



# **Moving Beyond Borders:**

## **A Rights-Based Approach to Addressing Climate Change- Induced Displacement**

20 February 2024 - By *Ilana Cohen*

“Climate change carries no passport and knows no national borders.”  
- *Ban Ki-moon, former Secretary-General of the United Nations*

## *Introduction*

In 2016, Ioane Teitiota, a native of the Pacific Island nation of Kiribati, took the New Zealand government to court at the United Nations (UN) Human Rights Committee. In what is now recognized as a landmark legal case, Teitiota appealed the New Zealand government's denial of his claim to asylum as a climate refugee. Crucially, the Committee ruled that governments must account for climate change-driven human rights violations in evaluating asylum claims, laying a baseline for recognizing a right to non-refoulement for climate refugees.<sup>1</sup> The case offered both a hopeful window for clarifying state legal obligations to address the growing phenomenon of climate change-induced displacement and a dire warning about the lack of such obligations in international law at present. Even as this ruling "pave[d] the way for future cases whereby the right to life is arbitrarily deprived due to severe, environmental factors," Teitiota lost his appeal, leaving him in a precarious position.<sup>2</sup> As many others like Teitiota watch their homes become uninhabitable due to rising sea levels, extreme heat, and more, they have no clear recourse under international or most domestic law to support their resettlement, particularly across borders.

Indeed, the stakes surrounding climate change-induced displacement are increasing with the intensification of the immediate and slow onset effects of climate change each year. Currently, the United Nations High Commissioner for Refugees (UNHCR) estimates that 21.5 million people are displaced by extreme weather events on average each year; further studies indicate that there could be up to 1.2 billion people forcibly on the move due to climate change mid-century.<sup>3</sup> Much of this displacement will disproportionately affect people in developing Global South countries least responsible for the climate crisis and more vulnerable to its consequences.

The majority of displaced people will move within the borders of their own countries, becoming internally displaced persons (IDPs), or regionally to neighboring countries. However, many people will also be forced to cross borders in search of security and opportunities unavailable in their home countries, where governments lack the capacity to respond adequately to climate disasters and there are high levels of poverty and conflict that climate change may compound. Already, several Asian countries are experiencing record levels of disaster-induced displacement,

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<sup>1</sup> "UN landmark case for people displaced by climate change," Amnesty International, Jan. 20, 2020, <https://www.amnesty.org/en/latest/news/2020/01/un-landmark-case-for-people-displaced-by-climate-change/>; Shaindl Keshen, Steven Lazickas, and Lucía Solórzano, "Non-refoulement: A Legal Hope for the Protection of Environmental Migrants and their Rights," <https://multilateralism.sipa.columbia.edu/news/non-refoulement-legal-hope-protection-environmental-migrants-and-their-rights>.

<sup>2</sup> "Ioane Teitiota decision, CCPR/C/127/D/2728/2016," Earth Refuge, Sept. 30, 2020. <https://legal.earthrefuge.org/ioane-teitiota-decision/3/>.

<sup>3</sup> Vivianne Clement et. al, *Groundswell Part 2: Acting on Internal Climate Migration*, World Bank: Washington, DC, 2021. <http://hdl.handle.net/10986/36248>; Sean McAllister, "There could be 1.2 billion climate refugees by 2050. Here's what you need to know," Zurich.com Jan. 13, 2023, <https://www.zurich.com/en/media/magazine/2022/there-could-be-1-2-billion-climate-refugees-by-2050-here-s-what-you-need-to-know>.

while many Central Americans are seeking environmental refuge in the United States.<sup>4</sup> Rather than embracing equitable resettlement schemes, many wealthy developed countries seeing these trends have restricted asylum and migration paths contrary to their common but differentiated responsibilities to address the climate crisis.<sup>5</sup> These xenophobic policies, along with increasing resource scarcity and climate conflict, contribute to a “climate apartheid” scenario.<sup>6</sup>

Hence, it is unsurprising that there remains a vast legal protection gap around cross-border climate-induced displacement in international law. The foundational international legal frameworks for addressing refugeehood — the 1951 Refugee Convention and the 1967 Protocol which amended the convention — do not mention climate change-induced displacement. Nor is there a universally agreed-upon definition of climate refugees in the international community. While, as this report will discuss, more recent international and regional agreements, including the New York Declaration for Refugees and Migrants and the Protocol on Free Movement of Persons in the IGAD Region, have recognized the need for and, indeed, incorporated protections for environmental and climate refugees, these protections remain scarce and limited in practice. Such protections typically fail to account for all of the ways in which climate change can displace people beyond one-time disasters, i.e., through slow onset effects, and often lack proper implementation or enforcement mechanisms, meaning that they are not legally binding.

