

Human rights protection for persons displaced across international borders due to climate change: from a remedial to an integrated human rights-approach*

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Abstract: La tutela dei diritti umani dei migranti climatici: da un paradigma rimediabile ad un approccio integrato human rights-based - International human rights bodies and experts have long recognized the profound effects of climate-related displacement on fundamental rights, as well as the persistent gaps in legal protection within the human rights framework. This article examines the issue from a wider perspective by outlining what an integrated human-rights-approach to climate displacement may look like. Thus, Section 1 and 2 examine, respectively, how human rights bodies, experts and scholars, have conceptualized climate displacement and its human rights implications, and assessed the potential and gaps provided by the human rights regime in responding to these challenges. Building on this analysis, Section 3 proposes an integrated human rights-approach, i.e., one that moves beyond the sole application of refugee and human rights law and provides both preventive and remedial measures.

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1. Conceptualizing climate displacement and vulnerability within human rights institutions

International human rights institutions and experts have long acknowledged climate change's capacity to act as a driver of forced migration¹, thus contributing to expose vulnerable groups to human rights

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¹ A. Sironi, C. Emmanuel, M. Bauloz, M. Emmanuel, *Glossary on Migration*, 2019, (hereinafter IOM, *Glossary on Migration*, 2019) under the term: "Environmental Migration", <https://publications.iom.int/>. Following the IOM terminology, the present article refers only to climate displacement, aiming to focus on the cases in which climate change contributes to forced migration, rather than on voluntary migration.

violations. The first part of this contribution aims to provide an analysis of the way in which human rights institutions, experts and quasi-judicial bodies have conceptualized climate displacement and acknowledged its human rights impacts, especially on vulnerable groups and populations.

1.1 Climate-induced displacement: early conceptualizations and distinctions

In 2009, the Office of the High Commissioner on Human Rights (OHCHR) and the UN Independent Expert on the Human Rights of Internally Displaced Persons first warned about the existing risk that 50 to 250 million people would be displaced by the first half of the century, either internally or across borders, due, among other factors, to the effects of climate change². The OHCHR's report on human rights and climate change acknowledged the full spectrum of climate scenarios under which certain groups of people may be induced or forced to relocate, including: «weather-related disasters, such as hurricanes and flooding, slow onset disasters, such as desertification, sinking of coastal zones and possible total submersion of low-lying island States, increased disaster risks resulting in relocation of people from high-risk zones, and social upheaval and violence attributable to climate change-related factors»³.

In that regard, scholars have long noted that climate migration constitutes a multi-causal phenomenon, with climate change reinforcing, rather than singularly causing, human mobility⁴. For their part, while acknowledging that environmental migration constitutes a complex and multicausal phenomenon⁵, international and human rights experts have tended to associate climate-induced displacement to three main causes, namely, a) sudden events, b) slow onset events, and c) the interrelation between violence and climate-related factors.⁶ Sudden onset events include

² Representative of the Secretary-General on the human rights of internally displaced persons, *Protection to and assistance of internally displaced persons*, A/64/214, 3–8-2009, para. 11, <https://docs.un.org/en/A/64/214>; Office of the High Commissioner for Human Rights (OHCHR), *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, A/HRC/10/61, 15-1-2009, para. 55, <https://www.refworld.org/reference/themreport/unhrc/2009/en/65384>.

³ Office of the High Commissioner for Human Rights (OHCHR), cit., para. 56.

⁴ Boas, I., Farbotko, C., Adams, H. et al. (2019), *Climate Migration Myths*, *Nature Climate Change*, 9(12), 901, 902; C. Scissa, *Cambiamenti climatici e migrazioni forzate: fenomenologia e risposte giuridiche*, in *Dir. imm. citt.*, 2021, 1, 7, 10–12.

⁵ Special Rapporteur on the human rights of migrants, *Climate Change and migration*, A/67/299, 13-08-2012, <https://docs.un.org/en/A/67/299>, para. 32: «Environmental migration, like every kind of migration, is essentially a complex, multicausal phenomenon which may be driven by a multiplicity of push-and-pull factors»; See also: IPCC, *Sixth Assessment Report (AR6), Working Group II: Impacts, Adaptation and Vulnerability*, 2022, Cambridge University Press, Geneva, 28-02-2022, <https://doi.org/10.1017/9781009325844>, 744–747.

⁶ Office of the High Commissioner for Human Rights (OHCHR), cit. *supra*, fn. 3, paras. 55–58; IOM, *Global Report on Internal Displacement 2023: Chronic Impacts of Internal Displacement*, Geneva, 1 May 2023, <https://www.internal-displacement.org/global-report/grid2023>, 42–43.

phenomena like hurricanes, storms and floods. They tend to produce an immediate and visible result, but often their effects only last for limited periods of time, rarely causing protracted displacement. Conversely, slow onset events involve longer processes such as sea level rise, desertification or droughts, among others, and «often lead to permanent migration or displacement due to longer lasting or potentially irreversible effects to the environment»⁷. In the worst-case scenario, that may lead to the uninhabitability of a whole territory, as in the case of the eventual total submergence of small island states⁸. Human rights as well as scientific reports also highlight that people facing sudden and slow onset events may thus face different kind of barriers. Those displaced by slow onset events may face resource scarcity and, as a result, increased land conflicts. Often, the consequences of armed conflict and ecological deterioration may combine, for instance when «government structures and institutions are weak, the interaction of drought, or other adverse effects of climate change, with conflict can lead to famine»⁹. As a matter of fact, the possibility for climate change to indirectly contribute to violent conflict, thus triggering human mobility, has been recognized in independent studies by the UN Special Rapporteur on the Right to Food and the Special Rapporteur on Climate¹⁰. Finally, subsequent studies problematized the difficulties of distinguishing between “voluntary” and “forced” migration, especially in the face of slow onset disasters and long environmental deterioration¹¹. For instance, people living in areas affected by environmental degradation may try to find fortune in environmentally prosperous areas within or outside their countries, but also be forced to do so, when facing direct «threats to

⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR) & Platform on Disaster Displacement, *The slow onset effects of climate change and human rights protection for cross-border migrants*, A/HRC/37/CRP.4, 22-3-2018, para. 17, https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_slow_onset_of_Climate_Change_EN.pdf.

⁸ *Ibidem*, para. 60.

⁹ 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*, 1-10-2020, para. 11, <https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123356>.

¹⁰ Special Rapporteur on the Right to Food, *Report on the right to food in the context of natural disasters*, A/HRC/37/61, 25-1-2018, para. 107, <https://docs.un.org/A/HRC/37/61>: «Climate change has long-term and deeper impacts on food insecurity that eventually could bring conflicts to countries that have limited capacity to cope, which could then become trapped in a vicious cycle of conflict, disaster and food insecurity»; Special Rapporteur on promotion and protection of human rights in the context of climate change, *Providing legal options to protect the human rights of persons displaced across international borders due to climate change*, A/HRC/53/34, 18-4-2023, <https://docs.un.org/en/A/HRC/53/34>.

¹¹ Office of the High Commissioner for Human Rights (OHCHR), cit. *supra*, fn. 3, para. 56; Special Rapporteur on the human rights of internally displaced persons, *Climate change and displacement*, A/HRC/56/47, 01-07-2024, para. 20, <https://docs.un.org/en/A/HRC/56/47>; Special Rapporteur on the human rights of internally displaced people, *Internal displacement in the context of the slow-onset adverse effects of climate change*, A/75/207, 21-7-2020, <https://docs.un.org/A/75/207>, see para. 12, where the Rapporteur notes that in most cases, when induced by slow onset events, climate displacement «falls on a continuum between voluntariness and constraint».

life, health, property, and livelihood»¹². In those cases, human rights experts tend to distinguish between voluntary and forced migration based on the migrant's ability to still enjoy one's human rights in the state of origin, in spite of its environmental conditions. Providing a complex analysis of the interrelation between climate change and mobility, the Inter-American Court of Human Rights also noted that climate change may «affect freedom of movement in different ways», and namely, by contributing to voluntary or forced migration, and do so «directly, or indirectly»¹³. Indirect contribution to displacement may occur when climatic conditions «compound preexisting situations of vulnerability and factors of displacement, such as conflict, violence, poverty, food insecurity, or inequalities»¹⁴.

