

Rethinking the status and protection of environmental migrants under international law

di Paola Puoti

Abstract: Ripensare lo status e la tutela dei migranti ambientali nel diritto internazionale – This paper argues that the definition of persons moving to escape environmental degradation and climate change should focus not on the causes of migration but on individuals' vulnerability and the prevention of irreparable harm. Building on this premise, the author proposes a reinterpretation of the non-refoulement principle grounded in the indivisibility and interdependence of all human rights - including economic, social and cultural rights - and in the principle of effectiveness, which requires States to safeguard the essential content of rights at risk upon return. From this preventive, dignity-based perspective, non-refoulement must also cover foreseeable severe deprivations, thereby reshaping international protection frameworks.

Keywords: International mobility; Environmental migrants; Vulnerability; Non-refoulement; Socio-economic rights

285

1. The Global South and the unequal burden of climate mobility: reassessing legal responsibility and protection gaps

The struggle against climate change and its devastating environmental and human consequences - alongside migration driven by environmental and climatic factors - constitutes one of the most complex global challenges of the twenty-first century. Climate change intensifies both rapid¹ and slow-

• This article has been realized within the activities of the Jean Monnet Module “CLIMOVE-U – *Climate Migration Governance: Legal Protections for Environmental Displaced Persons in the European Union*”, funded by the Erasmus+ Programme of the European Union (Project n. 101238566. Call: ERASMUS-JMO-2025-HEI-TCH-RSCH; Topic: ERASMUS-JMO-2025-MODULE). *Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor the granting authority can be held responsible for them.*

¹ According to the World Meteorological Organization, «extreme weather and climate events include, but are not limited to, heatwaves, cold waves, floods, extreme precipitation, droughts, tornadoes, and tropical cyclones»: World Meteorological Organization, *Guidelines on the Definition and Characterization of Extreme Weather and Climate Events* WMO-No. 1310, 2023, 3 (digitallibrary.un.org/record/4012890?v=pdf). With the exception of drought - which develops gradually and is classified as a slow-onset event - all others occur suddenly and may be categorized as rapid-onset events.

onset² phenomena that exacerbate poverty and displacement³, particularly in the Global South, whose populations bear the brunt of impacts such as land degradation, resource scarcity, and loss of livelihoods, despite contributing minimally to greenhouse gas emissions⁴.

Scholars have emphasized that, according to the International Organization for Migration (IOM), climate change influences migration through the intensification of natural disasters, degradation of living conditions, sea-level rise, and competition over natural resources⁵. The IPCC⁶ estimates that 3.3 billion people live in countries highly vulnerable to climate impacts⁷, while according to the UNHCR, there is a clear interrelationship between the climate crisis and human displacement: in 2022, climate-related disasters triggered more than half of all new displacements worldwide, and almost 60% of refugees and internally displaced persons lived in countries most vulnerable to climate change⁸. As emphasised by the Special Rapporteur on Extreme Poverty and Human Rights in his 2019 report to the Human Rights Council, the primary responsibility for climate change lies with the Global North and its citizens⁹. Indeed, the wealthiest ten percent of the world's population produce half of all global carbon emissions, while the poorest half - around 3.5 billion people - generate only a tenth. The richest one percent emit 175 times more carbon

² Decision 1.CP/16, defines *slow-onset events* as phenomena that «refer to the risks and impacts associated with increasing temperatures, desertification, loss of biodiversity, land and forest degradation, glacial retreat and related impacts, ocean acidification, sea level rise, and salinization»: UNFCCC (2010), *Cancun Climate Change Adaptation Framework Decision* - adopted as part of the 2010 Cancun Agreements of COP16, Decision 1.CP/16 para 25 in nota 3, unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf.

³ The interrelationship between climate change and human rights is widely acknowledged: UNHCR, *Legal Considerations Regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters*, in 33(1) *Int' J. Refugee L.* 151 (2021); Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, *Understanding Human Rights and Climate Change*, 2015; CoE Parliamentary Assembly, *Climate and migration*, 20 April 2021, para 7.3.

⁴ Human Rights Council, *The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations*. Report of the Secretary-General, UN Doc. A/HRC/50/57, 6 May 2022, para 6, which notes that the least developed countries contribute only for 2% of global greenhouse gas emissions, whereas the G20 States are responsible for approximately 80%.

⁵ A. Brambilla, *Migrazioni indotte da cause ambientali: quale tutela nell'ambito dell'ordinamento giuridico europeo e nazionale?*, in *Dir. imm. citt.*, 2017, n. 2, 1, 3.

⁶ The Intergovernmental Panel on Climate Change (IPCC) is a scientific body established in 1988 by two United Nations organizations -the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP)- with the mandate to study global warming.

⁷ Human Rights Council, *Providing legal options to protect the human rights of persons displaced across international borders due to climate change*, UNGA A/HRC/53/34 18 April 2023, para 11.

⁸ K. Siegfried, *Climate change and displacement: the myths and the facts*, UNHCR, 15 November 2023, www.unhcr.org; HRC, *The impacts of climate change on the human rights of people in vulnerable situations*. Report of the Secretary-General, UN Doc. A/HRC/50/57, 6 maggio 2022, para 6.

⁹ U.N. Human Rights Council, *Climate Change and Poverty*, U.N. Doc. A/HRC/41/39 (July 17, 2019), para 14.

than those in the bottom ten percent, who are also far more likely to be displaced by slow-onset climate impacts¹⁰.

Quantifying cross-border movements linked to environmental degradation remains difficult, due to the complex interplay of environmental, political, and socioeconomic factors¹¹. Estimates of ‘climate migrants’ range widely - from 25 million to 1 billion people, with 200 million being the most commonly cited estimate¹². Projections suggest that by 2050, about 143 million people in the Global South may be affected, leading to diverse forms of ‘human mobility’, a concept now used by international organizations to encompass migration, displacement, and planned relocation¹³.

Distinguishing environmental migration, displacement and planned relocation is essential within the broader framework of human mobility¹⁴. Environmental migration encompasses voluntary or involuntary movements prompted by sudden or gradual environmental change¹⁵, with climate migration referring specifically to movements linked to climate change¹⁶ and economic migration to those driven primarily by economic factors¹⁷. Displacement, by contrast, denotes predominantly forced movements resulting from conflict, human rights violations or disasters¹⁸, while slow-onset environmental processes generally give rise to voluntary, adaptive migration¹⁹. Finally, planned relocation describes an organised, often State-assisted process through which individuals or communities are moved from environmentally degraded or disaster-prone areas to safer

¹⁰ *Ibidem*.

¹¹ The *World Migration Report 2024* states that in contrast to the relatively reliable data available on ‘internally displaced persons’ (hereinafter IDPs), it is far more difficult to estimate the number of individuals who migrate abroad each year for reasons related to environmental degradation, including those associated with climate change. This difficulty arises from a range of factors: the diverse nature of the phenomena involved - whether rapid or slow-onset; the voluntary or forced, temporary or permanent character of such movements; the challenge of distinguishing environmental drivers from political, social, and economic ones; and, finally, the differing capacities of States and communities to adapt, build resilience, and prevent risk: see M. McAuliffe, L.A. Oucho (Eds.), *World Migration Report 2024*. International Organization for Migration (IOM), Geneva, 2024, Ch. 7.

¹² F. Laczko, C. Aghazarm, *Migration, Environment and Climate Change: Assessing the Evidence*, IOM, 2009, 5.

¹³ A.I. Almulhim, G.N. Alverio, A. Sharifi, et al., *Climate-induced migration in the Global South: an in depth analysis* in *nþj Clim. Action* 3, 47 (2024).

¹⁴ These movements are increasingly framed under the concept of ‘human mobility’: Advisory Group on Climate Change and Human Mobility, *Human Mobility in the Context of Climate Change* UNFCCC - Paris COP21 (2015); Human Rights Council (HRC), *Report on the slow-onset effects of climate change and human rights protection for cross-border migrants* (hereinafter 2018 *Slow-onset report*) (A/HRC/37/CRP.4), 22 March 2018, para 16.

¹⁵ A. Sironi, C. Emmanuel, M. Bauloz, M. Emmanuel, *Glossary on Migration*, in 34 *International Migration Law* 2019, (hereinafter IOM, *Glossary on Migration*, 2019) under the term: *Environmental Migration*, publications.iom.int/.

¹⁶ *Ibidem*, under the term *Climate migration*.

¹⁷ *Ibidem*, under the term *Economic Migration*.

¹⁸ *Ibidem*, under the term *Displacement*.

¹⁹ 2018 *Slow-onset report*, cit., para 16.

locations where they can rebuild their lives²⁰. The relationship between climate change, environmental degradation, and human mobility - whether voluntary or forced, internal or international - is now widely recognized in both international practice²¹ and legal scholarship²², even though these factors cannot be entirely disentangled from other drivers of human movement, such as armed conflict or severe socioeconomic crises²³. Nonetheless, such movements raise a number of legal challenges, including definitional ambiguities, particularly in distinguishing between refugees and climate or environmental migrants, according to the causes and/or the voluntary or forced nature of their movement; and the absence of specific international norms for the protection of those affected. These issues collectively represent a complex and pressing challenge for the international community as a whole.

2. The quest for definition: persons escaping environmental degradation and climate change

A wide range of terms has been advanced to describe individuals who leave their homeland as a result of environmental degradation and/or climate change, among them 'climate migrant'²⁴, 'environmental migrant'²⁵, 'environmentally forced migrant'²⁶, 'persons displaced by climate change'

²⁰ IOM, *Glossary on Migration*, 2019, under the term: *Planned relocation*, according to which while the term 'relocation' refers to «[T]he transfer and integration of internally displaced persons into another geographical area within the same country as one of the three forms of durable solutions», the term 'resettlement' (refugees) is employed to indicate «[T]he transfer of refugees from the country in which they have sought protection to another State that has agreed to admit them – as refugees – with permanent residence status».

