pacific regionalism in identifying solutions to future climate migration and turning the 'rhetoric of victimhood' (p. 33) that underpins the notion

of Pacific 'climate refugees' into alternative narratives of hope, activism and agency.

Proposals for in situ *adaptation and migration as development opportunity*

Critics of international protection mechanisms are more likely to argue for approaches that respond to the impacts of climate change using development and adaptation initiatives. This section examines these proposals looking at the benefits they offer, the problems they encounter and importantly how they position responsibility and deal with climate justice.

Proposals for in situ adaptation emphasise the way climate change intersects with other drivers of migration (such as poverty, unemployment and population pressures) and look for ways to act upon these drivers to avoid migration altogether. This argument rejects the use of the term 'climate refugee' due to the way it fails to address the wider social, economic and political drivers of migration (Bettini 2014). While 'refugee' narratives evoke international legal protection mechanisms, this approach calls instead for development and adaptation policies to address underlying structural vulnerabilities that compound the effects of climate change on people's livelihoods. Narratives that prioritise in situ adaptation look at how the threat of climate-related migration can be turned into 'an opportunity to improve lives, advance the development process, and adapt to long-term environmental change by altering development patterns' (Asian Development Bank 2012: vii).

Despite the efforts of adaptation and development approaches to reduce the need for climate-related migration, several concerns regarding this approach must be examined. The first relates to a concern that climate change impacts may exceed adaptation thresholds and that in situ development approaches risk shutting down migration possibilities and are thus unable to facilitate pre-emptive relocation. This is problematic because pre-emptive relocation has often been recognised as providing the best chance of voluntary migration with dignity (Hugo 2010; Böge 2013). The second concern looks at how development-centred approaches may deflect from the issue of climate change. McAdam (2011) has argued that, in the case of small island developing states in the Pacific, general poverty may obscure climatic drivers, thereby reducing the likelihood that donors provide funding specifically for adaptation and migration. This also relates to the third concern that financing for climate change is being conflated with financing for development. Crossen (2020: 30) observed how New Zealand does not report climate finance separately from Official Development Assistance (ODA) and how this makes it hard to assess whether New Zealand's contribution to climate finance in the Pacific is additional and genuine or simply a reallocation of its existing aid budget.

Responding to issues with the in situ adaptation and development narrative outlined above, there is now a growing argument for the use of migration as a form of adaptation and as a development opportunity in and of itself (Ferris 2012; McAdam 2016). This first began circulating with the inclusion of migration and planned relocation within the Cancún Adaptation Framework (2010). This Framework saw a shift away from demands for international legal protection mechanisms and a move towards international cooperation to plan for migration. Alongside this rationale, it has been argued that migration should be seen as a development opportunity for both migrants and receiving countries by helping to bolster economies through meeting labour force needs and through the ability of migrants to provide remittances to their home countries (Tacoli 2009; Asian Development Bank 2012; Black et al. 2011; Farbotko et al. 2016).

When migration in the context of climate change is reconceptualised as a tool of 'adaptation' with the potential to enhance economic development opportunities (i.e. through remissions), it is no longer seen as being 'forced' but rather as the voluntary choice of responsible subjects (Methmann and Oels 2015: 59). Bettini et al. (2017) put forward one of the strongest cases against the use of these narratives. They argue that the narrative of 'migration as adaptation' appears to: 'displace justice claims and inherent rights in favour of a depoliticized idea of adaptation which relies on the individual migrant's ability to compete in and benefit from labour markets' (p. 348). They contend that the narrative is an extension of a neoliberal agenda that promotes individual responsibility and resilience over and above international responsibility. When international responsibility to protect is replaced with a focus on individual responsibility — albeit in an effort to maintain self-determination, the issue of climate justice is no longer visible. Consequently, these narratives may represent 'a step backwards in terms of the possibility of posing the question of justice' (Bettini et al. 2017: 354).

Scrutinizing New Zealand's approach to Pacific climate mobilities

This section critically examines New Zealand's approach to addressing current and future climate-related migration in the Pacific. We first discuss the shifts in foreign policy strategies and immigration policies (section 'From access quotas and circular migration to humanitarian 'climate refugee' visas and in situ adaptation') and then turn to the response of New Zealand's legal system to 'climate refugee' claims ('The missing link to climate justice in New Zealand's tribunal decisions on 'climate refugee' claims' section). Ultimately, this will allow us to comment on how

New Zealand's approach recognises and deals with climate (mobility) justice.

