

Defending the Planet: A Columbia Law Podcast **Episode 5: “The Climate Refugee Crisis”**

[00:00:05] **Ama Francis:** Most people would agree that the people who are most severely impacted by climate change are the people who contributed least to the problem.

[00:00:15] **Michael Doyle:** I would like us to discover ways that we can win, so to speak, by helping people we have harmed.

[00:00:23] **Francis:** Something that’s really exciting about U.S. policy right now is President Biden’s commitment to figuring out how to resettle and admit climate-displaced people.

[00:00:34] **Michael Gerrard:** This is *Defending the Planet* from Columbia Law School. I’m your host, Michael Gerrard. I’m a professor at Columbia Law School, where I teach courses on environmental and energy law and serve as faculty director of the Sabin Center for Climate Change Law. Each week, I’ll be joined by guests who are experts in the field, including several of my colleagues at Columbia. In this series, we’ll be talking about combating the climate crisis through one of the most important and effective sets of tools at our disposal: the law.

[00:01:05] **Gerrard:** The Marshall Islands sit six feet above sea level. As oceans rise, this tiny nation-state in the Pacific Ocean is at the highest risk of being wiped off the map, literally. Is a country still a country if it’s underwater? For the last decade, I’ve been working with officials in the Marshall Islands to advise on climate change and its impacts. What happens to people when their homeland is no longer habitable? Where will they go? What will be their citizenship? What rights will they have? Migration of people as a result of climate change is happening already on every continent, and it’s a challenge that’s presenting new legal questions on a near constant basis. In this episode, we dive into climate migration to talk about how existing human rights law and international cooperation can protect people fleeing the destructive forces of climate change.

[00:02:10] **Gerrard:** My guests today are Michael Doyle and Ama Francis. Michael Doyle is a university professor at Columbia and specializes in international relations theory, international security, and international organizations. He serves as senior fellow at the Carnegie Council and is an elected fellow of the American Academy of Arts and Sciences, the American Philosophical Society, and the American Academy of Political and Social Science. Ama Francis is the Climate Displacement Project strategist at the International Refugee Assistance Project, where they are developing a strategy in

collaboration with the Natural Resources Defense Council to expand legal protection for climate-displaced people. Until recently, Ama was a fellow at the Sabin Center. They are now a nonresident fellow with us. Ama is also a consultant to the Open Society Foundation's International Migration Initiative. Welcome, Michael and Ama.

[00:03:22] **Francis:** Thank you.

[00:03:24] **Doyle:** Thanks, Michael. Delighted to join you.

[00:03:27] **Gerrard:** Ama, you grew up in a small island nation in the Caribbean, Dominica. Can you tell us about how that experience sparked your interest in climate migration?

[00:03:37] **Francis:** Sure. Yeah, I grew up in Dominica, which is a small island in the Caribbean, as you said. And there are two things to know about Dominica. The first is that it's one of the most beautiful places on Earth. And the second is that climate change is one of our biggest threats. I think this was really brought home for me in 2017 when Dominica, my home island, was devastated by Hurricane Maria. Many of you will have remembered that Hurricane Maria devastated a number of other islands in the Caribbean, including Puerto Rico. For us in Dominica, Maria was just absolutely devastating. We lost the equivalent of over 200 percent of our GDP, some people died, and after the storm, about 20% of the population permanently left the island. When—I think at the time, I was already really engaged in climate and really cared about the issue. But I think Hurricane Maria really brought home the message for me that climate change isn't a far-off threat. It's something that's happening right now.

[00:04:52] **Gerrard:** Ama, can you give us a sense of the nature and magnitude of the climate displacement problem?