²¹ *Ex multis: Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Nansen Initiative, December 2015, para 25; *Global Compact for Safe, Orderly and Regular Migration (GCM)* which clearly identifies slow-onset environmental degradation, natural disasters, and climate change as drivers of contemporary migration (in particular Objectives 2 and 5 of the GCM). At the European level: CoE Parliamentary Assembly, *Climate and migration* cit.

²² *Ex multis* F. Amato, V. Carofalo, A. Del Guercio, A. Fazzini, V. Grado, E. Imparato, A. Liguori (Eds.), *Climate change, human rights And international migration - Cambiamento climatico, Diritti umani e migrazioni internazionali*, Napoli, 2025; I. Boas, H. Wiegel, *Environmental Change and Migration*, in H. Money, H. Lockhart (Eds.), *Introduction to International Migration: Population Movements in the 21st Century* (1st ed.), New York, 2021.

²³ Id., *ibidem*.

²⁴ L. Nishimura, 'Climate Change Migrants': *Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, in 27 *Int'l J. Refugee L.* 107, 111 (2015); P. D. Warren, *Forced Migration After Paris COP21: Evaluating the "Climate Change Displacement Coordination Facility"*, in 116 *Colum. L. Rev.*, 2103 (2016), scholarship.law.columbia.edu/sabin_climate_change/194.

²⁵ D.C. Bates, *Environmental Refugees? Classifying Human Migrations Caused by Environmental Change*, in 23(5) *Population Env't* 465 (2002).

²⁶ F.G. Renaud, O. Dun, K. Warner, J. Bogardi, *A Decision Framework for Environmentally Induced Migration*, in 49(1) *Int'l Migration* 5 (2011); E. Piguet, *Climate change and forced migration*, Research Paper No. 153, (2008), <http://www.unhcr.org>.

²⁷, ‘environmentally displaced person’²⁸, ‘climate refugees’²⁹ and others. Yet, no single definition has gained universal acceptance³⁰. This so-called ‘definitional chaos’, as aptly described in academic literature³¹, stems largely from the fact that attempts to classify such movements have traditionally relied on two unstable parameters: the *causes* of mobility and the *degree of voluntariness* in the decision to move.

Indeed, the classification of persons displaced by environmental degradation and climate change is central to determining the legal regime governing their movement, yet remains conceptually and legally contested. While the term ‘climate refugees’ was first introduced in 1985³², organisations such as the IOM favour the broader notion of ‘environmental migrants’ to capture the multi-causal and diverse forms of mobility involved³³. This Author and several scholars have likewise adopted this definition³⁴. Other scholars use ‘climate change migrants’³⁵, whereas the category of ‘refugee’ is generally rejected, as those affected do not meet the 1951 Convention criteria³⁶. Recent UN practice adopts neutral formulations – such as ‘persons displaced across international borders due to climate change’, precisely to avoid restrictive or misleading labels³⁷. As McAdam notes, however, displacement linked to climate change is inherently multi-causal, underscoring the persistent conceptual uncertainty surrounding how best to categorise these movements and the significant implications this has

²⁷ L.R. Brown, P.L. McGrath, B. Stokes, *Twenty-two dimensions of the population problem*, Washington, 1976, 83.

²⁸ R. Zetter, *Protecting environmentally displaced people: developing the capacity of legal and normative frameworks*, Refugee Studies Centre, 2011, www.rsc.ox.ac.uk/publications/protecting-environmentally-displaced-people-developing-the-capacity-of-legal-and-normative-frameworks.

²⁹ F. Biermann, I. Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, in 10(1) *Glob. Env'l Pol.* 60 (2012); A. Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, in 30 *L. & Pol'y* 502 (2008); K.M. Wyman, *Responses to Climate Migration*, in 37 *Harv. Env'l. L. Rev.* 167, 172 (2013).

³⁰ F. Biermann, I. Boas, *Preparing for a Warmer World...*, *op. cit.*, 61; F. Laczko, C. Aghazarm, *Migration, Environment and Climate Change...*, *op. cit.*, 5.

³¹ G. Sciacaluga, *International Law and the Protection of “Climate Refugees”*, Cham, 2020, 57.

³² E. El-Hinnawi, Report: *Environmental Refugees*, United Nations Environmental Program, Nairobi, 1985, 4 in digitallibrary.un.org/record/121267. See also Z. MALIK, *Protecting the unrecognised: how can current international protections and frameworks be reformed to better safeguard ‘climate refugees’?*, Cranfield University 2019, 3.

³³ “IOM, *Discussion note: Migration and the Environment*, Ninety-fourth session, MC/INF/288, 2007”, IOM, 2020, environmentalmigration.iom.int.

³⁴ D.C. Bates, *Environmental Refugees? ...*, *op. cit.*; C. Scissa, *The Principle of non-refoulement and Environmental Migration: a Legal Analysis of Regional Protection Instruments*, in *Diritto, Immigrazione e Cittadinanza*, 2022, 3, 1 ff., clarifying in fn 2 her intention to adopt the IOM's definition.

³⁵ P.D. Warren, *Forced migration after Paris COP21...*, *op. cit.*, 2113.

³⁶ See *infra* subpara 2.1.

³⁷ Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Providing legal options to protect the human rights of persons displaced across international borders due to climate change*, 18 April 2023, UNGA A/HRC/53/34.

for access to international protection³⁸. This debate highlights the persistent conceptual and legal uncertainty surrounding how best to define and categorize human mobility linked to environmental degradation and climate change, an uncertainty that has profound implications for the recognition and protection of those most affected.

2.1 Climate-induced displacement and the limits of the refugee paradigm

The term ‘climate refugees’, though widely employed in public and *media* discourse to refer to individuals displaced by environmental or climate-related factors, does not accurately or adequately reflect their legal *status*. Indeed, Ionescu, the Head of the Migration, Environment and Climate Change (MECC) Division of the IOM, rightly pointed out that reducing the issue of migration in the context of climate change to the single category of ‘climate refugee’ fails to capture the complex realities that define human mobility under environmental and climatic stress³⁹. Migration linked to climate change is largely internal rather than cross-border, leaving affected persons under the jurisdiction and responsibility of their own States. Moreover, such movements are not always forced; in the case of slow-onset processes, they often represent constrained choices or adaptation strategies rather than flight from immediate peril⁴⁰. In her view, the environmental, climatic, economic, political, and social drivers of migration are deeply intertwined, making it nearly impossible to isolate one predominant cause⁴¹. Establishing a specific ‘climate refugee’ *status* could thus have counterproductive effects, excluding those most in need, particularly poorer migrants, whose movements result from multiple overlapping vulnerabilities and who could not prove a direct link to environmental causes⁴². According to Ionescu, debates on climate migration should prioritize prevention by investing in environmental and climate action to avert forced displacement: the Paris Agreement provides a foundation, in this regard, for integrating human mobility into broader strategies to prevent, minimize, and address climate-related displacement⁴³. From this perspective, the expert emphasizes that the IOM calls for the full use of existing legal frameworks - both binding and soft law - across humanitarian, human rights, refugee, disaster management, and migration regimes. A human rights-based approach remains essential: States of origin bear the primary responsibility for protecting their citizens, even if they have

³⁸ J. McAdam, *Addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders*, Submission to the UN Special Rapporteur on the Promotion and Protection of Human Rights in the context of Climate Change, 7 November 2022, par. 1, www.ohchr.org/en/calls-for-input/2022/call-inputs-report-addressing-human-rights-implications-climate-change.

³⁹ D. Ionescu, *Let's Talk About Climate Migrants, Not Climate Refugees*, 06 June 2019, www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/#.

⁴⁰ Id., *ibidem*.

⁴¹ Id., *ibidem*.

⁴² Id., *ibidem*.

⁴³ Id., *ibidem*.

contributed least to global emissions⁴⁴. In essence, Ionescu argues that expanding regular migration pathways - such as humanitarian visas, temporary protection, residence permits, and regional or bilateral free movement agreements -, offers concrete and flexible avenues to protect climate-affected persons and facilitate adaptive migration strategies in response to environmental degradation and disasters⁴⁵.

2.2 Not by choice: challenging the 'economic migrant' label in environmental and climate-induced mobility

While categorizing those fleeing environmental and climatic events as 'refugees' proves unsatisfactory, their classification as 'economic migrants' is likewise difficult to sustain⁴⁶. As discussed above, human mobility rarely results from a single cause⁴⁷. Climate change typically operates as one among several interlinked drivers - economic, political, and social - rather than as an isolated determinant. Both rapid and slow-onset phenomena can lead to displacement: floods and hurricanes on the one hand; desertification, drought, and sea-level rise on the other⁴⁸. The latter often degrade land and livelihoods to the point of uninhabitability, provoking social tensions and competition over scarce resources⁴⁹. These secondary consequences may in turn generate conflict, threatening international peace⁵⁰ and transform what

⁴⁴ Id., *ibidem*.

⁴⁵ Id., *ibidem*. For a detailed discussion of this issue, see *infra*, para. 4.

⁴⁶ S.F. Martin, *Environmental Change and Human Mobility: Trends, Law and Policy* in 42 *Comp. Population Stud.* 187 (2017); G. Cataldi, *La distinzione tra rifugiato e migrante economico: una dicotomia da superare?*, in G. Nesi (Ed.), *Migrazioni e diritto internazionale: verso il superamento dell'emergenza?*, Napoli, 2018, 585; F. Cortese, *La difficile "classificazione" dei migranti*, in M. Savino (Ed.), *La crisi migratoria tra Italia e Unione europea*, Napoli, 2017, 141; F. Vassallo Paleologo, *Migranti economici e richiedenti asilo: una divisione che discrimina. Le nostre soluzioni*, 5.9.2016, www.a-dif.org.

⁴⁷ Office of the United Nations High Commissioner for Refugees (OHCR), *Forced Displacement in the Context of Climate Change: Challenges for States Under International Law*, AWG-LCA 6) 2, May 20, 2009, <http://www.unhcr.org/4a1e4d8c2.htm>.

⁴⁸ UNHCR, *Key Concepts on Climate Change and Disaster Displacement*, www.unhcr.org/protection/environment/5943aea97/key-concepts-climate-change-disaster-displacement.html.