From access quotas and circular migration to humanitarian 'climate refugee' visas and in situ *adaptation*

Despite claims to the contrary by some international commentators, New Zealand has so far eschewed the introduction of a specific immigration policy targeted at climate migrants from Pacific island countries (Rive 2015; Crossen 2020). Mobilities from the South Pacific to New Zealand remain highly uneven both across and within Pacific island countries, partially as a result of differences in the decolonization process in the region. Island groups that decided to remain in free association with New Zealand, such as the Cook Islands and Niue, have been granted New Zealand citizenship rights and hence can move freely between their islands and New Zealand (Lee 2009). Other island nations, such as Samoa, Tonga, Tuvalu, Kiribati and Fiji, are subjected to restrictive annual migration quotas (e.g. under the Pacific Access Category — PAC and the Samoan Quota Resident Visa scheme) that tend to favour young, healthy and skilled citizens of these countries (see Table 1). Yet other Pacific island countries, such as Vanuatu, Solomon Islands and Papua New Guinea, can send a portion of their younger, mostly male and able-bodied population to New Zealand's farming and horticultural sector under a circular labour mobility scheme[1] introduced in 2007, while permanent migration remains only a remote possibility for citizens from those countries.

In the late 2000s, the New Zealand government started to give more serious consideration to climate-related migration pressures from the Pacific, yet without taking any concrete policy actions. In 2016, the New Zealand Ministry of Foreign Affairs and Trade (MFAT) commissioned a study that predicted that: 'no atoll group in the Pacific is likely to be habitable by the end of the century' (Manley et al. 2016: 4). A subsequent literature-based study for MFAT published in 2020 maintains that loss of habitability is likely to be caused not only by changes in the climate but also to a great extent by social and economic drivers such as increasing population density, economic vulnerability, exploitation of natural resources, increasing incidence of pests and diseases, increased quantities of waste per capita and chemical and biological contamination (Talwar 2020). Neither of the two studies mentioned New Zealand's historic and current contribution to climate change as a major factor to be considered in the country's moral, legal or political obligations towards accommodating future climate migrants from Pacific island countries.

While the way in which climatic and non-climatic drivers of migration intersect makes it difficult to accurately delineate climate change-related migration from other forms of migration, sea-level rise signifies a direct and imminent threat to sustaining viable livelihoods in some low-lying Pacific Island countries (Campbell 2014; Warren 2016; Yu 2021; Kupferberg 2021). In 2017, New Zealand's Green Party — then in a confidence-and-supply arrangement[2] with the governing Labour/New Zealand First coalition — briefly entertained the idea of a humanitarian visa for 'climate refugees'. This was, however, quickly taken off the table and replaced with an approach that favoured support for in situ adaptation and development assistance. The New Zealand government indicated that this was because consultation with Pacific neighbours showed a preference for support to remain in-place: 'Pacific Island countries and communities have no wish to relieve the international community of its obligations and commitments to global action to reduce emissions by accepting large-scale migration […] as a solution' (MFAT 2018: 4; see also McNamara and Gibson 2009; Farbotko and McMichael 2019). Consequently, a revised approach prioritizing the use of Official Development Assistance (ODA) to prevent climate-related migration was put forward in the 'Pacific Climate Change-related Displacement and Migration Action Plan' (hereafter 'Action Plan'), which was approved by Cabinet in May 2018.

The Action Plan put to one side efforts to facilitate planned cross-border migration suggesting that further consideration of immigration options could be postponed to 2024: 'once the scale and potential impact of Pacific climate migration is clearer' (MFAT 2018: 1). Yet it is a well-known fact that climate change has already begun contributing to migration in the Pacific — with several examples of villages in Fiji, Papua New Guinea, the Solomon Islands and Kiribati which have had to relocate, or are preparing to relocate, due to sea-level rise and related coastal inundation (Piggott-McKellar et al. 2019; Benge and Neef 2020; Connell and Lutkehaus 2017; Albert et al. 2018; Farbotko and McMichael 2019). Numerous other examples also exist of communities that have had to relocate following destructive

[1] The Recognized Seasonal Employer (RSE) scheme recruits from nine countries in principle (Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu), but in practice, employers target most of their recruitment in just three countries — Vanuatu, Samoa and Tonga, which collectively represented 76% of workers in 2019/2020 (pers. comm., Cathrine Dyer). Hence, there is significant crossover between the RSE and the quota schemes in terms of where people come from.