[00:04:58] **Francis:** So climate change and environmental degradation, they're already happening and the effects are driving people to flee their homes to an extent that's greater than conflict. So there are generally three types of movement. Most people are displaced within their home countries. So they're moving internally, what's called internal displacement. Some small number of communities in the U.S. and across the world have chosen to move en masse as a community to a safer location—planned relocation. And the third type of movement is generally cross-border, so people who are seeking shelter across borders in other countries. It's really difficult to precisely estimate how many people are moving in this sense. Estimates range from 25 million to 1 billion people by 2050. But these numbers are sort of hard to pin down because climate change interacts with a number of other factors to force people to leave home. That being said, we do know that environmental disasters—climate related and otherwise—are displacing more people than conflict and have been doing so since 2008. Just last year, climate and other environmental disasters—climate-related and other environmental disasters—triggered more than 30 million internal displacements. And this, again, was just last year, and that's three times the number of people who were displaced by conflict. I bring this up to say that while our legal structure is set up to deal with people who are fleeing political persecution or war, we don't really have the same legal architecture for dealing with people who are fleeing climate-related disasters.

[00:07:01] **Gerrard:** And it's not only sea level rise and flooding. It's also drought and desertification and loss of sea ice. And in time, it will be extreme in unsurvivable heat.

[00:07:13] **Francis:** That's right.

[00:07:14] **Gerrard:** The term "climate refugee" is often used, but that really isn't a legal category. Can you explain that?

[00:07:22] **Francis:** If you are going to gain refugee status in another country, you need to show that you've been persecuted in relation to your race, religion, nationality, ethnicity, or a particular social group. There's no climate category, so to speak. That has meant that a lot of people generally say that there's no such thing as a climate refugee. Something I was really excited to learn recently was that there are actually climate-displaced people that have already gained refugee protection in the U.S., in part because of climate change, when climate change, because climate change was interacting with one of these established grounds that I mentioned: race, religion, etcetera. While there's no climate category, so to speak, in the refugee definition, both here in the U.S. and also generally across the world, there are instances where climate change interacts with these established grounds for protection so that climate-displaced people are actually eligible for refugee protection status. But no court has yet agreed with me necessarily in all of the cases that have been tried. Generally, courts don't extend refugee status to climate-displaced people, but again, we are seeing some examples here in the U.S. where that's the case.

[00:08:38] **Gerrard:** There was litigation brought by a man from Kiribati, which is another one of the threatened island nations in the, in the Pacific trying to get refugee status in New Zealand. Michael, can you tell us about that?

[00:08:53] **Doyle:** Yes, he made a claim that being returned to Kiribati would fundamentally violate his basic human rights to survival. And this was heard by the Human Rights Committee. And with a divided vote, it nonetheless was judged that he could not sustain that claim. The dissent was just as interesting as the majority opinion. And a standard came forward I thought was quite interesting—a standard of irreparable harm. And the end judge, as it came through in my interpretation, was that he was able to demonstrate some harm, but not that it was irreparable. That is, that the government of Kiribati should have been able to address it. A number of commentaries have suggested that the committee's judgment was a little too easy. That is, that it's very hard to address the kind of harms that his island nation was facing and that some people questioned whether it was rightly decided. But we now do have some standard out there called irreparable harm that I think should influence debates going forward and hopefully will be developed in ways that are more protective.

[00:10:10] **Gerrard:** Michael, you've been one of the leaders of the effort to develop the Model International Mobility Convention. Can you tell us what that is and where it stands?

[00:10:21] **Doyle:** Yes, this is a model convention, sort of like a model international law that was put together by 40-plus experts over a two-year period beginning in 2015. And

the two distinctive features of it were that it was designed to be comprehensive and cumulative. Comprehensive in that it's designed to cover the variety of circumstances through which people move across borders: everything from visitors through tourists and students and labor migrants and investors and family reunification and then refugees and forced migrants. And second of all, it was designed to be cumulative. That is, the notion is that you needed to be able to realize some of your basic rights in differing degrees depending upon those differing circumstances. And as you move across the statuses that we described—you know, foreign student labor, etcetera—you need to be able to realize more and more of your rights until if you're a refugee or a forced migrant, you and your family really need to be able to realize all of those rights that you have been denied in your home country, including employment, etcetera, and eventually, even, in our view, citizenship rights. So that's the structure of it. And it was designed to fill some gaps in existing international law on mobility, and it was designed to create synergies among different parts of the law of mobility, including between labor visas and refugee resettlement, something we've worked on since. And it was designed to produce better criteria, designed to partly address the problem that Ama just mentioned: that existing refugee law doesn't cover all of the circumstances in which people are forced to flee to protect the lives of themselves and their family and therefore who have a real moral claim on our asylum but don't qualify under existing refugee law from the 1951 convention.