Crucially, human rights frameworks can present a viable pathway for extending the scope of legal protection afforded to climate change-displaced persons who cross international borders. These rights are more expansive and complement those granted by refugee status, as such rights extend to all persons. This includes all displaced persons, from IDPs to asylum seekers, refugees, and migrants. In this way, human rights can serve as a first line of defense for persons seeking to secure a safe and reasonable quality of life as it is adversely affected by climate change.

### *Structure of Report*

This report will propose a rights-based approach for addressing the legal protection gap around climate refugees.<sup>7</sup> Thus, though climate change implicates many human rights, it will focus on

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<sup>4</sup> “Environmental Migration,” Migration Data Portal, May 24, 2023, [https://www.migrationdataportal.org/themes/environmental\\_migration\\_and\\_statistics](https://www.migrationdataportal.org/themes/environmental_migration_and_statistics); Julie Watson, “Climate change is already fueling global migration. The world isn’t ready to meet people’s changing needs, experts say,” PBS, July 18, 2022, <https://www.pbs.org/newshour/world/climate-change-is-already-fueling-global-migration-the-world-isnt-ready-to-meet-peoples-needs-experts-say>.

<sup>5</sup> Damian Carrington, “‘Climate apartheid’: UN expert says human rights may not survive,” *The Guardian*, June 25, 2019, <https://www.theguardian.com/environment/2019/jun/25/climate-apartheid-united-nations-expert-says-human-rights-may-not-survive-crisis>.

<sup>6</sup> Ibid.

<sup>7</sup> Use of the term ‘climate refugees’ will be employed throughout this report, and it is important to note the reasoning behind the use of the term, though it lacks a universally agreed-upon or official definition in the international community. In part, this definitional lack reflects the difficulty of distinguishing climate refugees from other types of refugees as well as from migrants, as the the Climate and Migration Coalition explains. This report simply employs the term climate refugees to refer broadly to people who are forced from their place of origin adue

the rights clearly jeopardized by climate change-induced displacement. Human rights, or those “rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status,” include a right to seek asylum and at the most basic level, a right to life, including a right to security of person and by extension, shelter.<sup>8</sup> Without refuge, people are left vulnerable to environmental hazards and exploitation, violence, and systemic injustice.

A rights-based approach takes as its point of departure the understanding that there is no way to address climate refugeehood without recognizing the underlying human rights at play. This approach examines how specific mechanisms for protecting and enforcing these rights can be employed on behalf of climate refugees within the international legal system. While not without its limits, there are already increasingly promising signs of what this approach can achieve. I will demonstrate this potential primarily through a table illustrating the connections between climate change-induced displacement and violations of human rights demarcated in international and regional agreements, as well as through analyzing past and ongoing legal cases centered around such connections, with support from the Earth Refuge Legal Database.<sup>9</sup> Both the table and case analyses are intended to serve as tools for future legal action, advocacy, and scholarship.

This report will further adopt a critical climate and environmental justice perspective.<sup>10</sup> Such a perspective takes as a baseline that the climate crisis has vastly unequal impacts, with Global South populations facing disproportionate and adverse effects. It also recognizes the role played by primarily Global North countries in driving the climate crisis and consequent displacement, as well as these countries’ according responsibilities to support and fund climate change mitigation and adaptation efforts, including in the Global South. This perspective further entails a critique of how rich developed countries continue to neglect their duties to address the climate refugee crisis and instead perpetuate systems that neglect and violate climate refugee rights.