⁴⁹ *Ibidem*.

⁵⁰ As correctly pointed out in the IACHR Advisory Opinions OC-23/17 and OC-32/25 environmental impacts can threaten the right to peace, since displacements caused by environmental degradation often unleash violent conflicts between the displaced population and the population already settled in the territory to which the former is displaced: see IACHR Advisory Opinion OC-23/17, *The environment and human rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2 of the American Convention on Human Rights*, 15 November 2017, Series A No. 23, para 66, www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf; IACTHR Advisory Opinion OC-32/25, *The Climate Emergency and Human Rights (Interpretation and scope of Articles 1(1), 2, 4(1), 5(1), 8, 11(2), 13, 17(1), 19, 21, 22, 23, 25 and 26 of the American Convention on Human Rights; 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," and I, II, IV, V, VI, VII, VIII, XI, XII, XIII, XIV, XVI, XVIII, XX, XXIII, and XXVII, of the American Declaration of the*

initially appear as voluntary adaptive movements into forced displacement⁵¹. Countries such as the Democratic Republic of the Congo, Somalia, Sudan, Syria, and Yemen exemplify the complex interplay between environmental stress, resource scarcity, and conflict, demonstrating the practical difficulty of determining whether climate change functions as an independent driver of migration⁵². In such contexts, drawing clear distinctions between economic migration, flight from conflict, and displacement linked to environmental decline becomes nearly impossible, especially in cases involving slow-onset processes⁵³.

Evidence suggests that these gradual phenomena will account for the majority of future cross-border movements⁵⁴. A Council of Europe report confirms that climate change is already altering demographic distributions, with most mobility occurring within and between neighbouring countries as a response to slow-onset climatic processes⁵⁵. Yet, persons affected by such conditions are typically classified as ‘economic migrants’, a category that excludes them from international protection unless they also come from countries experiencing war or generalized human-rights violations. Once abroad, migrants rarely invoke climate change as the cause of their departure, instead framing their claims within conventional legal categories, such as conflict or persecution⁵⁶.

Paradoxically, even small island States at existential risk from rising sea levels have often rejected the label ‘climate refugee’⁵⁷. Notably, New Zealand’s 2017 proposal to introduce a humanitarian visa for ‘climate refugee’ from Pacific Island nations was declined by the very States concerned, whose governments continue to regard migration as a last resort rather than an adaptive strategy⁵⁸.

Rights and Duties of Man), 3 July 2025 Series A No. 32 para 421, jurisprudencia.corteidh.or.cr/en/vid/1084981967.

⁵¹ A recently published study identifies five distinct scenarios of human mobility associated with environmental degradation and climate change. In addition to rapid- and slow-onset events, it examines the phenomenon of so-called ‘sinking islands’, the outbreak of violence and conflict resulting from resource depletion, and the designation of ‘high-risk zones’ considered too hazardous for human settlement: see W. Kaelin, H. Entwisle Chapuisat, Report on the *Protection of persons displaced across borders in the context of disasters and the adverse effects of climate change. A review of literature, legislation and case law to support the implementation of the global compact on refugees*, UNHCR – Platform on Disaster Displacement (PDD), April 2024 (hereinafter W. Kaelin, H. Entwisle Chapuisat, *2024 Report*), 9, disasterdisplacement.org.

⁵² Alliance of Bioversity International and International Centre for Tropical Agriculture, *Forced displacement in the context of the adverse effects of climate change and conflict. Global trends: Forced displacement in 2023*, United Nations High Commissioner for Refugees (UNHCR), 2024.

⁵³ R. Berkower, *As the Tide Rises: Addressing the Legal Gap in International Climate Migration Governance*, in 3 *The Interdependent* 1 (2022), doi.org/10.33682/akqn-as8v; A. Brambilla, *Migrazioni indotte da cause ambientali...*, *op. cit.*, 8.

⁵⁴ P.D. Warren, *Forced migration after Paris COP21...*, *op. cit.*, 2108–2109.

⁵⁵ CoE Parliamentary Assembly, *Climate and migration*, *cit.*, para 2.

⁵⁶ J. McAdam, ‘Protection’ or ‘migration’? *The ‘climate refugee’ treaty debate in Climate change, forced migration, and international law*, Oxford, 2012, 186.

⁵⁷ J. Mcadam, M. Loughry, *We aren’t refugees*, in insidestory.org.au, 30 June 2009.

⁵⁸ H. Dempster, K. Ober, *New Zealand’s “Climate Refugee” Visas: Lessons for the Rest of the World*. Center for Global Development January 23, 2020,

2.3 Reassessing the legal classification of environmental and climate-displaced persons

The voluntary/forced dichotomy plays a central yet problematic role in classifying movements linked to environmental degradation and climate change. Both the IOM and the UN Human Rights Council differentiate between “predominantly forced” and “predominantly voluntary” movements, yet acknowledge the fluidity between these categories. This linguistic flexibility reflects a conceptual tension: it is often artificial to describe as ‘economic migrants’ those who flee absolute poverty, drought, or rising seas simply because their lives are not in immediate danger⁵⁹. Scholars note that distinctions between ‘economic’ and ‘environmental’ migration often obscure the multi-causal realities of poverty, environmental decline and structural inequality, while restrictive migration policies instrumentalise voluntariness to deny protection to those fleeing slow-onset degradation⁶⁰. Restrictive migration policies in many developed States exacerbate this problem. The voluntary/forced dichotomy is frequently instrumentalized to deny protection to those displaced by slow and cumulative environmental change, whose movement is portrayed as voluntary. Yet, as numerous studies contend, migration from areas suffering desertification, salinization, or recurring drought is better understood as an “adaptive response”: a preventive measure taken before conditions become entirely incompatible with survival or dignity⁶¹. Such movement cannot be equated with voluntary labour migration or educational mobility typical of affluent societies⁶². Human rights bodies, particularly through General Comment No. 36⁶³ and *Teitiota*, affirm that returning individuals to conditions threatening life with dignity may breach Articles 6 and 7 ICCPR, even when movement is not overtly forced⁶⁴. Protection should therefore hinge on the *rights at risk* rather

www.refugeesinternational.org/new-zealands-climate-refugee-visas-lessons-for-the-rest-of-the-world/; A.C. Barbosa Pereira Matos, T. Cristino Frota Mont’Alverne, *The UN Ocean Conference and the Low-Lying States Situation: Would the UN SD Goal 14 Suffice to Avoid a Migratory Emergency?* in G.C. Bruno, F. Palombino, V. Rossi (Eds.), *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward*, Rome, 2017, 123; K. Schewel, *Understanding Immobility: Moving Beyond the Mobility Bias in Migration Studies*, in *54 Int’l Migration Rev.* 328 (2019), for a critique of the widely-held but little-recognized assumption that migration is the preferred option for human flourishing.

⁵⁹ See *supra*, authors cited in fn. 46.

⁶⁰ G. Cataldi, A. Del Guercio, *I Global Compact su migranti e rifugiati. Il soft law delle Nazioni Unite tra spinte sovraniste e potenziali sviluppi*, in *Dir. imm. citt.*, 2019, 2, 188, 200.

⁶¹ 2018 *Slow-onset report*, para 137 ff.

⁶² I. Ruggiu, *Migrazioni per cause climatiche e impatti sulla sicurezza a livello locale*, in F. Astone, R. Cavallo Perin, A. Romeo, M. Savino (Eds.), *Immigrazione e diritti fondamentali*, Torino, 2019, 399, 402.

⁶³ Human Rights Committee (HRC), *General Comment No. 36, Article 6: Right to Life*, (CCPR/C/GC/36), 3 September 2019, www.refworld.org/docid/5e5e75e04.html, para 62: «Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life». See also African Commission on Human and Peoples’ Rights, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right To Life (Article 4)* (November 2015), www.refworld.org.

⁶⁴ HRC, *General Comment No. 36*, cit., paras 31 and 55.

than on the “causes of movement”⁶⁵. Accordingly, the key legal question should not be whether a movement is forced or voluntary, but whether the persons concerned require international protection, and on what legal basis that need can be transformed into a right. Consequently, the decisive criterion should be “vulnerability” rather than causation or voluntariness.

Indeed, classifying those fleeing severe deprivation on the basis of presumed voluntariness is neither legally defensible nor ethically sustainable. Individuals escaping extreme poverty - whether triggered by sudden disasters or by gradual environmental decline - are among the most vulnerable and often lack the *minimum* economic, social and cultural rights required for a dignified life, effectively undermining their right to life. As leading scholarship emphasizes, distinguishing between climate change and disasters or conditioning protection on the ability to prove causation is conceptually flawed, since environmental and climatic factors are deeply intertwined with social and economic dynamics⁶⁶. Consequently, protection should hinge on vulnerability, a criterion implicitly reflected in the IOM’s concept of the ‘environmental’ and ‘climate’ migrant: properly understood, this definition captures this approach by encompassing persons whose rights are undermined by the interaction of environmental, climatic, social and economic factors⁶⁷.

Building on this foundation, and according to the most renowned scholarship⁶⁸, we propose reframing the analysis around “vulnerability”⁶⁹, here intended as a condition arising from the intersection of environmental, climatic, economic, social, and political factors that collectively erode human rights and *minimum* standards of living. Therefore “migrants in vulnerable situations” are those «who are unable to effectively enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer’s heightened duty of care»⁷⁰.

⁶⁵ J. McAdam, E. Bower, S. Weerasinghe. T. Wood, *Submission to the US Department of State Bureau of Population, Refugees and Migration on the impacts of climate change on migration, protection and resettlement*, Andrew & Renata Kaldor Centre for International Refugee Law Faculty of Law & Justice, University of NSW, Sydney, 28 May 2021, 2, www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Submission_to_the_US_State_Dept_Climate_Migration_28.5.21.pdf.

⁶⁶ G. Cataldi, A. Del Guercio, *I Global Compact su migranti e rifugiati*, op. cit., 200; J. McAdam, E. Bower, S. Weerasinghe. T. Wood, *Submission to the US Department*, cit., *ibidem*.