1.2 The human rights impact of climate displacement throughout the climate migrant's journey

Human rights experts and institutions have drawn the attention to the multiple ways and stages in which some groups of people may be subject to human rights violations connected with climate displacement. The Special Rapporteur on the Rights of cr noted that, on a geographical level, the most exposed countries include developing states presenting particular geographic characteristics and ecosystems such as «mega-deltas, small island developing States, and low-lying coastal and arid areas are most exposed to environmental migration»¹⁵. Moreover, several human rights institutions, including human rights treaty bodies, emphasized that, based on geographical, social, economic and political factors, vulnerable groups including women, children, minority and indigenous groups, and people with disabilities will be most affected by climate displacement and its human rights implications¹⁶. On that line, the Inter-American Commission on Human Rights noted that climate displacement tends to occur at the intersection between climate change, poverty, marginalization, conflict, and inefficient government structures. In those situations, people with pre-existing vulnerabilities, and living in conditions of marginalization, may not

¹² Representative of the Secretary-General on the human rights of internally displaced persons, *Protection to and assistance of internally displaced persons*, cit. *supra*, fn. 3, para. 20; cit. *supra*, fn. 8, para. 21: «The degree of voluntariness in the decision to migrate or not is affected by the effective enjoyment of human rights. Differential levels of compulsion and free choice are influenced by the ability to enjoy human rights, including through access to basic necessities».

¹³ Inter-American Court of Human Rights, *Climate Emergency and Human Rights*, Advisory Opinion AO-32/75, 29-05-2025, para. 416.

¹⁴ Inter-American Court on Human Rights, Advisory Opinion OC-23/17, *Environment and Human Rights*, 15-11-2017, paras. 416- 426.

¹⁵ Cit. *supra*, fn. 6, para. 35.

¹⁶ See, among others, *supra* fn. 6, para. 46: «Climate change disproportionately affects women, girls, boys, young people, persons with disabilities, older persons, lesbian, gay, bisexual and transgender (LGBT) persons, minorities, indigenous peoples, people living in poverty and the least economically secure»; United Nations High Commissioner for Human Rights, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, 4-5-2017, A/HRC/35/13, <https://docs.un.org/A/HRC/35/13>, paras. 19, 22.

be able to overcome the difficulties posed by climate change, and thus be forced to migrate¹⁷.

Moreover, human rights experts and institutions have highlighted that human rights violations will occur at all the different stages of a migrant's journey, i.e., before their decision to move, in the process of crossing international borders, and finally, upon a migrant's removal from the country where they seek international protection. In that framework, some treaty bodies have identified the human rights violations which occur before climate displacement, while others have highlighted the need to take measures to protect vulnerable groups (e.g. indigenous communities and ethnic minorities) from the risk of displacement. Finally, others highlighted the relevance of protecting e.g. women and children during and after climate displacement.

Firstly, to be forced to relocate from one's own place of residence due to climate factors touches upon different spheres of a person's life, and thus, on a wide spectrum of human rights. When people are deprived of their freedom of movement and choice of place of residence, they may «lose their homes and livelihoods and be deprived of their rights to housing, food, water and sanitation, health care, education and property»¹⁸. Indigenous people and groups reliant on traditional livelihoods, when forced to leave their territories, will be affected in their capacity to preserve cultural and spiritual practices, and thus, in their human right to self-determination¹⁹. People might, more simply, have lost their documents during a natural disaster, and consequently face barriers in accessing basic socio-economic services; their homes might be destroyed, damaged. On that line, in the *Teitiota* case, the Human Rights Committee noted that climate-induced displacement may affect the human right to life in its «various components», thereby including access to water, food, and other essential goods²⁰. Similarly, in a proceeding regarding Yemen, the Committee on Socio-Economic Rights (CESCR) noted with concern that the increase of floods and droughts, combined with an unprecedented rise in temperatures, had led to the destruction of property and loss of livelihood, eventually causing food insecurity and internal

¹⁷ Inter-American Commission on Human Rights, Resolution 2/24, *Human Mobility Induced by Climate Change*, 3.

¹⁸ Special Rapporteur on the human rights of internally displaced people, cit. *supra*, fn. 12, para. 23.

¹⁹ *Ibidem*; Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined twenty-first to twenty-fifth periodic reports of the Philippines*, CERD/C/PHL/CO/21-25, 23-5-2023, para. 17, <https://docs.un.org/CERD/C/PHL/CO/21-25>. Interestingly, in its concluding observations regarding Philippines, the CERD noted that ethnic minorities may be at an increased risk of displacement not only due to natural factors driven by climate change, but also owing to the specific extractive policies.

²⁰ L. Salvadego, *The Right to Enjoy a Life with Dignity and the Non-Refoulement Obligation in the Context of Climate-Induced Migration*, in 111 *Questions Int'l L.*, 21, 22 (2025); UN Human Rights Committee, *Ioane Teitiota v. New Zealand*, Communication No. 2728/2016, CCPR/C/127/D/2728/2016, decision of 7-01-2020. The Committee assessed whether the «situation of indigence, deprivation of food and extreme precarity could threaten his [Mr Teitiota's] right to life, including his right to a life with dignity», para. 9.9.

displacement²¹. Moreover, in its Advisory Opinion on Climate Change, the International Court of Justice also acknowledged that sea level rise is likely to lead to the forced displacement, especially from small island and low-lying coastal states, thus also affecting their populations' right to self-determination²². Recognizing that specific groups of people are more exposed to climate displacement, the Committee on the Convention on all Forms of discrimination Against Women (CEDAW) and the Committee on the Elimination of Racial Discrimination recommended the adoption of specific prevention, adaptation, and even redress measures taking into account the specific needs of women, indigenous people and ethnic minorities²³.

Secondly, those who embark on international migrations to escape from adverse climate change-related events will be exposed to multiple human rights risks «in particular in countries of transit and destination and in the context of access to entry and protection from return to harmful situations»²⁴. As the former Special Rapporteur on Climate Change noted, «the process of moving across international borders is fraught with human rights violations»²⁵. The latter may also be caused by specific foreign policies, such as the EU's choice to externalize border management through extraterritorial interception and pushbacks towards countries with limited human rights records, such as Turkey, Libya and Albania²⁶. Moreover, when

²¹ Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Yemen*, E/C.12/YEM/CO/3, 23-03-2023, para. 61, <https://digitallibrary.un.org/record/4007084?ln=en&v=pdf>.

²² International Court of Justice, *Obligations of States in respect of Climate Change*, Advisory Opinion, A/79/979, 23-07-2025.