### *Understanding the Historical Legal Protection Gap*

The current legal protection gap faced by climate refugees stems in part from the historical reality that the international legal system was not designed with climate change in mind. The first refugee and asylum policies focused on protecting those seeking to escape persecution, rather

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to either the immediate or slow onset effects of climate change, and who lack recognition as refugees under international law as it stands. Such a definition is informed by that provided by the Climate Refugees organization, which uses the term to “provoke conversation,” “emphasize the political responsibility of climate change,” and “present this [status] as a challenge to human rights,” among other reasons. The lack of recognition received by those meeting the definition of climate refugees is a key point that the report works to underscore, with the aim of illuminating the need to remedy this lack alongside potential rights-based pathways for doing so. Alex Randall, “Climate Refugees definition: can we define a climate refugee?” <https://climatemigration.org.uk/climate-refugees-definition/>; “Why” Climate Refugees, <https://www.climate-refugees.org/why>.

<sup>8</sup> “Human Rights,” United Nations, <https://www.un.org/en/global-issues/human-rights>.

<sup>9</sup> “Legal Database,” Earth Refuge, “Climate Case Chart.” Sabin Center for Climate Change Law. <http://climatecasechart.com>.

<sup>10</sup> Farhana Sultana, “Critical climate justice,” *The Geographical Journal*, 188, 118–124 (2022) <<https://doi.org/10.1111/geoj.12417>.

than those fleeing the impacts of environmental disaster or climate change and the devastation and violence brought with them. Indeed, the standard definition of a refugee in international law is an individual “who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group,” as stated in the 1951 Geneva Convention, which is commonly referred to as the Refugee Convention.<sup>11</sup> The Convention emerged in response to the Holocaust and World War Two, which elucidated the need to provide protections across borders for Jewish and European refugees fleeing persecution from before January 1, 1951. Mere citizenship and nationality-based protections, it became clear, proved inadequate to the task of safeguarding basic rights when nations persecuted and pursued genocide against people within their borders. It was clear that the international community had to intervene by offering safe harbor to the persecuted, as enshrined in the Convention to this day.

Over a decade later, the 1967 Protocol broadened the Convention’s application by eliminating the geographic and temporal limits it placed on refugee status. Thus, the Protocol helped move the Convention beyond its initially narrow and, as is often argued, discriminatory scope of protection, which excluded many asylum seekers from the Global South.<sup>12</sup> While this more expansive nature provided an important inroad for recognizing climate change-displaced persons as refugees today, the Protocol failed to directly address persons displaced by environmental conditions. Subsequent regional frameworks continued to expand the scope of such protections yet still did not explicitly recognize the environment or climate change as causes of refugeehood. In contrast to international legal instruments like the 1951 Refugee Convention, these regional frameworks have often been legally binding or operate as soft law (such as non-binding guidelines and recommendations). For instance, the binding 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa recognized as refugees, in addition to those with “a well-founded fear of persecution,” “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”<sup>13</sup> The non-binding 1984 Cartagena Declaration on Refugees in Latin America recognized refugees as those threatened by “generalized violence, foreign aggression, internal conflicts, massive human rights violations, and other circumstances that have seriously disturbed public order.”<sup>14</sup>

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<sup>11</sup> “What is a Refugee,” UNHCR, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

<sup>12</sup> Scholars Elsadig Elsheikh and Ayazi Hossein argue that the concept of “refugeehood” is bound up in a colonialist and capitalist global order shaped by World War II and exacerbated by Cold War forces. Elsheikh, Elsadig and Hossein Ayazai. “Moving Targets: An Analysis of Global Forced Migration,” Haas Institute, July 05, 2017, <https://haasinstitute.berkeley.edu/moving-targets-analysis-global-forced-migration>.

<sup>13</sup> Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), Sept. 10, 1969, 1001 U.N.T.S. 45, available at: <https://www.refworld.org/docid/3ae6b36018.html>.

<sup>14</sup> UN High Commissioner for Refugees (UNHCR), *The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America*, June 2013, PPLA/2013/03, available at: <https://www.refworld.org/docid/51c801934.html>.