⁶⁷ IOM, *Migration and the Environment*. Discussion Note: MC/INF/288, Geneva, 27–30 November 2007.

⁶⁸ J. McAdam, ‘Protection’ or ‘Migration’?..., op. cit., 193 ff.

⁶⁹ In this study, the term “vulnerability” is employed not in its generic sense but with the specific meaning attributed to it in the migration context, in line with the definition set out in the IOM *Glossary on Migration* and its accompanying explanatory note. Accordingly, the term “vulnerability” is defined as follows: «Within a migration context, vulnerability is the limited capacity to avoid, resist, cope with, or recover from harm. This limited capacity is the result of the unique interaction of individual, household, community, and structural characteristics and conditions» (IOM, *Glossary on Migration*, 2019, cit.).

⁷⁰ IOM, *Glossary on Migration*, 2019, cit., under the term referred, specifying that this definition is adapted from High Commissioner for Human Rights, *Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations*, Report of the United Nations High Commissioner for Human Rights to the Human Rights Council (3 January 2018) UN Doc. A/HRC/37/34, para. 12.

A key element of this assessment is the existence of an “internal protection alternative”, that is, the capacity of the territorial State to ensure basic rights and to implement adaptation measures such as relocation or resettlement without discrimination⁷¹. Where such capacity is absent, international protection obligations should arise.

3. Legal regimes of human mobility between sovereignty and solidarity

The distinction between IDPs, voluntary economic migrants and environmental migrants remains central for determining the applicable legal regime. IDPs retain freedom of movement within their own State and may benefit from domestic protection mechanisms without losing cultural or linguistic ties⁷². By contrast, persons crossing borders - whether in response to slow-onset environmental degradation or sudden disasters - generally lack international protection and face the sovereign discretion of States over admission and expulsion⁷³. Although freedom of movement is recognised in international human-rights law⁷⁴, its external dimension is fragile, as the exercise of State sovereignty can deprive it of practical effect⁷⁵. A structural dichotomy persists: voluntary movers fall under domestic immigration law, while those compelled to move may qualify for international protection under refugee law or *non-refoulement*⁷⁶. A recent study confirms a growing,

⁷¹ The *Internal flight alternative* also referred to as the *Relocation alternative* or *Internal protection alternative* is defined in the UNHCR *Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* 23 July 2003 (UN Doc. HCR/ GIP/03/04), para 6 as follows: «The possibility for refugees to find protection in another specific area of their own country where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, it can reasonably be expected that the individual may establish himself or herself and lead a normal life».

⁷² This does not concern cases of *forced eviction*, understood as «the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection»: see Committee on Economic, Social and Cultural Rights, *General Comment No. 7: The right to adequate housing (art. 11.1 of the Covenant): forced evictions* (1997). On this issue see also: UN OHCHR-UNHABITAT, *Forced Evictions*, Fact Sheet No 25/Rev.1, New York, Geneva, 2014.

⁷³ B. Conforti, M. Iovane, *Diritto internazionale*, XII ed., Napoli, 2021, 260.

⁷⁴ The right of every person to move freely within the territory of their State, to leave it, and to return thereto is enshrined in several international human rights instruments, including: Article 12(1), (2), and (4) of the International Covenant on Civil and Political Rights (ICCPR); Article 22 of the American Convention on Human Rights; Article 12 of the African Charter on Human and Peoples’ Rights; Article 26 of the Arab Charter on Human Rights; Article 2 of Protocol No. 4 to the European Convention on Human Rights (ECHR); and Article 5(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

⁷⁵ E. Fornalè, *Floating rights in times of environmental challenges*, in G. Cataldi, M. Corleto, M. Pace (Eds.), *Migrations and fundamental rights: the way forward*, Napoli, 2019, 183, 190 ff.; M. J. Purcell, *A right to leave, but nowhere to go: reconciling an emigrant’s right to leave with the sovereign’s right to exclude*, in 39(1) *U. Miami Inter-Am. L. Rev.* 177 (2007).

⁷⁶ I. Ruggiu, *Migrazioni per cause climatiche e impatti sulla sicurezza a livello locale*, *op. cit.*, 401.

though uneven, tendency to extend protection to cross-border disaster and climate-displaced persons through refugee, human-rights, or domestic frameworks, yet notes that such protection remains largely confined to sudden-onset events⁷⁷. For those leaving areas affected by gradual environmental decline, admission typically depends on domestic immigration systems and discretionary humanitarian measures⁷⁸.

3.1 Interpreting the Refugee Convention in light of environmental and climate-induced mobility

The 1951 Convention defines a refugee as «a person who is unable or unwilling to return to his or her country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion»⁷⁹. This definition presupposes an identifiable “will to persecute” by a State or non-State actor and therefore excludes natural events or environmental degradation as such from constituting grounds for refugee *status*. Disasters and ecosystem collapse do not, in themselves, manifest persecutory intent directed at the individual on any of the five Convention grounds⁸⁰. Nonetheless, the UNHCR has long recognized that, in specific contexts - particularly where the effects of climate change and environmental disasters intersect with conflict, violence, or other forms of persecution - the Refugee Convention may still apply, given that «there is no monocausal relationship between climate change and displacement»⁸¹.

In 2020 and 2023, respectively, the High Commissioner for Refugees adopted two interpretative documents aimed at clarifying the international legal regimes relevant to the protection of persons displaced across borders in the context of climate change and disasters, affirming that the authoritative interpretation and application of refugee law to these situations fall within its mandate⁸². This represents a significant acknowledgment of the need to extend protection to environmental and

⁷⁷ W. Kaelin, H. Entwisle Chapuisat, *2024 Report*, cit., 39.

⁷⁸ *Ibidem*, Ch. 4; J. Ramji-Nogales, *Slow-Onset Climate Justice And Human Mobility*, op. cit., 675.

⁷⁹ Convention Relating to the Status of Refugees, adopted in Geneva on 28 July 1951 and in force since 22 April 1954, Article 1.

⁸⁰ J. Ramji-Nogales, *Slow-Onset Climate Justice And Human Mobility*, op. cit., *ibidem*. See also M. SCOTT, *Finding Agency in Adversity: Applying the Refugee Convention in the Context of Disasters and Climate Change*, in 35(4) *Refugee Surv. Q.* 26-57 (2016).

⁸¹ OHCHR, *Forced Displacement in the Context of Climate Change*, cit. In its recommendations to the States Parties to the United Nations Framework Convention on Climate Change (UNFCCC), the United Nations High Commissioner for Refugees (UNHCR) emphasizes that: «[...] Some persons displaced across international borders qualify for refugee status. Their protection is the responsibility of States under the 1951 Convention and other instruments of international and regional refugee law as well as human rights law [...]» (II. para I lett. d).

⁸² UN High Commissioner for Refugees (UNHCR), *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020, www.refworld.org; UNHCR, *Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate*, 12 December 2023, www.unhcr.org.

climate migrants, who may, under limited conditions, qualify for refugee *status*.

At the regional level, both the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa⁸³ and the 1984 Cartagena Declaration on Refugees⁸⁴ broaden the concept of 'refugee' to include individuals who have fled their country owing to "events seriously disturbing public order"⁸⁵. In its 2020 *Legal Considerations on Refugee Protection and Climate Change*, the UNHCR further interpreted these instruments - of which only the OAU Convention is legally binding - as encompassing persons compelled to leave their country due to climate- or disaster-related circumstances that "seriously disturb public order"⁸⁶.

According to expert indicators, an event qualifies as such a disturbance only where it entails a threat to the rights to life, physical integrity, and liberty of individuals; where the phenomenon is widespread or generalized; and where the State is either unable or unwilling to restore and ensure public order⁸⁷. Crucially, unlike the 1951 Convention, these regional instruments do not require discriminatory intent as a condition for refugee recognition, nor do they rely on the "internal flight alternative" as a basis for exclusion⁸⁸. As documented in the 2024 Report, although 37 African States and 15 Latin American countries have incorporated these expanded notions into their domestic frameworks, practical implementation remains circumscribed⁸⁹. It is nonetheless significant that between 2023 and 2024 two regional human rights bodies appear to have endorsed a more evolutionary reading⁹⁰. In the African context, the African Commission on Human and Peoples' Rights has recently advanced an interpretation of the notion of 'refugee' under both the Geneva Convention and the African Refugee Convention that encompasses individuals fleeing their countries due to the effects of climate change. This approach shifts the *focus* from potential threats to public order in the country of origin to the impact of climate change on the fundamental human rights of affected individuals⁹¹. With regard to the Americas, the Inter-American

⁸³ Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45.

⁸⁴ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, adopted by the *Colloquium*, held at Cartagena, Colombia, 19–22 November 1984.

⁸⁵ IOM, *Glossary on Migration*, 2019, cit., under the term *Complementary Protection*.

⁸⁶ 1969 Convention, art. I (2) of the; Cartagena Declaration, Conclusion III(3).

⁸⁷ C. Hansen-Lohrey, *Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change*. UNHCR PPLA/2023/01 (September 2023), 57-60.

⁸⁸ W. Kaelin, H. Entwisle Chapisat, *2024 Report*, cit., 17.

⁸⁹ *Ibidem*, 18.

⁹⁰ M. Di Filippo, *Garanzia di non-refoulement per i migranti ambientali e riconoscimento della protezione complementare: un contributo al dibattito*, in F. Amato, V. Carofalo, A. Del Guercio, A. Fazzini, V. Grado, E. Imparato, A. Liguori (Eds.), *Climate change, human rights And international migration - Cambiamento climatico, Diritti umani e migrazioni internazionali*, Napoli, 2025, 169, 191.

⁹¹ *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers*, April 2023, Principle 2, para 4; L. Dirar, I.M. Kysel, F. Raach, *Introductory Note to The African Guiding Principles on The Rights of Migrants, Refugees and Asylum Seekers (Afr. Comm'n H.P.R.)*, in 63(3) *Int'l Legal Materials* 482, 483 (2024).