[2] In New Zealand, parties that are in a confidence-and supply arrangement with the ruling party or coalition can play a prominent role, with their MPs being able to be appointed to ministerial portfolios outside cabinet. At the time, the Green Party held the ministerial portfolio for climate change.

Table 1 A timeline of New Zealand's approach to Pacific (climate) mobilities (1960–2020)

Year	Policy/legal matter
1960s	New Zealand (NZ) introduces formal work-permit schemes for Pacific island labourers to work primarily in agriculture and forestry; uptake is particularly strong in the aftermath of devastating cyclones affecting Pacific island populations
1974–1976	The NZ government instigates a violent crackdown on alleged overstayers from the Pacific; these 'dawn raids' cause enormous trauma among Pacific communities
1986	The NZ government tries a brief period of visa-free entry from selected Pacific island countries; abandoned after a few months following a drastic surge in immigrants to NZ
1990	A government-appointed Policy Review Group reports that climate change and associated rising sea levels may force the migration of people from low-lying atoll countries in the South Pacific (e.g. Kiribati, Tuvalu, Tokelau, Nauru, Tonga); the group suggests exploring the proposal for establishing a regional 'Greenhouse Gas Equilibrium Zone' in the Pacific
1998	The NZ government announces changes to the Samoan Immigration Quota system, which allows 1100 Samoan citizens per year to permanently settle in NZ
2002	The NZ government introduces the Pacific Access Category that allows up to 250 citizens from Tonga, 250 from Fiji, 75 from Tuvalu and 75 from Kiribati to apply for NZ residence each year (conditions: aged 18–45 years; job offer from NZ employer; English proficiency)
2006	The NZ government tries to dispel the false assertion in Al Gore's documentary 'An Inconvenient Truth' that some low-lying atoll countries, such as Tuvalu, had already moved their entire populations to NZ because of rising sea levels
2007	The NZ government introduces the Regional Seasonal Employer (RSE) scheme which fosters circular migration from Pacific Island countries to NZ to alleviate domestic labour shortages in the viticulture and horticulture industries
2008	Ahead of the Pacific Islands Forum, NZ officials propose a policy approach that stresses climate adaptation in Pacific Island countries and acknowledges that migration pressures may require more serious consideration
2013–2014	Kiribati citizen, Mr. Ioane Teitiota, claims protection in NZ referring to climate-induced environmental changes that threaten his and his family's life; his case is rejected by the Immigration and Protection Tribunal, the High Court and the Court of Appeal
2014	A Tuvaluan family of four claims protection in New Zealand citing landlessness and effects of climate change in their home country (lack of drinking water, sea-level rise; the climate refugee claim is dismissed by the Tribunal but the family is allowed to stay in NZ on humanitarian grounds
2015	Mr. Teitiota's refugee claims are dismissed by the Supreme Court of NZ; yet the court does not rule out the possibility of future 'climate refugees' being granted refugee status in NZ
2017	The Green Party of New Zealand floats the idea of a humanitarian visa for forced climate migrants; the proposal is later dropped due to lack of support from Pacific people
2018	The NZ government launches a Pacific climate displacement action plan that emphasises the use of official development assistance to avert and delay climate-related displacement, while preparing for future Pacific migration through a Pacific-led collective response mechanism
2019	Ruling of the UN Human Rights Committee (HRC) on Mr. Teitiota's case against his deportation by the NZ government; the HRC upholds the decision of NZ's courts
2020	NZ's Ministry of Foreign Affairs and Trade publishes a 'Pacific Climate Change-related Human Mobility Research Strategy and Plan', advocating research to better understand patterns of future Pacific climate migration, both internal and cross-border
2020	The New Zealand government pledges NZD 2 million to support Fiji's Relocation Trust Fund, aimed at planned resettlement of communities affected by climate change within Fiji

Source: Lee 2009; McAdam 2015; MFAT 2018; Dumaru and Paisley 2020; Crossen 2020; Scott 2020

climate-related weather events (e.g. Neef et al. 2018; Wewerinke-Singh and Van Geelen 2018). Currently these relocations are being managed internally, yet access to suitable land and social infrastructure poses a major problem leading to growing squatter settlements and tensions over land use (Wewerinke-Singh and Van Geelen 2018).