[00:12:36] **Gerrard:** So how would this help people who are displaced by climate change?

[00:12:41] **Doyle:** It would help people who are displaced by climate change because we came to the view after a lot of debating that the Refugee Convention of 1951, as Ama just described it, was too narrow. There are a lot of other reasons for which people flee to save their lives and livelihoods that need to be recognized under international law. And so what we decided to do was leave refugee status as it is in the '51 convention—persecution based on race, religion, nationality, social group, political opinion—leave it as it is, but add a new category that we call forced migrants, and that's anybody who was forced to flee from circumstances that put their lives at risk or that of their family or experiencing, you know, arbitrary incarceration or other crimes like torture, etcetera. And say that, for whatever reasons that you may be forced to flee, you would qualify for asylum under this new model convention. And so we decided to go to that as the right standard that would include people who are fleeing to save themselves from droughts, hurricanes, floods, etcetera.

[00:13:58] **Gerrard:** So you think that the definition of refugee under the 1951 Refugee Convention should be expanded to include all those people who are displaced by any number of these factors you're talking about?

[00:14:11] **Doyle:** No, we came to the decision after a lot of time that we shouldn't do that. That is, that we should keep the refugee definition in the '51 convention. There are countries that are skeptical about the protections that are built into the '51 convention, you know, that allow people asylum, that allowed them a status equal to foreign nationals, that preserve, you know, their basic freedoms of expression and etcetera. So instead, we created a new category, a broader category called forced migrants that has all of the asylum protections of the '51 convention and more. We say that you have

rights that, with regard to some areas like employment, etcetera, after you've been recognized as a forced migrant, that are equivalent to nationals, not foreigners. And there are a number of other protections that are built in. So in real terms, a refugee now becomes a 1951 refugee, now becomes a subset of our broader category called forced migrants, but we don't touch the words "refugee" or the '51 convention. We just want to build on it and expand it, not revise it.

[00:15:25] **Gerrard:** Ama, how do you feel about the idea of expanding the definition of refugee under the convention?

[00:15:31] **Francis:** I agree with Michael that now these aren't friendly times for renegotiating the definition of a refugee. I would only add that I think there are things that we can be doing, at least here in the U.S., to make sure that people who are eligible for protection because they're fleeing climate-related disasters aren't being left out of the protective scope of refugee status. There are things that we can do, like training our immigration officers here in the U.S. to recognize valid climate claims under U.S. refugee law. The Department of Homeland Security, for example, might issue guidance that clarifies how climate interacts with the U.S. definition of a refugee, which is based on the refugee convention that we're talking about.

[00:16:26] **Gerrard:** Ama, you've written about free-movement agreements. Can you tell us what those are and what relevance they have to climate displacement?

[00:16:34] **Francis:** Free-movement agreements are provisions—migration-related provisions—within regional trade agreements that make it easier for people to move between a set of participating states. So the most well-known example is the Schengen Area in Europe. But about 120 countries around the world participate in some sort of free-movement agreement. Usually the agreements are tied, as I mentioned, to major regional trade blocs, so the intent is to make it easier for goods, services, and also labor, i.e. people, to move from place to place. And I'm excited about free-movement agreements as a tool in the climate context for two reasons. The first is that they've already been used in this context in the Caribbean. I mentioned that in 2017, Hurricane Maria devastated my home island, Dominica. After, after that event, Dominicans were able to seek shelter in other islands in the Caribbean because of the rights that they had to enter and work in other islands through our own regional trade bloc in the Caribbean, the Caribbean community, and also the Organisation of Eastern Caribbean States. In East Africa, a set of East African countries have just negotiated their own free-movement agreement that expressly mentions people moving in the context of disasters and makes clear that people fleeing environmental disasters also will have rights to move under the agreement.