²³ Committee on the Elimination of Discrimination against Women, *Concluding observations on the ninth periodic report of Spain*, CEDAW/C/ESP/CO/9, 31-5-2023, <https://docs.un.org/CEDAW/C/ESP/CO/9>; See, para. 19: «It is further concerned about climate refugees in the State party, the majority of whom are women and children, and about the disproportionate impact of the climate crisis on women and girls, which requires specific and urgent measures»; Committee on the Elimination of Discrimination against Women, *Concluding observations on the ninth periodic report of New Zealand*, CEDAW/C/NZL/CO/9, 30-10-2024, para. 38, <https://docs.un.org/CEDAW/C/NZL/CO/9>; Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined twenty-first to twenty-fifth periodic reports of the Philippines*, CERD/C/PHL/CO/21-25, 23-5-2023, See para. 17, noting the vulnerability of ethno-religious minorities to displacement, as a consequence of «climate disasters, and forced displacement in the context of large-scale extractive and development projects»; Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined twenty-second to twenty-fifth periodic reports of the Niger*, CERD/C/NER/CO/22-25, 24-05-2023, para. 22, <https://docs.un.org/CERD/C/NER/CO/22-25>. While not explicitly referring to displacement, the Committee noted the combined impact of the extractive policies and climate change on the access to land and natural resources of the Tuareg indigenous groups in Niger in the Sahel.

²⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR) & Platform on Disaster Displacement, cit., *supra*, fn.8, 8.

²⁵ Special Rapporteur on promotion and protection of human rights in the context of climate change, cit. *supra*, fn. 11, para. 17.

²⁶ Council of Europe Commissioner on Human Rights, *Externalised asylum and migration policies and human rights law*, Council of Europe, 4-09-2025, <https://rm.coe.int/report-on-externalisation-of-migration-by-michael-o-flaherty-council-o/488028300a>; Special

adequate shelter is not provided, or when crossing unsafe countries, migrants may face racial discrimination, forced labor, harassment, abuse, and torture, incurring, among others, in a violation of their right to life and physical integrity²⁷. The Committee on the Rights of the Child noted that, in cases of climate displacement, children and girls may be more likely to be pulled out of school, forced into child marriage, or trafficked, and their bodily integrity may also be at threat during their migration journey, whereas children with disabilities may find even harder barriers in receiving adequate shelter and support during emergencies, suffering higher rates of abandonment and neglect.²⁸ Generally speaking, the Council of Europe's Commissioner for Human Rights noted that different groups, including children, pregnant women, LGBTI people, and people with physical and mental disabilities, may be at particular threat of human rights abuses in externalized asylum or return procedures.²⁹

Thirdly, the human rights of climate displaced people may be violated when they are not granted international protection and pushed back to countries where they cannot anymore live a secure and dignified life. Being forced to return to countries affected by climate-induced sudden and/or slow onset events, will imply a new violation of a person's freedom of movement, as well as returning to a condition of deprivation of one's right to adequate food, water, health, and housing.³⁰ In such cases, human rights violations are caused by a multitude of interconnected factors, such as long-standing environmental deterioration, poverty, gender inequality, violence. In that light, experts and scholars have also drawn the attention towards the human rights violations suffered by "trapped populations", such as older people or people with disabilities, who may be «unable to leave areas highly exposed to climate risks, facing greater levels of vulnerability»³¹.

Finally, as it will be seen in further detail below, with a few exceptions (Section 2.3), international human rights institutions have kept a rather neutral standing with regard to the extraterritorial responsibility of industrialized states in tackling climate displacement³². Among others, it is worth to note that, in a recent proceeding regarding the state of Tuvalu, although recognizing the gendered impacts of climate displacement on

Rapporteur on promotion and protection of human rights in the context of climate change, cit. *supra*, fn. 11, para. 20.

²⁷ Special Rapporteur on the human rights of migrants, cit. *supra*, fn. 6; United Nations High Commissioner for Human Rights, cit. *supra*, fn. 17, paras. 26-27.

²⁸ Ivi, para. 21.

²⁹ Cit. *supra*, fn. 27, 35.

³⁰ Special Rapporteur on promotion and protection of human rights in the context of climate change, cit. *supra*, fn. 11.

³¹ Office of the United Nations High Commissioner for Human Rights (OHCHR) & Platform on Disaster Displacement (2023), cit. *supra*, fn. 8, para. 33; cit. *supra*, fn. 6, para. 49 ss; C. Bustos, J. Vélez-Echeverri, *A Human Rights Approach to Climate-Induced Displacement: A Case Study in Central America and Colombia*, in 31 *Mich. St. Int'l L. Rev.* 403, 408 (2023).

³² Human Rights Council, Report of the Working Group on the Universal Periodic Review on Kiribati, A/HRC/60/5, 17-06-2025. In the context of the Universal Periodic Review, different states noted the responsibility of the state of Kiribati in actively protecting the right of migrants after climate displacement, for instance, by preventing their statelessness. See, paras 102, 115.

women, CEDAW recommended the state against «promoting displacement as a solution to climate change and rising sea levels»³³.

2. The protection of cross-border climate displaced persons under human rights and refugee law: promising avenues and limitations

Although climate-related displacement can lead to human rights violations at multiple and successive stages, human rights scholarship tends to focus on the post-mobility phase, when displaced persons must seek international protection in a host country. In that regard, human rights bodies and experts have recently started envisaging ways in which the international legal framework may be extended to provide an enhanced protection for climate migrants. The following paragraphs will thus briefly illustrate the ongoing debate regarding the limits and prospects regarding the application of the 1) Geneva Convention and 2) the non-refoulement principle to climate displaced persons. Finally, they will inquire good practices on the transnational level, as well as their intrinsic limitations.

2.1 A climate “refugee” under the Geneva Convention?

A legal definition of the term “climate refugee” is still lacking in international law, mostly owing to the political resistance of developed states³⁴. The latter means that climate displaced people will not have a direct right to international protection *per se* but may receive it when fulfilling the other necessary legal requirements provided by international refugee law. Namely, art. 1 (a) of the Geneva Convention (1951) defines a refugee as a person who is outside of their country of nationality or habitual residence and cannot return due «to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country»³⁵. Thus, under the Geneva Convention, the legal status of refugees may be granted to groups of people facing persecution owing to their beliefs, identity, or belonging to a particular political, religious, or social minority. As noted by the OHCHR, the main difficulty in applying such definition to climate refugees coincides with the “persecution” requirement³⁶.

³³ Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fifth and sixth periodic reports of Tuvalu*, para. 36, CEDAW/C/TUV/CO/5-6, <https://docs.un.org/CEDAW/C/TUV/CO/5-6>.

³⁴See McAdam, *Swimming Against the Tide: Why a Climate Change Displacement Treaty Is Not the Answer*, in 23 *Int'l J. Refugee L.* 2,6 (2011); Biermann and Boas, *Preparing for a Warmer World*, in 10(1) *Glob. Env't. Politics* 60 (2010), 60,67-69; and Docherty & Giannini, *Confronting a Rising Tide*, in 33 *Harv. Envtl. L. Rev.* 349,3 52-

353 (2009), highlighting how the absence of a ‘climate refugee’ definition stems primarily from the reluctance of developed States to extend binding protection.

³⁵ Convention Relating to the Status of Refugees, 28-71951, 189 U.N.T.S. 137, art. 1.A.

³⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR) & Platform on Disaster Displacement, cit. *supra*, fn. 8.

Namely, climate migrants may be granted refugee status when persecution happens in the context of climate change, thus exposing certain individuals or minorities to «sustained and violation of human rights on account of one of the Convention grounds»³⁷. A 2018 OHCHR Report³⁸ identified a set of cases in which state or non-state agents may undertake persecutory actions in the context of climate change, for instance by 1) «discriminating particular groups for humanitarian assistance or protection against climate disasters», 2) «using climate change impacts as a way to persecute certain persons», 3) «withdrawing humanitarian assistance from marginalized groups», 4) «targeting individuals for engaging in disaster-relief work», or 5) «limiting access to agriculture for particular groups who require it for survival». Finally, the latter conditions may also apply when a «state is unable to protect a group of people from non-State persecution in areas affected by slow onset processes or following a sudden onset event»³⁹.