Commission in Resolution No. 2/24, affirms that States must ensure access to asylum and other forms of international protection, recognizing that the impacts of climate change may amount to persecution under the 1951 Refugee Convention or to “grave disturbances of public order” within the meaning of the Cartagena Declaration⁹².

3.2 The evolving scope of non-refoulement in cases of climate and environmental displacement

Where the conditions of Article 1 of the 1951 Convention are not met, its Article 33 still embeds the principle of *non-refoulement*, now widely regarded as a *jus cogens* norm and an integral part of international human rights law⁹³. Originally codified to prevent the return of refugees to places where their life or freedom would be at risk, the principle has since been strengthened by instruments such as Article 3 of the Convention against torture and additional human rights treaties⁹⁴. UN and treaty-body practice further confirms that *non-refoulement* protects all migrants from torture, inhuman or degrading treatment, and other forms of irreparable harm, an understanding rooted in the Human Rights Committee’s interpretation of States’ obligations under the ICCPR⁹⁵. It has been observed that, in some cases, international law provides for treaty-based regimes of protection – such as those governing refugees or beneficiaries of subsidiary protection – that grant specific rights, including the right to residence. In other situations, it merely enshrines the principle of *non-refoulement*, without creating a corresponding protection framework, as expressed in certain human rights treaties and their interpretation by monitoring bodies⁹⁶. In its broader

⁹² Comisión Interamericana de Derechos Humanos, *Resolución no. 2/24 sobre movilidad humana inducida por el cambio climático*, 26 de diciembre de 2024, para 29.

⁹³ «Article 33 – *Prohibition of Expulsion or Return (Refoulement)*. No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion».

⁹⁴ 1950 European Convention on Human Rights, Article 3; 1957 European Convention on Extradition, Article 3(2); 1966 International Covenant on Civil and Political Rights, Article 7; 1969 American Convention on Human Rights, Article 22(8); 1981 Inter-American Convention on Extradition, Article 4(5); 2000 Charter on Fundamental Rights of the European Union, Article 19; and the 2007 International Convention for the Protection of All Persons from Enforced Disappearance, Article 16.

⁹⁵ OHCHR, *The principle of non-refoulement under international human rights law*, 5 July 2018, www.ohchr.org; Human Rights Committee, General comment no. 31 (80), *The nature of the general legal obligation imposed on States Parties to the Covenant: International Covenant on Civil and Political Rights*, 29 March 2004 para 12, CCPR_C_21_Rev.1_Add.13-EN.

⁹⁶ M. Di Filippo, *Garanzia di non-refoulement ...*, *op. cit.*, 174. On the interpretation of the *non refoulement* principle see: Advisory Opinion OC-21/14: *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (IACtHR, 19 August 2014) para 226; ECtHR, no 14038/88, *Soering v United Kingdom*, 7-07-1989; HRC, *General Comment no 31* cit., para 12; African Commission on Human and Peoples’ Rights (ACHPR), *General Comment No 4 (2017)*, para 17, and *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers* (20 October 2023) Principle 20 (3)-(4).

understanding, *non-refoulement* has evolved from a refugee-specific safeguard into a general norm of international human rights law, binding on all States regardless of formal treaty commitments⁹⁷.

At present, *non-refoulement* constitutes the main safeguard for persons seeking protection abroad on environmental or climatic grounds, yet it provides limited and temporary relief. As scholarship stresses, it is a reactive mechanism: it prevents removal but does not confer a right to admission or a durable legal *status*, nor does it impose positive obligations on receiving States⁹⁸. Triggered only where an imminent and irreparable risk exists, it generally covers threats to life or freedom from torture or inhuman treatment⁹⁹. The assessment focuses exclusively on conditions in the receiving State, considers all risks cumulatively¹⁰⁰ and, in disaster contexts, requires an evaluation of available protective measures or internal relocation options¹⁰¹, taking into account gradual or recurrent threats where ‘imminence’ and ‘foreseeability’ are decisive¹⁰². European jurisprudence applies a “predominant cause” test, adopting a stricter threshold where harm is linked mainly to socio-economic deprivation and a standard “*minimum-severity*” test where human action or omission contributes to the risk¹⁰³. National courts increasingly recognise that environmental harms often intersect with failures in governance or adaptation¹⁰⁴. Nevertheless, *non-refoulement* remains largely confined to sudden-onset disasters and offers

⁹⁷ IACHR, Advisory Opinion OC-23/17, cit. See also, for an account of the evolution of the principle F. Lenzerini, *Il principio del non-refoulement dopo la sentenza Hirsi della Corte europea dei diritti dell'uomo*, in *Riv. dir. internaz.*, 2012, 3, 721 ff., 731; M. Di Filippo, *Garanzia di non-refoulement...*, *op. cit.*, para 2, 173-188.

⁹⁸ A. Caligiuri, *Invisible in Law: Environmental and Climate Migrants and the Gap in International Protection*, in 111 *QIL*, Zoom-in 1-6 (2025).

⁹⁹ D. Cantor, B. Burson, B. Aycok, N. Feith Tan, T. Anastasiou, E. Arnold-Fernandez, C. Field, C. Hansen-Lohrey, W. Kälin, G. Kane, S. Miron, M. Rao, B. Sánchez Mojica, C. Scissa, S. Weerasinghe, T. Wood, *International Protection, Disasters and Climate Change* in 36(1-2) *Int'l J. Refugee L.* 176, 194 (2024).

¹⁰⁰ *Ibidem*.

¹⁰¹ See *supra*, subpara 2.3 and fn 71.

¹⁰² D. Cantor, B. Burson, et al., *International Protection, Disasters and Climate Change*, *op. cit.*, 195; M. Foster, J. McAdam, *Analysis of “Imminence” in International Protection Claims: “Teitiota v New Zealand” and Beyond*, in 71 *Int'l & Comp. L.Q.* 975 (2022).

¹⁰³ According to D. Cantor, B. Burson, et al., *International Protection, Disasters and Climate Change*, *op. cit.*, 195, European case-law (ECtHR, nos. 8319/07 and 11449/07, *Sufi and Elmi v. United Kingdom*, 28-06-2011, paras 281-284) affirms that where the ‘predominant cause’ of the harm is poverty or the State’s lack of resources to deal with a naturally occurring phenomenon, such as ‘drought’, then a higher severity threshold for engaging *non-refoulement* obligations applies than where the ‘predominant cause’ is the direct and indirect actions of human State or non-State actor (para 282).

¹⁰⁴ M. Ammer, M. Mayrhofer, *Cross-Border Disaster Displacement and Non-Refoulement under Article 3 of the ECHR: An Analysis of the European Union and Austria*, in 35 *Int'l J. Refugee L.* 322 (2023); F. Negozio, F. Rondine, *Analysing National Responses to Environmental and Climate-Related Displacement: A Comparative Assessment of Italian and French Legal Frameworks*, in 61 *Q. Refugee Problems* 53 (2022); C. Schloss, *Climate Migrants – How German Courts Take the Environment into Account when Considering Non-refoulement*, in *Voelkerrechtsblog*, 3 March 2021, voelkerrechtsblog.org; F. Passarini, *Environment: Protection of Environmental Migrants in Italy in Light of the Latest Jurisprudential Developments*, in *Italian YIL* 446 (2022).

little protection to those fleeing slow-onset degradation, despite the fact that such processes can equally compromise fundamental rights and generate profound social and political instability¹⁰⁵.

3.3 The principle of non-refoulement in the context of slow-onset climate events

Slow-onset climate change has been described as a form of “slow violence”, an often invisible manifestation of structural inequality whose cumulative effects escape conventional legal categories¹⁰⁶. These processes tend to generate gradual, adaptive movements - initially internal and temporary - that may become permanent as conditions deteriorate, while the enjoyment of basic rights shapes both vulnerability and the degree of voluntariness involved¹⁰⁷. Because international law favours clear causation and migration law prioritises civil and political rights, the diffuse socio-economic harms caused by slow-onset degradation remain insufficiently recognised, leaving most affected persons without international protection unless the harm reaches the threshold of irreparable injury¹⁰⁸. Yet such degradation can severely compromise access to essential resources like food and water, raising the question whether *non-refoulement* should apply in cases of serious socio-economic deprivation linked to climate impacts¹⁰⁹. Establishing this remains a difficult task given the principle’s stringent threshold¹¹⁰. As McAdam notes, movements triggered by gradual deterioration are generally anticipatory and processed through ordinary migration channels, rendering the climate dimension invisible¹¹¹, while State practice continues to portray those affected as voluntary economic migrants rather than as persons displaced by environmental harm¹¹².

Commentators, accordingly, emphasise the analytical difficulty of separating ‘environmental’ from ‘economic’ migration, noting that poverty is often environmentally induced and that many individuals relocate only to areas where conditions are marginally better, as frequently observed in Sub-Saharan Africa and South Asia¹¹³. Other scholars add that people fleeing extreme deprivation seldom articulate environmental causes before authorities and are therefore categorised as economic migrants, while structural drivers - such as extreme weather, drought, desertification, or

¹⁰⁵ S. Zingg, *Exploring the climate change–conflict–mobility nexus*. Migration Research Series, N° 70, IOM, Geneva, 2021, publications.iom.int/system/files/pdf/MRS-70_1.pdf.

¹⁰⁶ J. Ramji-Nogales, *Slow-Onset Climate Justice And Human Mobility*, *op. cit.*, 673; 2018 *Slow-Onset Report*, para 16.

¹⁰⁷ *Ibidem*, 675.

¹⁰⁸ *Ibidem*.

¹⁰⁹ 2018 *Slow-onset report*, para 16.

¹¹⁰ J. McAdam, ‘Protection’ or ‘Migration’?..., *op. cit.*, 193.

¹¹¹ *Ibidem*

¹¹² 2018 *Slow-onset report*, paras 20-21.