[00:18:14] **Gerrard:** I've written about the idea that the major emitting countries should each take a percentage of the world's population that is displaced by climate change roughly proportional to their contribution to the load of greenhouse gases in the atmosphere. For the U.S., that's now about 25%. Obviously, under U.S. politics it's inconceivable that the U.S. would agree to that. But do you think this idea has any sense—it makes sense as a matter of moral responsibility? And do you think that there's any way that over time some countries might accept that kind of responsibility?

[00:18:56] **Doyle:** You know, from the moral point of view, we collectively—the industrial countries and the U.S. at 25% of the burden individually—are creating harms on people who have no direct causal connection to the creation of the harms. There's something that, you know—I'm writing something with a couple of colleagues—Janine Prantl and Mark Wood—and we're calling something related to what you described, sort of moral tort liability in the sense that we're creating harms that should be redressed and climate is clearly one of them. I would add that to a second factor, which is that, you know, 85% of the world's refugees today are being taken care of, hosted by developing countries. And the reason is that they happen to be next door to a lot of civil wars. This is an unfair distribution. So we put these two things together and clearly we should have a much fairer distribution of responsibilities. So I would be 100 percent with the countries that have created these harms to try to redress them. As somebody who's worked in international politics at the U.N. and elsewhere, frankly, I'm a little skeptical that countries step up and recognize the guilt for harms that they've done. There are very few exceptions in history. You know, to my mind, countries, unfortunately, typically respond to self-interest and to a certain extent in very limited ways to the reputational benefits of seeming to do your share and do good. But the first is much more powerful. So I would like us to discover ways that we can win, so to speak, by helping people we have harmed. I know that sounds difficult, but I think that's an avenue for addressing these problems. Labor visas is one way that we could give priority to refugees.

[00:21:15] **Gerrard:** I mean, you've written about the idea of creating a mobility visa clearinghouse. Can you tell us about that?

[00:21:21] **Doyle:** In general, countries should create a more regularized institutional environment for bringing in labor to fill jobs that are not going to be filled by nationals. If this country, the U.S., is going to continue to grow—and we want it to—we will need immigrant labor, given the demographic profiles that we see today. And we can identify likely jobs that will not be filled unless immigrants play some role in filling them. And we should prioritize those immigrant labor jobs for people who actually need to flee their country as well, because there are many refugees and forced migrants who have substantial skills that they would like to practice, ideally back in their home countries after it's been restored and are back on a development path. But if not, then as immigrants.

[00:22:23] **Gerrard:** Ama, do you have thoughts on this issue of the moral responsibility of developed countries to take in people who are displaced by climate change?

[00:22:32] **Francis:** I think we, most people, would agree that the people who are most severely impacted by climate change are the people who contributed least to the problem, and you could say the same for countries. And so from that perspective, I do think that here in the U.S., where we largely benefit from carbon pollution and in other countries, industrialized countries that have benefited from that carbon pollution as well, I definitely agree that there's a moral responsibility to take in people. And like Michael, have also, as a pragmatist, tried to think of ways that we can actually incentivize countries to open up ways for people to migrate regularly. And here, you know, I would just, I guess, highlight that something that's really exciting about U.S. policy right now is President Biden's commitment to climate change and specifically his commitment to figuring out how to resettle and admit climate-displaced people. You know, he issued an