Moreover, human rights scholars have noted that the state's intentional or discriminatory omission to protect certain groups of people from environmental degradation may amount to «persecution» under certain circumstances.⁴⁰ For instance, some authors have argued that according to a liberal interpretation of the notion of «persecution», specific groups of people may be recognized as climate refugees when their basic rights are denied in a sustained, systematic, but also discriminatory manner⁴¹.

While exceptional, such instances may increasingly occur in the present-day world, marked as it is by wars and environmental crises. Particularly, reckless environmental policies, even more so when driven by a discriminatory or persecutory intent, may lead to the ecological collapse of entire territories, making it impossible for vulnerable populations to remain in their lands, by e.g. practicing subsistence agriculture. One illustrative example in that sense may be that of the Yanomami indigenous group in Brazil, which suffered malnutrition, mass deaths and forced displacement as a consequence of Bolsonaro's extractive and agricultural policies in the Amazon Forest. Although largely absent from the climate-migration discourse, the Yanomami issue led the non-profit organization *Allrise* to

³⁷ Ivi, 23.

³⁸ *Ibidem*.

³⁹ *Ibidem*.

⁴⁰ Such progressive theses find their theoretical foundation in the seminal work of authors like James C. Hathaway and Michelle Foster, who first suggested that persecution should be defined as «a sustained or systemic violation of basic human rights demonstrative of a failure of state protection». See J. Hathaway, *The Law of Refugee Status*, Toronto, 1991, 101; J. Hathaway, M. Foster, *The Law of Refugee Status*, Cambridge, 2014, 185; M. Scott, *Climate Change, Disaster, and the Refugee Convention*, Cambridge, 2020, 96 ss.

⁴¹ L.S. Nishimura, *Gaps in Protection: Climate Change, Human Mobility, and Current Approaches*, in P. Kalivis, A. Savaresi (Eds.), *Climate Change, Human Rights, and Adaptive Mobility*, Oxford, 2025, 14, 28. M. Di Filippo, *La protezione dei migranti ambientali nel dialogo tra diritto internazionale ed ordinamento italiano*, in *Dir. umani Dir. int.*, 2023, 1, 16: «A mo' di esempio, si consideri alla condizione di [...] gruppi minoritari che possono essere bersagliati a seguito della pressione politica e sociale dovuta alla scarsità di risorse e alle tensioni successive ad eventi ambientali; ad azioni distruttive del contesto naturale riferibile a determinate popolazioni, concepite come forme di persecuzione».

request the opening of a criminal file for crimes against humanity vis-à-vis the former President Jair Bolsonaro⁴². Nothing would preclude the possibility that the aforementioned policies, by effectively dispossessing the Yanomami of their basic means of subsistence could, in the future, qualify the components of that indigenous group as climate refugees, under the described conditions.

Nonetheless, even admitting that in some exceptional circumstances, the Geneva Convention may apply to people displaced due to climate change, it is also clear that the described conditions will not cover all situations of climate displacement. That is because the notion of persecution entails some form of action or inaction carried with a persecutory or at least discriminatory intent.⁴³ On the contrary, scholars and institutions have emphasized that those forced to migrate may not necessarily be the most persecuted or discriminated, but will most likely be the most fragile, marginalized, and neglected by their respective governments.⁴⁴ Consequently, in its current formulation, the Geneva Convention will not be able to provide protection to all those individuals who are forced to migrate due to the intersection of adverse climate conditions (i.e., sudden or onset events), socio-economic marginalization, and weak government structures, unable to provide them with adequate protection.

2.2 Complementary forms of protection: the application of subsidiary protection and the non-refoulement principle to climate displacement

When lacking the requirements for obtaining refugee status, asylum seekers may either be entitled to “subsidiary protection” under art. 2 of the EU Directive 2004/83⁴⁵ or be allowed to remain in the host country based on

⁴² International Criminal Court, Communication to the Office of the Prosecutor of the International Criminal Court, *The Planet vs Bolsonaro*, 12-10-2021.

⁴³ See *supra*, fn. 41.

⁴⁴ See, among others: V. Basile, *La dottrina del social paradigm: quali opportunità di estendere la portata della definizione di rifugiato?*, «I “disastri naturali”, pertanto, si verificano solo in presenza di condizioni sociali particolarmente precarie e non dovrebbero confondersi con i natural hazards, che hanno un carattere del tutto naturale», in F. Amato et al., *Climate Change, Human Rights and International migration*, Napoli, 2025, 205, 216. See also: M. Marchegiani, *L’incidenza della nozione di vulnerabilità sullo sviluppo del diritto internazionale in tema di cambiamenti climatici*, Torino, 2023;

OHCHR, *Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child*, A/HRC/35/13, 4-05-2017, paras. 19-22; Inter-American Commission on Human Rights,

Resolution No. 2/24: Human Mobility Induced by Climate Change, 2024, 1: «The people and communities most affected are those who have contributed minimally to greenhouse gas emissions, the main cause of climate change. Many of them in situations of vulnerability, poverty, displacement and marginalization cannot overcome these consequences and must mobilize, leaving their homes or places of habitual residence in search of better opportunities and dignified living conditions. »

⁴⁵ Council Directive 2004/83/EC of 29-4-2004 on *Minimum Standards for the Qualification and Status of Third-Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*.

the state obligations under human rights and refugee law (i.e., principle of *non-refoulement*)⁴⁶. To start with, subsidiary protection may be granted to those who may face a real risk of suffering serious harm due to torture or inhuman or degrading treatment, or «by reason of indiscriminate violence in situations of international or internal armed conflict», when forced to go back to their country of origin. For instance, one may imagine that subsidiary protection be granted to the Palestinian inhabitants of Gaza in the aftermath of the war, on the grounds of human rights violations caused by the intersection of the persisting violences in the occupied territories and the well-documented ecological impacts of the war⁴⁷.

Moreover, the principle of *non-refoulement* is grounded on both international refugee and human rights law, being provided under art. 33 of the Geneva Convention, and under art. 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). Under human rights law, a state is obliged not to remove anyone from the country in which they have applied for international protection, when there are substantial grounds for believing that they would be at risk of being subject to a violation of their right to life, and other serious violations of human rights, torture or other cruel, inhuman or degrading treatment or punishment⁴⁸.

In its Comment no. 36 on the right to life, the Human Rights Committee laid the foundation for the application of the *non-refoulement* principle in the climate context, as it recognized climate change as one of the greatest threats to the enjoyment of the right to life⁴⁹. Furthermore, in the *Teitiota* case, the Committee noted that, «without robust national and

⁴⁶ In its General Comment no. 36, the Human Rights Committee explicitly stated that «the obligation not to extradite, deport or otherwise transfer, pursuant to article 6 of the Covenant, may be broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status». See, Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30-10-2018, para. [x], <https://docs.un.org/en/ccpr/c/gc/36>, para. 31.

⁴⁷ United Nations Environment Program (UNEP), *Environmental impact of the conflict in Gaza Preliminary assessment of environmental impacts*, Nairobi, 2024, wedocs.unep.org/20.500.11822/45739. The report noted, among other things, that the conflict in Gaza interrupted almost all environmental management systems and services (including basic sewage infrastructure) with major impacts on the health of the population and increasing rates of non-communicable diseases. See also, A. Del Guercio, *Conflitti armati, ambiente e diritti umani: il caso della Striscia di Gaza*, in Amato F. et al., *Climate change, human rights and international migration*, Napoli, 2022, 166-167: «La devastazione dell'ambiente contribuisce indiscutibilmente all'esposizione del gruppo a condizioni di vita che possano provocarne la distruzione. Ciò innanzitutto in maniera diretta, per via delle incursioni armate, che determinano danni alla popolazione e agli ecosistemi; ma anche per le conseguenze che ne derivano in termini di impronta ecologica e di contaminazione degli habitat naturali (che diventano inabitabili) per mezzo delle sostanze tossiche diffuse nell'aria, nell'acqua e nel suolo».