¹¹³ N. MYRES, *Esodo ambientale (Popoli in fuga da terre difficili)*, Milano, 1998; quotation from S. NESPOR, *I rifugiati ambientali*, *op. cit.*, 7-8.

discriminatory settlement patterns – remain under-examined¹¹⁴. Jurisprudence confirms this structural invisibility: although some New Zealand decisions have not excluded the possibility that climate impacts could engage *non-refoulement*¹¹⁵, courts have consistently found the risk insufficiently imminent or severe, thereby applying a high threshold, ill-suited to slow-onset processes where movement typically occurs before harms become catastrophic. In effect, protection should attach upstream, not only when catastrophe is immediate¹¹⁶.

The difficulty does not lie in the absence of gravity. Rather, it lies in the analytical model through which risk is assessed. Slow-onset degradation unfolds cumulatively through intersecting deprivations—food, water, health, housing, safety—which may appear insufficient when considered in isolation. As Di Filippo observes, a fragmented assessment risks artificially raising the threshold of *non-refoulement*, which he considers more readily applicable where acute pollution poses direct threats to life, yet far more difficult to establish when inadequate climate action merely results in the progressive erosion of the *minimum* conditions required for a dignified existence.¹¹⁷

Refugee law itself recognises that several moderate risks may collectively amount to persecution¹¹⁸.

The normative benchmark for evaluating severity is provided by the evolutionary and dignitarian interpretation of the right to life. The most perceptive scholarship underline that the right to life extends beyond mere physical survival to encompass *minimum* conditions compatible with dignity¹¹⁹. This understanding is reflected in the jurisprudence of the Inter-American Court of Human Rights¹²⁰, as well as in General Comment No. 36

¹¹⁴ C. SCISSA, *An innovative analysis of Italy's protection against disaster displacement: numbers and profiles of the beneficiaries*, in *RLI Blog*, 2023.

¹¹⁵ 2018 *Slow-Onset Report*, paras 60 e 67, citing *Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 3125 paras 31-32; *Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* (2015) NZSC 107 para 13; *AC (Tuvalu)* [2014] NZIPT 800517-520 (Immigration and Protection Tribunal) paras 70 e 75.

¹¹⁶ 2018 *Slow-Onset Report*, para 68.

¹¹⁷ M. Di Filippo, *Garanzia di non-refoulement...*, *op. cit.*, 182.

¹¹⁸ J. McAdam, *Protecting People...*, *op. cit.*, 714; UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, reissued February 2019 (originally issued 1979), para. 53: «Various measures not in themselves amounting to persecution (for example, discrimination in different forms) may, if taken together, produce an effect on the mind of the applicant that can reasonably be regarded as persecution».

¹¹⁹ E. Decaux, *Le droit à la vie et le droit à une alimentation suffisante*, in C. Tomuschat, E. Lagrange, S. Oeter (Eds.), *The Right to Life*, Leiden, 2010, 317 ff.; J. McAdam, *Climate Change, Forced Migration, and International Law*, *op. cit.*, 56; J. Hamzah Sendut, *Climate Change as a Trigger of Non-Refoulement Obligations under International Human Rights Law* in *EJIL Talk*, 2020; L. Salvadego, *The Right to Enjoy a Life with Dignity and the Non-Refoulement Obligation in the Context of Climate-Induced Migration*, in 111 *QIL*, Zoom-In 21, 44 (2025).

¹²⁰ IACtHR, no. 125, *Yakye Axa Indigenous Community v. Paraguay* (Merits, Reparations and Costs), 17-06-2005, Series C, paras 161-162, 164-165, 167; Id., no. 146, *Sarhoyamaya Indigenous Community v. Paraguay* (Merits, Reparations and Costs), 29-03-

of the Human Rights Committee¹²¹ and in the African Commission's General Comment No. 3¹²². The Human Rights Committee's views in *Portillo Cáceres* and *Daniel Billy* further confirm that environmental harm may implicate Article 6 ICCPR¹²³. Scholars argue that these *minimum* guarantees of dignity interact directly with *non-refoulement* obligations¹²⁴.

Within this framework, irreparable harm functions as the operative triggering standard of *non-refoulement*. As clarified in international human rights practice, removal is prohibited where there are substantial grounds for believing that a real and reasonably foreseeable risk of serious and irreversible prejudice exists¹²⁵. The prohibition does not depend on the formal classification of the right invoked but on the gravity and foreseeability of the harm¹²⁶.

The role of temporality must therefore be clarified. Anderson et al. demonstrate that 'imminence' has no autonomous foundation in the substantive risk test and functions, at most, procedurally¹²⁷. Conflating 'imminence' with 'foreseeability' risks narrowing protection in precisely those contexts where degradation is structurally predictable yet progressively unfolding¹²⁸. The Human Rights Committee's decision in *Teitiota v. New Zealand* illustrates this tension¹²⁹. Although the Committee recognised that climate impacts may engage *non-refoulement*, it rejected the

2006, Series C, paras 156, 168–170; Id., no. 214, *Xákmok Kásek Indigenous Community v. Paraguay* (Merits, Reparations and Costs), Judgment of 24 August 2010, Series C, paras 185–186, 194–195, 208–211; Id., no. 196, *Kawas Fernández v. Honduras*, 3-04-2009, Series C, para 148; Id., Advisory Opinion No. OC-23/17, 15 November 2017 on the *Environment and Human Rights*, para. 47.

¹²¹ HRC, *General Comment no. 36*, cited above, paras 26 and 62.

¹²² African Commission on Human and Peoples' Rights, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, 2015, para 3.

¹²³ Human Rights Committee, *Portillo Cáceres et al. v. Paraguay*, Communication No. 2751/2016, Views of 25 July 2019, UN Doc. CCPR/C/126/D/2751/2016, paras 7.3; Human Rights Committee, *Portillo Cáceres et al. v. Paraguay*, Communication No. 2751/2016, Views of 25 July 2019, UN Doc. CCPR/C/126/D/2751/2016, paras 7.3, 7.5; Human Rights Committee, *Daniel Billy et al. v. Australia (Torres Strait Islanders)*, Communication No. 3624/2019, Views of 21 July 2022, UN Doc. CCPR/C/135/D/3624/2019, paras 8.3, 8.7, 8.8.

¹²⁴ L. Salvadego, *The Right to Enjoy a Life with Dignity...*, *op. cit.*, 43, who also refers to J. De Coninck, A. Soete, *Non-refoulement and climate change-induced displacement: Regional and international cross-fertilization?*, in 31 *Rev. Eur. Comp. & Int'l Env'l L.* 421, 428, 431–432 (2022).

¹²⁵ HRC, Communication No. 2728/2016, *Teitiota v. New Zealand*, Views 24-10-2019, para 10. For comments see, *inter alia*: J. McAdam, *Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-refoulement*, in 114(4) *Am. J. Int'l L.* 708 (2020); F. Maletto, *Cambiamento Climatico: Il Caso Teitiota C. Nuova Zelanda*, in *SIDIBlog*, 23 March 2020, <http://www.sidiblog.org>; A. Maneggia, *Non-Refoulement of Climate Change Migrants: Individual Human Rights Protection or 'Responsibility to Protect'? The Teitiota Case Before the Human Rights Committee*, in *Dir. um. Dir. intern.*, 14, 2020, 2.

¹²⁶ M. Di Filippo, *Garanzia di non-refoulement...*, *op. cit.*, 184 ff.

¹²⁷ A. Anderson, M. Foster, H. Lambert, J. McAdam, *Imminence in refugee and human rights law: a misplaced notion for international protection* in 68(1) *Int'l Compa. L.Q.* 111–140, 125–128 (2019).

¹²⁸ *Ibidem*, 135–139.

¹²⁹ *Teitiota v. New Zealand*, *cit.*, para 9.12.

claim on the basis that the risk was not sufficiently imminent. Scholarship has criticised this reasoning¹³⁰, and the dissenting opinions stressed that requiring proof of widespread deaths contradicts the preventive function of Article 6¹³¹. As McAdam notes, persons facing serious environmental risks should not be required to wait until harm becomes immediate¹³². The Committee's fragmented approach, assessing each deprivation separately, set an excessively demanding threshold¹³³. Subsequent developments suggest a gradual recalibration. The Italian Court of Cassation has referred to the "irreducible core of personal dignity" as the threshold below which the right to life is violated, including in environmental contexts¹³⁴. Foster, Flegar and Ferolla Vallandro do Valle argue that severe socio-economic deprivation may generate *non-refoulement* obligations¹³⁵. In *A.M. v Switzerland*, the CRC recognised that extreme deprivation may violate children's rights¹³⁶. The IACtHR has further emphasised vulnerability and best interests of the child in environmental contexts¹³⁷. In *Teitiota*, the Committee's focus on the applicant alone, rather than on his children, may have prevented consideration of vulnerability and best interests¹³⁸. Since the CRC and the IACtHR¹³⁹ have adopted broader approaches specifically

¹³⁰ J. Mcadam, *Protecting People Displaced by the Impacts of Climate Change...*, *op. cit.*, 720-721, who furthermore observes that the decision's *focus* on Article 6 precluded an examination of Article 7 ICCPR, which might have led to a different outcome given its broader understanding of inhuman or degrading treatment (723); A. Maneggia, *Non-Refoulement of Climate Change Migrants...*, *op. cit.*, 640, citing ECtHR, *Sufi and Elmi v. the United Kingdom*, Judgment of 28 June 2011, Applications nos. 8319/07 and 11449/07.

¹³¹ *Teitiota v. New Zealand*, *cit.*, Individual opinion of Committee member Vasilka Sancin (dissenting); Individual opinion of Committee member Duncan Laki Muhumuza (dissenting).

¹³² J. Mcadam, *Protecting People Displaced by the Impacts of Climate Change...*, *op. cit.*, 720.

¹³³ A. Del Guercio, *Una Governance integrata della mobilità umana...*, *op. cit.*, 353.