executive order in February requiring a report on climate displacement and how to admit climate-displaced people. So I guess I would just—I bring that up to just push back just a little bit against the premise of the question, which is that it's not politically feasible. I think actually there are some governments that understand this as a, as a moral issue and also realize from a practical standpoint that migration is happening. It's in countries' benefit to be able to manage that by setting out clear ways that people can enter a country, and that from an economic standpoint, also for the reasons that Michael expounded on, bringing in laborers is a good thing. And on that point, I would add, though, that it's really important that these labor pathways also be complemented by humanitarian pathways as well because although most migrants are of working age, not everyone is able to work who might need protection. Elderly people, people with disabilities, children, for example, may not be able to work. And it's also important that built into these labor mobility schemes is a respect for international labor, labor standards, and access to decent work. So I am generally on the side of migration can be a win-win situation, but we need to make sure that there are, sort of, there's a respect for rights built into that so that it actually is a win-win and not an exploitative situation.

[00:25:15] **Gerrard:** Do you think there are other ways that international organizations or international law can help address the issues of climate displacement?

[00:25:24] **Francis:** I do. I think in recent years there have been a number of really exciting developments. The Paris Agreement, for example, set up a task force on displacement to study and figure out responses to this issue of climate displacement. More recently, the Global Compact on Safe, Orderly and Regular Migration, which was the first intergovernmentally negotiated migration agreement, mentions climate change and highlights specific policy tools that national governments can adopt to, to admit people who are fleeing all sorts of climate-related disasters. International law is, especially in recent years, has been doing more on climate displacement, which is a really good sign. And I think one of the most important things that international law and organizations can be doing on climate displacement is to be really pushing forward this normative shift to more admission pathways, more migration pathways for people who are on the move. And I would just also add that it's really important not to forget the regional level as well. The U.S. in 2016, for example, endorsed guidelines on the protection of people moving across borders in the context of climate change in disasters as part of the Regional Conference on Migration, which a number of our allies in the Americas participate in. And so there's a lot of movement at the regional level as well. And I'm excited by that.

[00:27:03] **Gerrard:** We've mostly been talking about international migration, but there has been quite a bit of displacement within the United States caused by climate change. Of course, in the 1930s, we had the Dust Bowl where millions of Americans from the middle part of the country migrated mostly to the west because of the persistent drought. We have internal displacement today in the United States and we'll face a lot more of it with coastlines that are flooding and more recently with the wildfires that have been so terrible in the West. Aha, can you talk a little bit about that?

[00:27:40] **Francis:** There are some estimates that there will be some 13 million people displaced by sea level rise in the U.S. within this century. And, of course, there are

indigenous communities in the U.S. who are already undergoing planned relocation—at least two who have decided as a community to move in Alaska and who are doing so in Louisiana. And so you're absolutely right: Climate displacement is an issue that's happening here in the U.S., and, unfortunately, the story in terms of our legal frameworks and normative frameworks is not a hopeful one. We also don't have adequate U.S. laws or frameworks in place to deal with this issue. So it's a big challenge as well.

[00:28:31] **Gerrard:** A major question is, move to where? And if we are going to be moving millions of people, tens of millions of people, where are they going to go? This is really what I think is going to be one of the major policy and legal challenges in the decades to come. Aha, I think you consider yourself an environmental social justice advocate. You once said that now that you live in the U.S., you realize that climate change is an issue about inequality not only between countries but also between people from different racial and socioeconomic backgrounds. Can you expand on that a little bit?

[00:29:10] **Francis:** I think the simple way to explain this is that inequality structures outcomes. The communities who are hardest hit by any crisis, whether that's COVID or climate, tends to be low income and communities of color, and that's because of a legacy of systemic inequality, racism. That means that resources are concentrated predominantly in not only predominantly white communities but also predominantly white countries. So the countries that are most impacted by the climate crisis, for example, are countries that are predominantly of color and generally under-resourced. And again, that's no accident. It's linked to histories of colonization, systemic racism, which means that resources have been unequally concentrated. And resources, as we know, is what allows communities and countries to withstand crisis. If we think about a storm hitting a small island state—like a hurricane, for example. A Category 5 hurricane, which is the strongest type of hurricane, hits Dominica, my home island, and that's devastating. For us, that was what our then-prime minister described as war, absolute war. If that same hurricane hits, say, New Orleans, it's also really devastating. But the whole country of the U.S. is not totally side-railed by that one environmental event. If you zoom in even closer, though, the African-Americans in New Orleans are much more severely affected by that one environmental event than generally, the wealthier, white people who live in that same place. And there's been great work about discriminatory access to disaster aid and relief here in the U.S. I think what's really exciting about this moment is the effort and the desire really to shift that. And I've been really heartened by the efforts of our institutions and our communities and our families to really think about how can we be redistributing and rethinking how resources are concentrated so that we all have the capacity to cope with these crises that come with being human.