⁴⁸ In the human rights context, the right to life and the freedom against torture, cruel, inhuman or degrading treatment, are respectively protected under art. 6 and 7 of the International Covenant on Civil and Political Rights. Moreover, the principle of non-refoulement has also been grounded on art. 2, 3 and 8 of the European Convention of Human Rights. See: M. Di Filippo, cit. *supra*, fn. 42.

⁴⁹ Human Rights Committee, cit. *supra*, fn. 21.

international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states»⁵⁰.

In the *Teitiota* case, the Human Rights Committee applied for the first time the principle to a case of climate displacement with ambivalent results⁵¹. In the latter, it evaluated whether by repatriating Mr Teitiota, the inhabitant of a small island state who alleged to have lost his basic means of subsistence due to climate-induced sea level rise, entailed a violation of art. 6 of the ICCPR. Eventually, the Committee applied a rather high threshold in its assessment, admitting the application of the principle of *non-refoulement* only in the most extreme situations.

Firstly, the Committee requested that the risk be both imminent and personal, excluding that it could derive from the general conditions in the receiving state, except in the most extreme cases⁵².

Secondly, it imposed the fullest burden of proof on the applicant, thereby requesting the most vulnerable subject to prove that the consequences of climate change had caused a “real risk of irreparable harm” to his right to life. Despite Mr Teitiota had shown the difficulties in sustaining his family as a subsistence farmer, in an island increasingly affected by sea level rise and land conflicts and reported the adverse effects of the water scarcity on the health of his son, the Committee found its allegations to be insufficient to prove a violation of the right to life under art. 6. It eventually refuted Mr Teitiota’s application, noting that the island of Kiribati had not yet been submerged, and that its government was taking adaptive measures aimed to face malnutrition and water scarcity⁵³.

The *Teitiota* case shows very well the prospects, and even more so, limitations of the human rights regime in offering protection to climate displaced people. As such, it has been the object of both academic excitement and critique⁵⁴.

On a possibilistic note, scholars have highlighted that the Committee’s decision confirmed the possibility, for people displaced across international borders due to climate change, to avail themselves of complementary forms of protection under human rights law, including the *non-refoulement* principle under art. 6 of the ICCPR⁵⁵. The decision did so by leaving the door open to awarding international protection to similar applications in the future, based on Kiribati’s special vulnerability to sea level rise and climate change⁵⁶. Conversely, detractors have noted that the Committee’s interpretation

⁵⁰ Ivi, para. 9.11.

⁵¹ Human Rights Committee, cit *supra*, fn. 21.

⁵² *Ibidem*, para. 9.2.

⁵³ Ivi, para. 9.6, 9.10.

⁵⁴ See, among others: B. Simon, A. Kent, *The Teitiota Case and the Limitations of the Human Rights Framework*, in 75, *Quest. Int. L.*, 25-39 (2000).

⁵⁵ C. Scissa, *The principle of non-refoulement and environmental migration: a legal analysis of regional protection instruments*, in *Dir. imm. citt.*, 2022, 3, 7, 1-36.

⁵⁶ See *supra*, fn. 21, para. 9.11. The Committee considered that, given that the risk of an «an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized».

poorly protects the right to live with human dignity⁵⁷, and did not offer a clear timeframe on when the right to life may be threatened by climate change⁵⁸. Moreover, some criticized the unfair distribution of the burden of proof, highlighting the risk that, if applied under the HRC's rigid parameters, the *non-refoulement* principle may just come too late⁵⁹.

Among the critical voices, Judge Duncan Laki Mumuza noted, in its dissenting opinion, that the burden of proof imposed upon an asylum seeker should not be overly burdensome. The Judge considered it sufficient that Mr Teitiota had already faced considerable difficulties in accessing freshwater, that his child had suffered from a serious health condition, and his family had faced barriers in growing crops for agricultural subsistence, to conclude that he faced a “real, personal, and reasonably foreseeable risk of a threat of his right to life”⁶⁰. On the most practical level, critics have also found it counter-intuitive to wait for most extreme circumstances, such as an increase in death rates or “a mass exodus” due to sea level rise, to admit international protection, also noting the limited power of small island states as Kiribati in adequately adapting to climate change.⁶¹ In that regard, international scholars and institutions invited to re-consider the requirement that the threats should be sufficiently imminent and severe in the context of slow onset processes, where «people often move before the impacts reach that threshold»⁶². The latter to prevent the risk that, when such thresholds are finally reached, the mechanisms provided by human rights and refugee law may be simply insufficient to tackle much larger migration fluxes.

2.3 Transnational good practices between promising avenues and persisting inequalities

The previous analysis has shown that, with some narrow exceptions, climate displaced people are still far from receiving a direct, or at least adequate, legal protection through international refugee and human rights law. In this context, international experts have plauded national practices recognizing 1) broader legal definitions of refugee status, 2) temporary protection permits for those hit by natural disasters, including those induced by climate change, and 3) extensive interpretations of the *non-refoulement* principle.

⁵⁷ L. Salvadego, cit. *supra*, fn. 21.

⁵⁸ L. Rose, *The world after Teitiota: What the HRC decision means for the future of climate migration*, in 12(1) *San Diego J. Clim. & En. Law* 41, 43 (2021).

⁵⁹ M. Foster, J. Mc Adam, *Analysis of “imminence” in international protection claims: Teitiota v. New Zealand and beyond*, in 71 (4) *ICLQ* 975 (2022).

⁶⁰ Human Rights Committee, Individual Opinion of Committee Member Duncan Laki Mumuza (dissenting), *Teitiota v. New Zealand*, U.N. Doc. CCPR/C/127/D/2728/2016, 7-01-2020.

⁶¹ K. Steenmans, A. Cooper, *Ioane Teitiota v New Zealand: A landmark ruling for climate refugees?*, in 25(2) *Coventry Law J.* 23 (2020).

⁶² Office of the United Nations High Commissioner for Human Rights (OHCHR) & Platform on Disaster Displacement, cit. *supra*, fn. 8, para. 68. See J. McAdam, *Climate Change Displacement and International Law: Complementary Protections Standards*, 1, 16–17 (2011), <https://www.unhcr.org/media/no-19-climate-change-displacement-and-international-law-complementary-protection-standards>.

Firstly, regional instruments in Africa and Latin America (i.e., OAU Convention in Africa and Cartagena Declaration in Americas) recognizing refugee status to people risking to suffer “generalized violence”, “events seriously disturbing public order”, and “massive violation of human rights” were considered particularly promising where climate change exacerbates existing problems, for instance by contributing to famine and conflict⁶³. In that regard, the African Commission on Human Rights and Inter-American Commission on Human Rights have gone even further, indicating that the impacts of climate change may qualify as threats to the public order, thus providing an adequate basis for granting international protection to climate refugees.⁶⁴ It is interesting to note that the Italian legal system used to admit the possibility to issue complementary protection to asylum seekers who did not fall under the refugee category, in presence of “serious reasons of a humanitarian character”, under art. 5.6 of the Law no. 40/1998. The latter provision was abolished in 2018, reintroduced in 2020 with some improvements, and modified in 2023, whereas the latter amendment deleted any reference to the humanitarian reasons.⁶⁵

Secondly, a few national systems including Ecuador, Argentina, Brazil, Italy, Sweden and the US, provide temporary protection visa for those displaced due to relevant humanitarian needs, including “natural disasters”, where the applicants’ conditions in their countries do not allow their safe return.⁶⁶ In Italy, for instance, a first humanitarian visa was introduced in 1997.⁶⁷ The latter has been implemented as a collective measure to grant protection to those escaping the Balkan wars in the 1990s and the Arab Springs in the 2011, but never as a legal ground to protect groups of people displaced by climate-induced disasters.⁶⁸ Moreover, the Italian law provides a further temporary visa for serious calamities “of a contingent and exceptional nature”, which may be issued on an individual basis for a maximum period of six months and renewed for the duration of the calamity. Being limited in time and applicable only to contingent and exceptional phenomena,⁶⁹ the latter may grant temporary protection to people displaced by sudden onset events, such as floods, inundation, and earthquakes. Instead, it will hardly be applicable to those displaced by slow onset events, such as droughts and desertification, characterized by a slow insurgence and permanence.⁷⁰

Thirdly, multiple human rights institutions and even quasi-judicial bodies highlighted the need to evaluate the applications for complementary

⁶³ Cit. *supra*, fn. 8, para. 72.