¹³⁴ Corte Cass., (II sez. civ.), ordinanza n. 5022/2021, I.L. c. *Ministro dell'Interno e Procuratore Generale della Corte d'Appello di Ancona*, 12-11-2020. For some comments see, *ex multis*, F. Perrini, *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della Corte di Cassazione*, in *Ord. internaz. dir. um.*, 2, 2021, 349; A. Del Guercio, *Migrazioni connesse con disastri naturali, degrado ambientale e cambiamento climatico: sull'ordinanza n. 5022/2020 della Cassazione italiana*, in *Diritti Umani e Diritto Internazionale*, 2021, 2, 521. See also Corte Cass., (I sez. civ.) no 4455/2018; Id., (SS.UU civ.), no 29459/2019; Id., (I sez. civ.), ordinanza no 17130/2020.

¹³⁵ M. Foster, *International Refugee Law and Socio-Economic Rights. Refuge from Deprivation*, Cambridge, 2007, 278-284; V. Flegar, *Vulnerability and the Principle of Non-Refoulement in the European Court of Human Rights: Towards an Increased Scope of Protection for Persons Fleeing from Extreme Poverty?*, in 8(2) *Contemp. Readings L. Soc. Just.* 148 (2016); M. Ferolla Vallandro do Valle, *Fleeing Deprivation: Deducing Non-Refoulement Obligations from Economic, Social and Cultural Rights*, in 36 *Int'l J. Refugee L.* 353 (2024).

¹³⁶ CRC (Committee on the Rights of the Child), Comm. No. 95/2019, *A.M. (on behalf of M.K.A.H.) v. Switzerland*, Decision, 2209-2021 (Session 91), paras 106 – 10.9 and 11, UN Doc. CRC/C/88/D/95/2019. See M. Ferolla Vallandro do Valle, *Fleeing Deprivation...*, *op. cit.*, 362 ff.

¹³⁷ IACtHR, Advisory Opinion Oc-21/14, *cit.*, paras 209 ss, especially para 222.

¹³⁸ Several scholars take this view: J. McAdam, *Protecting People...*, *op. cit.*, 716-717; A. Del Guercio, *Una Governance integrata...*, *op. cit.*, 353, fn. 78, where it is highlighted that international law increasingly recognizes the best interests of the child as a central consideration in the context of climate change action.

¹³⁹ IACtHR, Advisory Opinion Oc-21/14, *cit.*, *ibidem*.

addressed to children's rights, uncertainty remains as to when ESC-based *non-refoulement* extend to adult migrants facing analogous cumulative and dignity-undermining conditions¹⁴⁰, although scholars argue that their open-ended formulations suggest a broader scope¹⁴¹.

European jurisprudence reflects a similar, albeit uneven, evolution: although the ECtHR has traditionally recognised *non-refoulement* in socio-economic contexts only exceptionally¹⁴², judgments such as *M.S.S. v. Belgium and Greece*¹⁴³, *Sufi and Helmi*¹⁴⁴ and *Tarakhel v. Switzerland*¹⁴⁵ reveal a growing, though inconsistently applied, incorporation of 'vulnerability' and 'cumulative risk' into the Article 3 assessment¹⁴⁶. Advisory practice further consolidates this trajectory. In July 2025, the Inter-American Court of Human Rights issued an Advisory Opinion establishing a direct link between climate change and human mobility¹⁴⁷. The Court recognised that climate impacts generate both rapid and slow-onset displacement, secondary movements and situations of immobility¹⁴⁸, and held that States have preventive and protective duties: they must adopt legislative and policy measures to address climate-related mobility¹⁴⁹, and create domestic mechanisms - such as humanitarian visas, refugee *status* or temporary residence permits - for cross-border climate-displaced persons¹⁵⁰. Its reasoning, grounded in the *pro homine* principle¹⁵¹, has been described as unprecedented in requiring States to establish effective protection systems¹⁵². Twenty days later, the International Court of Justice delivered its own Advisory Opinion on climate obligations, acknowledging that *non-refoulement* applies where climate impacts create a real risk of irreparable

¹⁴⁰ M. Ferolla Vallandro do Valle, *Fleeing Deprivation...*, *op. cit.*, 355.

¹⁴¹ *Ibidem*, 357-358.

¹⁴² V. Flegar, *Vulnerability...*, *op. cit.*, 148.

¹⁴³ ECHR, (Grand Chamber), no. 30696/09, *M.S.S. v. Belgium and Greece*, 21-01-2011.

¹⁴⁴ ECtHR, nos. 8319/07 and 11449/07, *Sufi and Elmi v. United Kingdom*, 28-06-2011.

¹⁴⁵ ECHR, (Grand Chamber), no. 29217/12, *Tarakhel v. Switzerland*, 4-11-2014.

¹⁴⁶ V. Flegar, *Vulnerability...*, *op. cit.*, 158-159, who refers to later judgments such as ECtHR, no. 60367/10 *S.H.H. v. the United Kingdom*, 29-01-2013 reaffirming a restrictive interpretation of Article 3 in socio-economic contexts.

¹⁴⁷ IACtHR, Advisory Opinion OC-32/25 cit.

¹⁴⁸ IACtHR, Advisory Opinion OC-32/25 cit., para 95.

¹⁴⁹ IACtHR, Advisory Opinion OC-32/25 cit., paras 422-424.

¹⁵⁰ IACtHR, Advisory Opinion OC-32/25 cit., para 433.

¹⁵¹ The IACtHR explicitly applies the *pro homine* principle, whereby « if in the same situation both the American Convention and another international treaty are applicable, the rule most favourable to the individual must prevail ». See: IACtHR, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, Series A No 5 (13 November 1985) para 52. IOM, *High-Level Exchange on the Intersection of Climate Justice and International Law related to Migration*, Dakar, 12 March 2025, IOM Resource Paper; D.R. Brasil, G.N.C.S. de M. Bandeira, *A rereading of international protection to environmental refugees according to the pro homine principle*, in *Dir. Just. Estud. Contemp.*, 6(6), 2018, 107.

¹⁵² L. Riemer, *A Single Paragraph's Promise: The ICJ's Advisory Opinion on Climate Change and the Understated Question of Human Displacement*, July 26, 2025, blogs.law.columbia.edu/climatechange/2025/07/26/a-single-paragraphs-promise-the-icjs-advisory-opinion-on-climate-change-and-the-understated-question-of-human-displacement/.

harm¹⁵³. While this constitutes an important step, commentators note that the ICJ adopts a cautious approach, relies narrowly on *Teitiota*, and provides limited guidance on implementation¹⁵⁴. As noted by Judge Aurescu and leading scholars, the Opinion affirms the principle yet stops short of articulating a comprehensive, human-centred and operational framework comparable to that developed by the Inter-American Court¹⁵⁵. Unlike the Inter-American Court's *Advisory Opinion OC-32/25*, which explicitly requires States to establish national mechanisms for humanitarian visas and refugee-like protection, the ICJ refrains from providing concrete guidance on implementation¹⁵⁶.

As demonstrated in this section, the international protection of environmental and climate migrants remains far from fully recognised within the international legal framework, and approaches to the principle of *non-refoulement* continue to diverge significantly across regions. Scholarship rightly observes that, while in some regions the principle of *non-refoulement* is firmly embedded in domestic legislation and interpreted dynamically by regional courts in light of environmental drivers of mobility, in others it remains weakly applied and environmental causes are scarcely recognised, with the result that its future role in environmental migration cases is likely to remain fragmented and largely dependent on the regional context¹⁵⁷.

We argue that this pronounced fragmentation partly arises from the insufficient acknowledgment of the specific vulnerability of environmental and climate migrants, as well as of the broader principle that all human rights - civil, political, economic, social, and cultural - are indivisible, interconnected, and interdependent. Without recognition of this principle, neither the effectiveness of human rights nor the protection of their *minimum* core can be ensured.¹⁵⁸

In relation to the principle of effectiveness (*effet utile*), some scholars seem implicitly argue that it should also apply in the context of the international protection of people fleeing environmental degradation and climate change¹⁵⁹. Closely linked to the need to guarantee the practical effectiveness of all human rights and to safeguard their essence, this

¹⁵³ ICJ Advisory Opinion, *Obligation of States in respect of climate change*, 23 July 2025, para 438.

¹⁵⁴ L. Riemer, *A Single Paragraph's Promise...*, *op. cit.*

¹⁵⁵ ICJ Advisory Opinion, *Obligation of States in respect of climate change*, *cit.*, Separate Opinion of Judge Aurescu.

¹⁵⁶ L. Riemer, *A Single Paragraph's Promise...*, *op. cit.*

¹⁵⁷ C. Scissa, *The Principle of non-refoulement and Environmental Migration...*, *op. cit.*, 35-36.

¹⁵⁸ World Conference on Human Rights, *Vienna Declaration and Programme of Action* (1993) UN Doc A/CONF.157/23, para 5: «All human rights are universal, indivisible and interdependent and interrelated». The principle has been endorsed by the Committee on Economic, Social and Cultural Rights (CESCR), in its *General Comment No 3: The Nature of States Parties' Obligations* (1990) para 8: «All rights enshrined in the Covenant are interdependent and indivisible and cannot be understood in isolation from other human rights guarantees».

¹⁵⁹ L. Salvadego, *The Right to Enjoy a Life with Dignity...*, *op. cit.*, 43; J. De Coninck, A. Soete, *Non-refoulement and climate change-induced displacement: Regional and international cross-fertilization?*, in *RECIEL* 429 (2022).

understanding requires States to protect the essential content of every right enshrined in international instruments¹⁶⁰.

In our view, only a holistic and human-rights-centred interpretation can foster the gradual harmonisation of international, regional, and, above all, national practice - legislative, administrative, and judicial alike - in matters concerning protection from *refoulement* of environmental and climate migrants. This is particularly relevant given the current absence of both a recognised protected legal category and a specific international protection regime applicable to such individuals.