[00:31:40] **Doyle:** But one of the things—I know this sounds a bit ironic in some way—that makes me hopeful about social change on this issue is that climate change affects not just those who are most vulnerable but many people who thought they were relatively invulnerable. To give you an example, we have friends who live on a very nice lake in upstate New York with pretty homes and whatnot. Nonetheless, even for these people, the variability in the level of the lake that they're on, produced by big swings and rainfall at various seasons—much more than they're used to—require them to rebuild their docks every year. Now, measured against the lives of people in New Orleans or

Dominica, this is trivial, understood. But nonetheless, one of the striking things about climate change is it gets the attention of those who were well-off in addition to those who were much less well-off. And that makes me, as a cynical political scientist, a little bit more hopeful of change.

[00:32:54] **Gerrard:** Do you see scenarios in your mind for what the, of the future, in future decades will bring with respect to climate change displacement and the resulting geopolitical implications of that?

[00:33:10] **Doyle:** Yeah, I see a decent scenario and an indecent scenario. The indecent scenario is that the wealthy countries start building walls around themselves or sending naval patrols to the seas around themselves, pushing back desperate persons onto the countries that they're fleeing and, you know, severe emergencies in places like South Asia. I think you've mentioned the vulnerability of the Bangladesh coastal areas to long-term flooding. Imagine that taking place and pushing people, you know, in large numbers, into India. India once before was a very generous host to people from that region. Will they be so in the future? We don't know. And imagine similar evolutions in Central America pushing people north to the U.S. Imagine the Mediterranean. It would be an armed world, an armed camp with large levels of, let's call it ordinary violence. And that's a grim, grim scenario. But I can also see a more decent future wherein we establish regimes that allow for the movement of desperate people, that provide regular pathways of mutual benefit to developed and developing countries, putting them on a path of growth. And, most importantly, if this is going to be work, very substantial investment in climate mitigation in the following ways: That is, moving to a greener industrial path in places like Europe, North America, and Northeast Asia, China, India, and elsewhere, and also investing in the resilient mitigation that might involve the movements of some people from vulnerable areas and investing in other places in which which they would live. And so I see those two scenarios out there, and I don't know whether you're asking me which one is more likely. And, unfortunately, I don't have a clear instinct on that matter except to say that we should realize how bad the indecent one is and how tolerable the decent one is. And we should take whatever efforts we can to move toward a much more decent future.

[00:35:44] **Gerrard:** Michael and Ama, thanks so much for joining us.

[00:35:47] **Francis:** Thank you.

[00:35:48] **Doyle:** Delighted to have joined you.

[00:35:51] **Gerrard:** My guests today were Michael Doyle and Ama Francis. Join me next time for another episode of *Defending the Planet*, and make sure to follow us wherever you get your podcasts. Thanks so much for listening. *Defending the Planet* is brought to you by Columbia Law School and is produced by the Office of Communications, Marketing, and Public Affairs at Columbia Law School. Our executive producer is Michael Patullo. Julie Godsoe, Nancy Goldfarb, and Cary Midland, producers. Editing and engineering by Jake Rosati. Writing by Martha Moore and Dan Shaw. Production coordination by Zoë Attridge. Special thanks to Michael Burger and the Sabin Center for Climate Change Law. If you like what you hear, please leave us a review on your podcast platform. The more reviews we have, the more people will get to

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