⁶⁴ Cit. *supra*, fn. 6, Office of the United Nations High Commissioner for Human Rights (OHCHR); cit. *supra*, fn. 8, Special Rapporteur on promotion and protection of human rights in the context of climate change; cit. *supra*, fn. 11, para. 47 ss.

⁶⁵ A. Stevanato, *I migranti ambientali nel decreto-legge n. 20 del 2023. Che cosa resta della loro protezione?*, in *Corti Supr. Salute*, 2023, 1, 2.

⁶⁶ Cit. *supra*, fn.11, paras. 40, 43.

⁶⁷ D. lgs. 286/1998, art. 20.

⁶⁸ C. Scissa, *La protezione per calamità: una breve ricostruzione dal 1996 ad oggi*, in *Forum Quaderni Cost.*, 2021, 1, 137, 140-141.

⁶⁹ M. Di Filippo, cit. *supra*, fn. 41.

⁷⁰ Scissa C., *Il permesso di soggiorno per calamità: un aggiornamento sulla sua applicazione, numeri e beneficiari*, 20-11-2024, in [questionegiustizia.it](https://www.questionegiustizia.it/articolo/permesso-soggiorno-calamita), <https://www.questionegiustizia.it/articolo/permesso-soggiorno-calamita>.

protection and *non-refoulement* based on a comprehensive vulnerability assessment, especially in the context of slow onset events, where climate change may exacerbate pre-existing socio-economic vulnerabilities. The latter proposals seem to echo progressive approaches that have long been defended in the literature, such as the functional or social paradigm approach.⁷¹ Among others, the Special Rapporteur on the Human Rights of Migrants invited to attentively consider the potential impact of the “broader socio-political context” in which climate change may exacerbate “pre-existing discrimination, persecution, and marginalization”⁷². However, among others, it was the Inter-American Commission of Human Rights to provide the most extensive interpretation of the principle of *non-refoulement* so far, noting that states should undertake a “cumulative risk assessment” (see, Section 3).

In a few international and European rulings, Courts have applied the principle of *non-refoulement* to migrants who risked returning to conditions of extreme poverty, e.g., under art. 3 of the European Convention of Human Rights.⁷³ Some scholars have expressed the hope that the same principle may be applied in the context of climate migration, where vulnerable individuals are forced to migrate due to the combination between geographic and socio-economic factors. However, the latter case law has only been applied in exceptional cases, when vulnerable groups risked being deprived of their access to healthcare and shelter in case of return, so that it is not clear whether it may be applied when climate change hinder access to other socio-economic rights⁷⁴.

Moreover, comparative analyses have shown that European legal systems tend to be the most reluctant to apply such progressive human rights standards in the context of climate migration.⁷⁵ The latter is also true for a virtuosistic system as the Italian one, where after restrictive political

⁷¹ C. Zickgraf, *The Fluidity of Environmental Migration: Beyond Definitions and Categories*, in F. Gemenne et al (Eds.), *Research Handbook on Climate and Migration Law* (2023), 31-48. The functional approach would consist in assessing the specific vulnerabilities of displaced persons, e.g. considering the loss of livelihoods, territory, and security in the place of origin. Considering the social variable of environmental hazards, the social paradigm approach proposes evaluating refugee requests based on a comprehensive assessment which takes into account all dimensions of social vulnerability which may induce an individual to seek international protection (i.e., “the social paradigm”). See: V. Basile, cit. *supra*, fn. 45, 217-219: «Il social paradigm, in particolare, suggerisce di guardare attentamente alle pratiche di discriminazione e marginalizzazione imperniate nei diversi contesti sociali, che gravano soprattutto su certi individui o gruppi».

⁷² Special Rapporteur on the human rights of migrants, *The impact of climate change on the human rights of migrants*, A/77/189, 19-07-2022, para. 67, <https://docs.un.org/A/77/189>.

⁷³ M. Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, Cambridge, 2009; G. Lauria, *The international protection regime in the age of climate change*, University of Macerata (PhD thesis), 2022.

⁷⁴ V. Flegar, *Vulnerability and the principle of non-refoulement in the European Court of Human Rights: towards an increased scope of protection for people fleeing from extreme poverty?*, in 8(2) *Contemp. Readings in L. and Soc. Just.* 148, 153 ss (2016).

⁷⁵ For instance, cit. *supra*, fn. 11, 39 ss; C. Scissa, cit. *supra*, fn. 56; K. Neri, *Human Rights and Climate Migrants: A Comparison of the Potential for Legal Protection in Europe and the Americas*, in 111 *Questions Int'l L.* 1 (2025).

reforms,⁷⁶ complementary forms of protection may now only be issued by courts, in application of the principle of *non-refoulement* (provided by art. 5.6 of the Italian Immigration Law). In that sense, the Italian legal system offers a virtuosistic example of “remedial protection”. On a general level, Italy’s Supreme Court has affirmed the possibility to issue the special protection visa (which has replaced the humanitarian protection visa), based on a comparative evaluation of the migrant’s subjective vulnerability and objective living conditions in the country of origin as opposed to the host country, thus coming closer to the legal principle enshrined in the recent Inter-American Commission’s resolution on climate migration⁷⁷. Furthermore, in subsequent decisions, Italy’s Court of Cassation considered the climatic conditions in the country of origin as a crucial element to evaluate the applicant’s vulnerability and capacity to enjoy her fundamental rights in the country of origin. On those grounds, the latter Court eventually applied the *non-refoulement* principle to applicants who, if returned to their countries, would be deprived of their right to live with dignity, due to the combined effect of climate-induced slow and sudden onset events, violence, and extreme poverty in Bangladesh, Pakistan, and Niger⁷⁸.

Despite positive, such decisions came many years after the respective asylum seekers had fled their countries, ventured in irregular migrations, and when they had already integrated in Italy. The Italian case, in brief, highlights the need to recognize forms of protection for climate migrants that are as direct as possible. That is because even an “enlightened” application of the *non-refoulement* principle, such as that developed by Italian judiciary in accordance with international law, may come several years after climate displaced people have suffered a violation of their human rights. However necessary, remedial protection risks being inconsistent, vulnerable to shifts in the case law, and ultimately delayed in relation to the moment when the human rights violation occurs. Conversely, where the most virtuosistic forms of protection in the Global North tend to be remedial, direct forms of protection are more often recognized in Global South jurisdictions, as it is shown by the recent decisions in the Latin American practice. The latter picture is made even worse by the fact that jurisdictions in the Global South tend to host the greater number of climate displaced people, thus perpetrating unjust global patterns⁷⁹.

⁷⁶ E. Colombo, *Il ruolo della protezione umanitaria nel panorama legislativo europeo e le possibili implicazioni della sua abolizione*, in *Eurojus*, 2019, 1, 11.