The New Zealand government has committed financial and technical support for hard infrastructure projects to help communities to adapt in situ in some of the small Pacific island countries most affected by sea-level rise. Presented at the 2017 UN World Climate Change Forum, COP23 in Bonn, Germany, the Temaiku Land and Urban Development project is a collaboration between New Zealand's Ministry of Foreign Affairs, Jacobs New Zealand Engineering group and the Government of Kiribati that aims to raise a 300-hectare swamp area in Kiribati 2 m above the anticipated future sea level (Walters 2019). Yet, the project will take 30 years to complete and its estimated costs of US$273 million exceed the annual GDP of Kiribati, a small Pacific atoll island nation with few resources (Walters 2019; Kupferberg 2021). Kupferberg (2021) argues that when considering future population growth projections, Kiribati would need more than six infrastructure projects of the size of the Temaiku project to provide a realistic alternative to cross-border relocation of the country's citizens. Another example of New Zealand's support of local adaptation efforts is its

financial assistance to Fiji's Relocation Trust Fund which is aimed at the planned resettlement of dozens of communities affected by climate change within Fiji and uses the language of internal relocation as a 'last resort adaptation option' (IOM 2021: 9).

It is important to note that despite the New Zealand government's attempt to recognise Pacific interests by providing assistance to remain in place, not all Pacific nations and communities adopt the same perspective when it comes to acceptable solutions (Farbotko et al. 2016; Noy 2017; Yates et al. 2022). While many contemporary Pacific leaders have confirmed their determination to keep their citizens in place and consider population-scale cross-border relocation only as an option of last resort (Farbotko and Lazrus 2012; McNamara and Gibson 2009; Perumal 2018; Bordner et al. 2020), the 'migration in dignity' concept coined by former President of Kiribati Anote Tong remains alive in many Pacific island communities, particularly in the low-lying atoll island countries whose very existence is threatened by sea-level rise, such as Nauru, Tuvalu and Kiribati (Teaiwa 2018; Oakes 2019). This therefore begs the question as to why New Zealand has chosen to adopt an approach privileging development/adaptation solutions over efforts to provide safe migration pathways. As Bordner et al. (2020) have found, the dependency of Pacific island nations on external funding of climate adaptation measures can act as a barrier to effective and locally appropriate adaptation strategies.

New Zealand's call for a Pacific-led collective response mechanism to future climate mobilities — which uses a language of collaboration and deliberation — could be interpreted as an attempt to shift responsibility for dealing with Pacific climate migrants to the broader Pacific island community. While it is certainly important for the New Zealand government to have intensive consultation with its Pacific island neighbours over a well-coordinated response to current and future climate mobilities, it should not be relieved of its obligation to provide adequate immigration channels for those who are willing to move to a safe haven before their homeland becomes uninhabitable.

The missing link to climate justice in New Zealand's tribunal decisions on 'climate refugee' claims

The case of Mr. Ioane Teitiota from Kiribati entered the global limelight in 2015 when New Zealand's highest court ultimately rejected his claim that he and his family, i.e. his wife and three NZ-born children, could not return to their home country because climate change made it impossible for them to continue a life in safety and dignity. He had argued unsuccessfully that the living conditions on the overcrowded atoll archipelago have become too precarious due to rapid sea level rise, dwindling freshwater resources, coastal erosion, infertile soils and increasing land conflicts and violence (Scott 2020; CCPR 2020). Along with other small atoll island states in the Pacific, Kiribati is projected to become uninhabitable by the middle of the twenty-first century, if not earlier (Campbell 2014). This has raised questions not only about the country's physical existence but also its future as a legal entity and the nationhood of its citizens (Skillington 2016; Cass 2018).

The original court case brought to the New Zealand Immigration and Protection Tribunal[3] (NZIPT) in 2013 has been described by Scott (2020: 75) as 'the most carefully considered determination of a climate-change-related application for recognition of refugee status to date'. Indeed, the NZIPT considered advice by an expert on Kiribati environmental and social challenges and acknowledged that 'claims for international protection in the context of 'natural' disasters and climate change should be considered in the same manner and by applying the same principles as other claims relating to feared violations of economic and social rights' (Scott 2020: 77). However, the NZIPT maintained that a case for a 'climate refugee' claim under the 1951 Refugee Convention could only be made if the government of Kiribati arbitrarily deprived the appellant and his family of their human rights, e.g. by withholding post-disaster humanitarian relief aid or using environmental destruction as a weapon of oppression against a particular social group (Scott 2020). It seems cynical that the dire conditions caused by climate change are deemed insufficient to make a valid claim for refugee status and therefore would need to be further amplified by negative actions of the appellants' own government in order for them to stand a chance to have their claims acknowledged.