We submit that the abovementioned principles entail the direct applicability not only of civil and political rights—such as the right to life and the prohibition of torture or inhuman or degrading treatment—but also, and crucially, of the *essential content* of economic, social, and cultural rights, including the rights to food, water, housing, and education¹⁶¹. These are in fact the rights most severely affected for individuals fleeing territories impacted by slow-onset and cumulative processes of environmental degradation, which render entire areas uninhabitable and heighten their vulnerability. We therefore agree with the most renowned scholarship and the recent international caselaw, that such processes—drought, desertification, salinisation, and sea-level rise—should be assessed through a cumulative lens, as they collectively generate conditions that may amount to a risk of irreparable harm or a flagrant violation of the right to a dignified life and the prohibition of inhuman or degrading treatment. Accordingly, we suggest that ensuring the effectiveness of the *non-refoulement* principle, by protecting the essence of the fundamental rights at risk, should not depend exclusively on the ‘imminence’ of harm but rather on the ‘foreseeable certainty’ of its occurrence. This, in turn, imposes an imperative duty on States to activate protective measures before the harm materialises.

4. Conclusions

The international community has not yet reached *consensus* on a legally binding term defining the *status* of persons who move—whether voluntarily or involuntarily, within or across borders—to escape the effects of climate change and environmental degradation. Nor does a specific international protection regime currently exist for this category of individuals.

Many commentators argue that this absence of agreement is not accidental but reflects the reluctance of developed States, which - confronted with alarmist predictions of mass influxes of environmental and climate ‘refugees’ - avoid adopting clear positions or politically costly measures at the domestic level, notwithstanding statistical evidence that undermines such forecasts¹⁶².

The broad definition of ‘environmental’ or ‘climate’ migrant endorsed by the International Organization for Migration (IOM) - and adopted here

¹⁶⁰ P. Thielbörger, *The ‘Essence’ of Fundamental Rights: A Comparative Overview*, in 17(3) *Int’l J. Const. L.* 926, 926–927 (2019).

¹⁶¹ M. Di Filippo, *Garanzia di non-refoulement...*, *op. cit.*, 184 ff.

¹⁶² C. SCISSA, *An innovative analysis of Italy’s protection against disaster displacement...*, *op. cit.*

- is unlikely to obtain formal legal recognition for *status*-determination purposes. It conflicts with the increasing resistance of developed States, particularly in Europe, to accepting migrants and asylum seekers, as evidenced by the proliferation of externalization policies and physical or legal barriers to entry¹⁶³.

The continued subjection of entry and expulsion to domestic law, under the principle of State sovereignty, constitutes one of the principal explanations for the persistent gaps in international law in this area. Paragraph 3 evidenced the tension between State sovereignty and international protection obligations: in distinguishing internal displacement from cross-border migration, it has been noted that while internally displaced persons retain rights within their State, those crossing borders due to environmental or climatic causes remain largely unprotected under current international law. As we have seen, refugee law—particularly the 1951 Geneva Convention—offers limited protection for environmental and climate migrants.

For cases falling outside the scope of refugee law, international protection for environmental and climate migrants primarily relies on international human rights law, especially on the expansion of the *non-refoulement* principle beyond refugee law into human rights law, where it has evolved into a *jus cogens* norm prohibiting return to serious harm, including torture or life-threatening conditions. While courts increasingly consider ‘cumulative risks’ and ‘vulnerability’ in disaster contexts, they remain restrictive toward slow-onset environmental degradation, which may be described as a form of “slow violence” largely invisible in law. Gradual processes such as drought, salinization, and desertification erode socio-economic rights but often fail to meet the high threshold required for *non-refoulement*. Scholars therefore advocate extending the principle to cover dignity-based deprivations of essential rights - life, health, food, water, and housing - citing landmark cases that signal a doctrinal shift. Decisions such as *Teitiota v. New Zealand* and *A.M. v. Switzerland* suggest that severe deprivation of economic, social, and cultural rights can constitute ‘irreparable harm’, thereby expanding the scope of *non-refoulement*, interpreting the right to life as encompassing the right to live with dignity, integrating socio-economic conditions into protection standards. At the regional level, the Inter-American Court of Human Rights, in its Advisory Opinion OC-32/25, advances this interpretation by requiring States to adopt legal and policy measures addressing climate-induced human mobility. By contrast, the International Court of Justice, in its 2025 Advisory Opinion, affirms the application of *non-refoulement* obligations in climate contexts but adopts a more cautious and minimalist stance.

A holistic and human-rights-centred interpretation does not expand *non-refoulement* beyond its established gravity-based threshold. Rather, it ensures that cumulative and structurally foreseeable forms of environmental degradation are assessed coherently in light of the indivisibility interdependence and interrelatedness of human rights and the principle of effectiveness. Protection therefore does not hinge on temporal ‘imminence’,

¹⁶³ F. BRANDONI (Ed.), *I migranti ambientali. L'altra faccia della crisi climatica. Dossier 2021*, Legambiente, 39.

but on whether the ‘reasonably foreseeable’ trajectory of environmental harm threatens the essential content of fundamental rights and the material foundations of a dignified life.

Against this background, the foregoing analysis reveals the emergence of a preventive, dignity-oriented reading of *non-refoulement*. This approach grounds protection in the specific vulnerability of individuals fleeing climate-affected territories and bridges civil and political rights with economic, social and cultural guarantees. In this perspective, protection against climate-related harm constitutes a concrete dimension of the right to live with dignity. The combined force of the two principles of indivisibility and effectiveness entails not only a negative duty to refrain from removal, but also positive obligations to adopt legislative, administrative and judicial measures capable of securing the effective enjoyment of fundamental rights both in the country of origin and in the country of destination.

In conclusion, it seems appropriate to advance a systemic reflection. The Inter-American Court’s Advisory Opinion of July 2025, by expressly requiring States to establish domestic protection mechanisms for climate-displaced persons, raises a broader question: whether international protection and *non-refoulement* obligations impose, on the host State, not only a duty of non-removal but also a positive obligation to ensure a clear and stable legal *status* for individuals who cannot be expelled.

From the perspective of universal human rights law, *non-refoulement* is traditionally formulated as a negative obligation. However, General Comment No. 31 of the Human Rights Committee clarifies that States must adopt legislative, administrative and judicial measures to give effect to Covenant rights and to ensure their practical and effective enjoyment by all persons within their jurisdiction¹⁶⁴. It further confirms that this obligation extends to all individuals within the territory and subject to the jurisdiction of States parties¹⁶⁵.

Similarly, the Committee on Economic, Social and Cultural Rights has affirmed that States are under an immediate obligation to secure at least the *minimum* essential levels of Covenant rights¹⁶⁶ without discrimination on the ground of nationality¹⁶⁷.

Read together, these interpretative positions do not expressly mandate the conferral of a specific immigration *status*. They may, however, be understood as implying that where removal is prohibited because it would expose an individual to irreparable harm, the host State must ensure the

¹⁶⁴ HRC, *General Comment no 31*, cit., para 7.

¹⁶⁵ HRC, *General Comment no 31*, cit., para 10.

¹⁶⁶ CESCR, *General Comment no 3*, cit., para 10: « [...] the Committee is of the view that a *minimum* core obligation to ensure the satisfaction of, at the very least, *minimum* essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant [...]».

¹⁶⁷ CESCR, *General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, para 30: « [...] The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal *status* and documentation [...]».

existence of adequate legislative and administrative frameworks capable of securing the effective enjoyment of fundamental rights. Maintaining a non-removable person in a condition of structural legal precarity - without access to a stable residence *status* or to the material conditions necessary for a dignified life - may therefore raise issues of compatibility with the positive obligations arising under both the ICCPR and the ICESCR.

At regional level, the European Court of Human Rights has repeatedly stressed that Convention rights must be “practical and effective” rather than “theoretical or illusory”¹⁶⁸. In *M.S.S. v. Belgium and Greece*¹⁶⁹, *Sufi and Elmi v. United Kingdom*¹⁷⁰, and *Tarakhel v. Switzerland*¹⁷¹, the Court emphasised vulnerability, cumulative risk and the need for effective procedural guarantees. Although the Court has not expressly required the conferral of a specific residence *status*, its insistence on effective protection under Articles 2 and 3 ECHR may be interpreted as implying that leaving a non-removable person in conditions incompatible with human dignity may engage State responsibility¹⁷².

By contrast, the Inter-American Court currently stands out for articulating this obligation in more explicit terms, expressly linking climate-related *non-refoulement* to the duty to establish domestic protection mechanisms.

Accordingly, the issue is not whether international law mandates a predetermined *status* category, but whether the absence of any stable and legally certain framework for persons who cannot be removed is compatible with the duty to guarantee the practical and effective protection of fundamental rights.

Paola Puoti
Dipartimento di scienze giuridiche e sociali
Università degli studi “G. D’Annunzio” di Chieti-Pescara
paola.puoti@unich.it

¹⁶⁸ ECHR, no. 6289/73, 9-10-1979, *Airey v. Ireland*, para. 24.

¹⁶⁹ ECHR, (Grand Chamber), no. 30696/09, cit., paras 250–263.

¹⁷⁰ ECHR, no. 8319/07 and 11449/07, cit., paras 278–283.

¹⁷¹ ECHR, (Grand Chamber), no. 29217/12, cit., paras 94–104.

¹⁷² Recent political initiatives within the Council of Europe framework suggest a risk that the already cautious interpretation of Article 3 ECHR in *non-refoulement* cases may be further narrowed. The Secretary General’s concept note and the Conclusions of the Informal Ministerial Conference of 10 December 2025 emphasise subsidiarity and States’ sovereign prerogatives in migration control (see: CoE, Speaking notes of the Secretary General and the Deputy Secretary General to the 1539th meeting of the Ministers’ Deputies (Valletta, Malta, 7 October 2025), SG/Inf(2025)29, search.coe.int/cm/eng?i=091259488028c6b1; CoE Informal Ministerial Conference 10 December 2025, Conclusions, rm.coe.int/informal-ministerial-conference-10-december-2025-conclusions/488029b843), while on 22 May 2025 a coalition of nine European states, spearheaded by Denmark and Italy, issued an open letter calling for a shift in the European Court of Human Rights’ interpretative approach in the field of migration and in cases concerning irregular migration and the expulsion of criminal foreign nationals, questioning whether the Court has extended Convention protection too far in immigration matters

(see the letter www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf).