⁷⁷ Inter-American Commission of Human Rights, cit. *supra*, fn. 17, para. 37: «*El análisis debe conllevar una evaluación acumulativa del riesgo en caso de devolución, es decir, debe contemplar las circunstancias y características de la persona afectada, la interacción de la movilidad con las consecuencias, directas o indirectas, del cambio climático, incluidos los desastres socioambientales, y las medidas adoptadas por su país de nacionalidad o de residencia habitual a este respecto. Asimismo, la evaluación acumulativa del riesgo debe incluir enfoques diferenciados, dirigidos a las personas en situación de vulnerabilidad, según lo dispuesto en la sección respectiva de esta Resolución*».

⁷⁸ Corte Cass (Sez. I), decision n. 7832/2019, 17-12-2019; Corte Cass. (Sezione II), decision n. 5522/2021, 24-02-2021; Corte Cass., decision n. 6964/2023, 8-03-2023. See also: Di Filippo, cit. *supra*, fn. 42, 1, 19.

⁷⁹ Among others, cit. *supra*, fn. 11.

3. An integrated human-rights approach to climate displacement, beyond human rights law

The previous paragraphs have further substantiated that international human rights and refugee law currently provide an indirect, incomplete, uncertain and in the best-case scenario, heavily postponed form of protection to climate displaced people.⁸⁰ This is particularly true considering that climate displaced people will suffer human rights violations from the moment in which they are unable to continue living a secure and dignified life in their land of origin or home country. They may subsequently suffer rights violations owing to the absence of secure channels to leave their countries, or adequate shelter in the countries where they decide to transit. Finally, they will suffer human rights violations owing to the lack of direct and clear forms of international and complementary protection, when seeking to resettle in a new state. It follows that, addressing climate displacement through a human rights approach implies addressing all human rights implications of climate change as well as tackling its root causes, aiming to protect people from displacement, and not just after it has occurred. Thus, to put it in the words of Cecilia Jimenez-Damary, Special Rapporteur on the rights of internally displaced people, a comprehensive human rights-based approach to climate displacement must be both “preventive and remedial”⁸¹.

The latter integrated approach fully aligns with the position expressed by the Inter-American Commission of Human Rights, in its Resolution no. 2/24 on *Human Mobility Induced by Climate Change* and by the Inter-American Court on Human Rights (also: IACtHR), in its Advisory Opinion *AO-32/25 on the Climate Emergency and Human Rights*. Namely, in the former, the Commission explicitly affirmed the right of every person and community not to be displaced due to climate change, and the consequent state obligation «to adopt all the preventive and anticipatory measures aiming to prevent that people are forced to migrate from their country of origin due to climate change, including socio-environmental disasters»⁸². In its Advisory Opinion, the Inter-American Court further noted that States should prevent the conditions that «drive forced migration and displacement

⁸⁰ L.S. Nishimura, cit. *supra*, fn. 42, 29: «There is also no guarantee that the people, courts, and bodies making such decisions will interpret the refugee criteria generously, although how they do will shape the understanding of refugee law and its application to climate change going forward. Furthermore, and crucially, protection based on refugee status tends to be granted only after people have moved and crossed borders, and only in the face of serious harm. This creates a temporal limitation, with protection not contemplated before or during a person’s movement».

⁸¹ UN Special Rapporteur on the rights of Migrants, cit. *supra*, fn. 12, para. 41: «In the context of climate change and disaster displacement, States must take positive action to protect people from direct threats to life and other human rights impacts of foreseeable natural hazards and related displacement by taking both preventive and remedial action». Such holistic approach had already been proposed in a 2012 study published by the UNHCR: W. Kälin, N. Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, UNHCR Legal and Protection Policy Research Series, 2012, 59 ss, <https://www.refworld.org/reference/lpprs/unhcr/2012/en/85058>.

⁸² Cit. *supra*, fn. 17, para. 14.

in the context of the climate emergency, [...] by developing regulatory, public policy, institutional, and budgetary instruments to address the needs of populations in situations of involuntary mobility»⁸³. To put it simply, the latter means that a human rights approach to climate displacement may require something more than the full enforcement of the states' legal obligations under human rights law. Namely, it may entail both a progressive interpretation of the existing state obligations under human rights law, and the enforcement the further relevant obligations under climate, environmental, humanitarian, and human rights law.⁸⁴ The latter also aligns with the International Court of Justice's Advisory Opinion on Climate Change, which confirmed that states have a legal obligation, under different sources of law, thereby including international climate and human rights law, to prevent, minimize, and remedy foreseeable risks and harms arising from climate change – thereby including climate displacement.⁸⁵

Preventive measures include the adoption of policies aimed to prevent climate change, generally, and climate displacement more specifically, as well as adaptation measures aimed reduce the risk of climate displacement, and increase the populations' preparedness, in case of its occurrence. In that regard, emphasizing the lasting implications of climate displacement on human rights, the Inter-American Court of Human Rights highlighted the states' obligation to «ensure the protection of sectors and population groups exposed to disasters and other impacts of climate change»⁸⁶. Furthermore, in its resolution, the Commission further emphasized the need to adopt measures aimed to strengthen the resilience of people forced to migrate owing to climate change, for them to be able to adapt to the deterioration of their environment⁸⁷.

Secondly, remedial measures include enforcing existing humanitarian laws⁸⁸, creating regular migration pathways for people displaced across international borders and providing adequate redress against any loss and damage induced by climate displacement. In its Advisory Opinion, the IACtHR placed particularly emphasis on the state's obligation to provide humanitarian assistance (including access to food, shelter, and essential services), in a way that respected the procedural rights of displaced people, and to refrain from any conduct which could endanger the lives, integrity, and dignity, of people in the process of displacement⁸⁹.

Moreover, an integrated human rights approach should consist of an early application of the existing international and humanitarian protection

⁸³ Inter-American Court of Human Rights, cit. *supra*, fn. 13, para. 422-424.

⁸⁴ On the need to overcome the “exclusivity” of the human rights and climate law regime, and to strive for a more integrated application of the two legal systems, see: A.L. Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, in 23(1) *Hum. Rts. L. Rev.* (2023), <https://academic.oup.com/hrlr/article/23/1/ngac034/6972876>, 1, 4.

⁸⁵ International Court of Justice, *Advisory Opinion*, cit. *supra*, fn. 23, paras. 172-173, 404: «The Court is of the view that international human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other».

⁸⁶ Cit. *supra*, fn. 14, para. 232.

⁸⁷ Cit. *supra*, fn. 18, paras. 13-14.

⁸⁸ Cit. *supra*, fn. 14, paras. 425; 428; 430.

⁸⁹ Cit *supra*, fn. 14, paras. 422-428.

framework to climate displaced people. Unsurprisingly, the Inter-American Court on Human Rights has expressed the most progressive stance in that regard. In its Advisory Opinion it noted that states should admit international protection for people displaced due to climate change, recognizing explicitly, in their legislation, that the effects of climate change, when combined with other factors of vulnerability, may indirectly bring about a serious disruption to the public order, thus causing displacement⁹⁰.

On a more concrete level, the Inter-American Commission further indicated that states have the legal obligations to adopt comprehensive protection frameworks «by establishing appropriate migration categories such as humanitarian visas, temporary residence permits, and/or protection under refugee status or similar status, which can provide them with protection against *refoulements*»⁹¹.

Moreover, with specific regard to *non-refoulement*, the Inter-American Commission noted that states should undertake a cumulative and individualized risk assessment, taking into account the specific subjective vulnerability of the asylum seeker, the direct and indirect connections between climate change and displacement in the country of origin, and the adaptation measures taken by the respective state. Furthermore, in spite of its more conservative orientation, the International Court of Justice extended the HRC's interpretation in the *Teitiota* case, noting that the *non-refoulement* principle shall apply whenever a real and foreseeable risk of harm exists, without waiting for such risk to be “imminent”⁹². While recognizing the importance of such legal advancements, it is important to recall that the principle of *non-refoulement* only constitutes a measure of last resort against arbitrary repatriations. Thus, unless progressive interpretative rules are combined with direct forms of protection which consider the multi-causal and complex nature of environmental migration, people displaced due to climate change will risk remaining in a condition of legal uncertainty for several years.