The role of New Zealand and other western powers in contributing to the vulnerabilities facing Kiribati was not given much room in the courts' deliberations. The judge in New Zealand's High Court briefly mentioned Kiribati's colonial history and how some of its islands were used by the UK and the USA as a testing ground for hydrogen bombs in the 1950s and 1960s (cf. Kupferberg 2021). What was left out of the judge's account was how around the same period the island nation was depleted of its natural phosphate reserves to the benefit of the Australian and New Zealand farming sectors which have become major contributors to climate change (cf. Teaiwa 2015). The issue of climate (in)justice was only indirectly raised when the judge noted the irony that Mr. Teitiota was seeking refuge within one of the 'perpetrating' countries, which 'completely reverses the traditional refugee paradigm' (McAdam 2015: 134). Yet, while rejecting Mr. Teitiota's

[3] The 18 members of the NZIPT are appointed by the Governor-General on the recommendation of the Minister of Justice. Hence, it can be assumed that the tribunal is loyal to whichever parties hold power.

claim, New Zealand's judicial system did not rule out that future cases may arise where climate-displaced persons could make a successful case for being recognised as refugees under the 1951 Convention (cf. Scott 2020: 84). Meanwhile, the case of a Tuvaluan family that made a similar claim as Mr Teitiota in 2014 was also rejected but the family was allowed to stay in New Zealand on humanitarian grounds (McAdam 2015; Scott 2020).

When Mr. Teitiota's climate refugee claim was ultimately dismissed by the New Zealand Supreme Court, he brought his case to the United Nations Human Rights Committee (HRC). The HRC upheld the earlier arguments made by New Zealand's judicial authorities that Mr. Teitiota had failed to provide sufficient evidence that he faced an 'imminent risk of being arbitrarily deprived of his life when he was removed to Kiribati' and there was 'no evidence that his situation is materially different from that of all other persons in Kiribati' (CCPR: 6). In line with its mandate, the HRC focused on the personal circumstances and arguments of the complainant from Kiribati but also considered expert opinions and scientific reports, such as the Intergovernmental Panel for Climate Change's Fifth Assessment Report. While the HRC acknowledged Mr. Teitiota's claim — supported by scientific experts — that climate-induced sea level rise may render his country uninhabitable, it noted that 'the timeframe of 10 to 15 years […] could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population' (CCPR: 12). The HRC did not scrutinise the effectiveness of past climate adaptation strategies in Kiribati and also did not elaborate on what timeframe would make further 'affirmative measures' futile in its view. As Wewerinke-Singh and van Geelen (2018) have shown for the case of the South Pacific island nation of Vanuatu, governments in small island developing states often lack the resources and institutional capacities to take such affirmative measures in the face of climate-related disasters. This is despite the fact that Vanuatu — along with Fiji — arguably has one of the world's most progressive and sophisticated national policies on climate change and disaster-induced displacement, which includes provisions for psychosocial well-being, gender equity and respect for custom and traditional knowledge (IOM 2021).

While the HRC acknowledged that climate change has made Mr. Teitiota's life in Kiribati very challenging, it was not of the view that a threshold had been reached where the claimant and his family faced a real risk of irreparable harm or impairment of their right to enjoy a life with dignity. Yet the HRC failed to define what a reasonably high threshold would look like, in other words at what point would climate change impacts render human life so miserable that a violation of the human right to a life in dignity can be established beyond reasonable doubt.

In its decision, the HRC did not make any reference to climate justice. It did not refer to the fact that New Zealand is the fifth-highest emitter of greenhouse gases on a per-capita basis within the Organisation for Economic Co-operation and Development (OECD) and therefore bears a particular responsibility for the worsening environmental conditions in Pacific Island countries. The HRC also did not mention the inherent inequities in New Zealand's immigration laws which allow citizens from Pacific countries with territorial or free association status (Tokelau, Niue and the Cook Islands) to move freely to New Zealand, while subjecting several other countries in the South Pacific region, including Kiribati, to the Pacific Access Category scheme, which is essentially an annual lottery system.

It is important to note that the decision of the HRC was not unanimous (CCPR: 1). Two of its 18 members presented individual opinions, and both argued that the risk threshold for irreparable harm to the lives of Mr. Teitiota and his family had already been met (CCPR: 13–15). One dissenting committee member — Professor of Law Dr. Vasilka Sancin — argued that it would fall on the State Party (i.e. New Zealand) not the alleged victim to provide evidence that the latter would indeed be able to enjoy access to safe drinking water (CCPR: 15). Emphasizing the need to employ a 'human-sensitive approach to human rights issues' (CCPR: 13), the other dissenting member — Mr. Duncan Laki Muhumuza, legal adviser at the Mission of Uganda to the United Nations — contended that 'the threshold should not be too high and unreasonable' (CCPR: 13) and that it would be 'counterintuitive to the protection of life' (CCPR: 14) to wait until frequent deaths would occur to acknowledge that the risk threshold is indeed met. He likened New Zealand's refusal to accept Mr. Teitiota as a climate refugee to 'forcing a drowning person back into a sinking vessel, with the 'justification' that after all there are other voyagers on board' (CCPR: 14).

These dissenting views suggest that the international refugee regime is showing its first cracks when it comes to dealing with 'climate refugees'. In a recent position paper, the United Nations High Commissioner for Refugees concluded that '[p]eople seeking international protection in the context of the adverse effects of climate change or disasters may have valid claims for refugee status' (UNHCR 2020: 11). If such views become more mainstream, climate mobility justice claims may indeed have better prospects of being acknowledged in future judicial processes and policy forums.

Conclusion

As this essay has shown, New Zealand's policy approach to Pacific climate mobilities to date has focused on supporting in situ adaptation strategies and internal relocation

as a form of adaptation and development, despite the recognition that cross-border migration from several atoll island nations, such as Kiribati and Tuvalu, will become inevitable in the near future. None of the immigration policies currently in place respond specifically to the challenge of climate migration from the Pacific nor do they recognise that Pacific island countries are owed redress for New Zealand's disproportionate contribution to greenhouse gas emissions, e.g. in the form of New Zealand accepting a fair share of future climate migrants from the South Pacific (cf. Saad 2017). This perpetuates what Skillington (2015: 290) has described as a form of legal violence that 'makes a non-recognition of the climate displaced and their suffering not only possible but also wholly uneventful, unavoidable, and entirely legal'. Unless New Zealand acknowledges its historic and contemporary responsibilities for climate-related dislocation of Pacific island people, there is little hope for greater climate mobility justice in the region.

In response to Heyward and Ödalen (2016) who make the case for a free movement passport for those that have been territorially dispossessed by climate change, Vaha (2018) calls for acceptance of climate migrants by 'more developed' neighbours that do not only have the moral responsibility due to their disproportionate contribution to climate change but also have the resources to accommodate a growing number of climate migrants which would be a way to honour the UNFCCC's principle of 'common but differentiated responsibilities and respective capabilities'. She argues that such countries can play a critical role in regional leadership, which would certainly apply to New Zealand in its relation with its Pacific small island neighbours. New Zealand is already home to a large number of Pacific diaspora communities that could play a pivotal role in alleviating the adverse emotional, psychosocial, spiritual and cultural impacts of future climate mobility from the Pacific Islands (Yates et al. 2022; Böge 2021). The International Organization of Migration (IOM) has also suggested that New Zealand should consider removing its existing barriers to Pacific climate mobility (IOM 2021). In a similar vein, the General Secretary of the Pacific Conference of Churches, Rev. James Bhagwan has 'called for 'radical hospitality and neighbourhood' and a 'spirituality of hospitality'' (Böge 2021: 17). This resonates with a World Bank proposal in a 2017 report for a new 'Australia-New Zealand Atoll Access Agreement' to allow free labour market access to atoll countries, such as Kiribati and Tuvalu, which would require the expansion of the Pacific Access Category to all citizens of these countries (World Bank 2017).

However, such an agreement would need to consider the impacts of free access to New Zealand's shores on Pacific labour markets, social networks and the integrity of island cultures and institutions (cf. Barnett 2012). Otherwise, there is a real risk that pre-emptive climate migration might lead to a collapse of Pacific island societies long before their islands become uninhabitable as a result of climate change itself. Climate mobility planning also needs to address voluntary immobility by providing support for and respecting the rights of those groups that prefer to remain on their land because of strong attachment to place or because they fear potential new vulnerabilities in an unknown environment (cf. Farbotko et al. 2020).

Finally, moving to a more proactive approach to Pacific climate migration, the New Zealand government will need to honour its obligations to Indigenous Māori under Te Tiriti o Waitangi (The Treaty of Waitangi) which recognises Māori sovereignty and requires Māori to be considered as equal Treaty partners in negotiations on the acceptance of future Pacific climate migrants. Only then can further injustices in the relations between New Zealanders of European descent (Pākehā) and Māori communities be prevented.

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