Finally, repair measures may entail both compensation and in-kind redress against any loss induced by climate displacement. For instance, in the case of indigenous people, the IACtHRs noted that, relocation measures should guarantee «access to land that is similar in quality and legal status to the land they previously occupied, and which allows them to meet their needs and ensure their future development»⁹³.

Last, but not least, preventive and remedial measures vis-à-vis climate displacement will require substantial financial assistance. In that regard, a

⁹⁰ Cit. *supra*, fn. 14, paras. 28-30. The latter interpretations further resonate with the most expansive readings of the notion of persecution under art. 1A of the Geneva Convention and, more broadly, with those approaches that foreground the social dimensions of vulnerability as drivers of climate displacement. See, cit. *supra*, fn. 41, 71.

⁹¹ Cit. *supra*, fn. 18, para. 433.

⁹² Advisory Opinion, cit. *supra*, fn. 22, para. 378. See also: L. Riemer, *A Single Paragraph's Promise: The ICJ's on Climate Change and the Understated Question of Human Displacement*, Climate Law: A Sabin Center Blog, 26-07-2025, <https://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/>.

⁹³ Cit. *supra*, fn. 14, para. 239.

few scholars and experts have drawn the attention to the fact that the existing international mechanisms, while laudable, provide a purely humanitarian, charitable solution, to the problem of climate displacement, thus avoiding to “engage with the historical and contemporary injustices animating the phenomenon.”⁹⁴ Some highlighted that, even in the context of climate displacement, developed states shall implement their respective obligations considering their greater historical responsibilities in causing climate change.⁹⁵ In a recent contribution, the former UN Special Rapporteur Ian Fry noted that climate-induced migration should be seen through the lens of international responsibility and accountability,⁹⁶ and thus be treated differently from any other form of environmental migration. In that perspective, the typical ad-hoc and temporary measures provided against environmental disasters would be insufficient; instead, developed states are required to sustain higher and regular financial and regulatory burdens (i.e., by establishing funding arrangements through the loss and damage fund). Moreover, in an even more progressive stance, the UN Special Rapporteur on the Human Rights of Migrants François Crépeau had noted that the principle of “common but differentiated responsibilities” (art. 3 of the UNFCCC) should guide the interpretation of the state’s climate finance obligations with regard to climate-induced migration, thus encouraging «countries in the global North and other States with economic means to contribute, financially and technically, to the implementation of bilateral and multilateral agreements facilitating specific regional climate-change-induced migration movements as part of coherent and negotiated regional sustainable adaptation strategies»⁹⁷. The latter view further aligns with what the former UN Special Rapporteur on Human Rights and Environment, David Boyd, called a “human-rights based approach to climate finance”: one that recognizes that «wealthy states have the moral and legal obligations to finance their fair share of loss and damage in low-income countries, small island developing States, and other climate-vulnerable developing countries»⁹⁸. Based on the above, it should be concluded that a human rights approach to climate displacement entails an equitable distribution of financial and regulatory responsibilities among the Global North and South. It should be reiterated that such an equitable, human-

⁹⁴ M. Burkett, *Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice*, in 53 *Harv. C.R.-C.L. Rev.* 445, 469 (2018).

⁹⁵ Among others, see: C. Dietmayer, *Fleeing the Climate: The Need for Protection of Climate Refugees in the Light of International Law*, in 37 *Pace Int'l L. Rev.* 299, 314 (2025), noting that «this imbalance between the global North and the global South and human rights solidarity must be consistently addressed at international level when dealing with climate-induced migration».

⁹⁶ Cit. *supra*, fn. 10, paras.. 10, 26.

⁹⁷ UN Special Rapporteur on the human rights of migrants, cit. *supra*, fn. 5, para. 81. Following the Rapporteur’s position, applying a distributive principle may both strengthen international protection for persons displaced from states lacking the capacity to provide adequate safeguards, while also pushing developed states to adopt more ambitious mitigation policies to prevent climate displacement.

⁹⁸ D.R. Boyd, S. Keene, *Mobilizing trillions for the Global South: The imperative of human rights-based climate finance*, Policy Brief No. 5, November 2023, <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/SR-Environment-PolicyBrief-5.pdf>.

rights-based approach to climate displacement, is not yet reflected in the general interpretation of the States' human rights obligations, which are (with a few exceptions) typically understood as territorial and reactive, that is, confined to a State's jurisdiction and triggered only once a human rights violation has occurred⁹⁹. Thus, even with regard to climate finance, a human rights approach to climate displacement shall be grounded on a combined application of international, environmental, and climate law principles with the existing human rights obligations.

4. Conclusion

Human rights scholars, experts and treaty bodies have long recognized the urgency to address climate displacement, given its wide and encompassing impacts on the human rights of an increasing number of people across the globe. The paper has first highlighted that the human rights impact of climate displacement may unfold in multiple stages. The experience of being displaced across international borders due to climate change does not only touch upon the freedom of movement but entails the deprivation of one's basic means of subsistence, home, property, cultural and religious traditions, or may undermine an entire population's right to self-determination. It may entail suffering human rights abuses, such as trafficking, or inadequate nutrition, healthcare and shelter, during the transit from one country to another. Finally, it may imply returning to a country where extreme weather events or slow environmental deterioration, combined with conflict and famine, have made it impossible to live a secure and dignified life. Against that framework, the legal protection afforded by the international refugee and human rights law tends to be indirect, uncertain, and even in the best cases, much delayed, compared to when the human rights violation has occurred. Namely, except for some progressive regional approaches, the internationally accepted legal definition of "refugee" tend to require the commitment or tolerance towards persecutory actions, thus admitting the possibility to recognize political asylum to climate displaced people only in rather exceptional circumstances. Moreover, despite an increasing support towards progressive applications of the *non-refoulement* principle within international institutions and academia, the transnational practice

⁹⁹ Since the OHCHR's 2009 analytical report acknowledged that human rights law may be limited in tackling climate change due to its territorial and reactive character, a few progresses have been made regarding the extraterritorial application of human rights obligations in the context of climate change. For instance, the Inter-American Commission on Human Rights noted that, in the climate context, «a State is responsible not only for actions and omissions in its territory, but also for those within its territory that could have effects on the territory or inhabitants of another State». However, the Commission seemed to refer mostly to mitigation obligations, rather than to climate finance. Moreover, in its Advisory Opinion, the International Court of Justice noted that human rights treaties have, in some circumstances, admitted the extraterritorial scope of human rights obligations, but avoided tackling the question in more general terms. See, Office of the United Nations High Commissioner for Human Rights (OHCHR), cit. *supra*, fn. 3, para. 70; Inter-American Commission on Human Rights, *Climate emergency: scope of human rights obligations*, Resolution no. 3/2021, 31 December 2021, cit. *supra*, fn. 14, para. 40; International Court of Justice, *Advisory Opinion*, cit. *supra*, fn. 23, para. 402.

highlights clear imbalances between countries in the Global North and the Global South, with the former often providing the most restrictive standards. Finally, the article has highlighted that, to adequately address climate displacement, even the most progressive interpretation of the human rights law may not suffice. Conversely, an integrated human rights approach requires a combined application of human rights, international, and climate change law, aiming to respond to climate displacement before it occurs, through actions aimed to prevent, and minimize climate displacement, address it, once it has occurred, and ultimately, redress it, through international protection mechanisms.

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