However, the need to address climate change-induced refugeehood failed to take hold in public and international discourse until the late 20<sup>th</sup> century, in part because climate change remained excluded from such discourse. Two years after NASA scientist James Hansen testified about the effects of climate change before the U.S. Congress, the Intergovernmental Panel on Climate Change (IPCC) released its first assessment report in 1990, calling for coordinated international action to address the climate crisis.<sup>15</sup> The evidence of anthropogenic climate change and the scientific consensus around this phenomenon was then overwhelming. Indeed, climate change’s manifold consequences, including displacement, began to receive more attention as the IPCC warned that “the greatest single impact of climate change could be on human migration – with millions of people displaced by shoreline erosion, coastal flooding and agricultural disruption.”<sup>16</sup> Soon after, frameworks promising greater protections for people displaced by climate change began to emerge under international migration and environmental law. For instance, the 1998 Guiding Principles on Internal Displacement advanced human rights-based protections for climate change-displaced persons by listing “natural or human-made disasters” as a cause of internal displacement. This listing provided an essential acknowledgment that people could be displaced within as well as beyond national borders by the climate crisis. This is significant because as mentioned, the majority of people forced to move due to climate change do so within their countries. However, the Principles neglected to recognize slow-onset climate change effects as a cause of displacement. Additionally, like many of the major international instruments invoked in this report, the Principles are not legally binding and signatories are at discretion to enforce them.<sup>17</sup> Moreover, by definition, these Principles do not apply to those forced to move outside of their countries. In spite of this shortcoming, the Principles can provide a useful framework for efforts to expand protections, including by drawing a clear link between climate disaster and displacement, as well as by noting the relevance of this link for granting legal status and rights to people seeking refuge. At their core, the Principles affirm that IDPs should “enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country,” free from discrimination — a commitment that could be extended to externally displaced persons driven to move by climate change. They also call for the inclusion of IDPs in the planning and management of displacement solutions, which suggests the importance of centering the agency a affected populations in creating feasible solutions.

In 2010, the Cancún Agreements invited nations to support climate mitigation and displacement measures based on a principle of common but differentiated responsibilities, indicating that wealthier Global North countries should shoulder more of the burden in addressing climate change-induced displacement.<sup>18</sup> Importantly, the Cancún Adaptation Agreement also recognized

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<sup>15</sup> “History of the IPCC,” IPCC, 2023, <https://www.ipcc.ch/about/history/>.

<sup>16</sup> Human Development Report (UNDP), *Fighting Climate Change*, 2007, [https://www.iisd.org/system/files/publications/climate\\_forced\\_migration.pdf](https://www.iisd.org/system/files/publications/climate_forced_migration.pdf)

<sup>17</sup> UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, July 22, 1998. ADM 1.1, PRL 12.1, PR00/98/109, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>.

<sup>18</sup> This principle “acknowledges the different capabilities and differing responsibilities of individual countries in addressing climate change.” “Common but Differentiated Responsibilities and Respective Capabilities (CBDR-

human mobility as an essential part of climate change adaptation; specifically, paragraph 14(f) called on states to implement “measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.”<sup>19</sup> The Agreement thus made clear that countries could not effectively divorce mobility from climate action but instead had poignant common but differentiated responsibilities to respond to their intersection. In 2012, in a less directly related but nevertheless salient development, the publication of the Dhaka Principles for Migrating with Dignity based on the UN Guiding Principles on Business and Human Rights drafted by the Institute for Human Rights and Business reflected a new commitment to the dignity and living conditions of migrant workers. The Principles provide a different lens through which to view the needs and rights of the climate change-displaced: that of the employment which they may seek out or be forced to accept outside of their home country.<sup>20</sup>

Following the United Nations Climate Change Conference of Parties (COP 21) in November-December 2015, 2016 saw the emergence of numerous historic developments in rights-based protections for climate change-displaced persons. The state-led Nansen Initiative put forward a Platform on Disaster Displacement to execute a Protection Agenda for cross-border climate refugees, addressing the unique vulnerability of this growing demographic. Also, the UN developed the New York Declaration for Refugees and Migrants, which acknowledged the “adverse effects of climate change” and natural disasters on displaced persons.<sup>21</sup> Later that year, the landmark Paris Agreement or Paris Climate Accords came into force, calling upon member states to, in taking climate action, “respect, promote and consider their respective obligations on human rights.”<sup>22</sup> Soon after in December 2018, the U.N. embraced the Global Compact on Refugees and outlined “a framework for more predictable and equitable responsibility-sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without international cooperation.”<sup>23</sup> There were also developments at the level of regional agreements around freedom of movement, including a recognition of the adverse effects of climate change in driving displacement and migration in the Intergovernmental Authority on Development’s 2020 protocol on freedom of movement within the eight African countries comprising this authority.<sup>24</sup>

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RC),” Climate Nexus, Oct. 26, 2019, <https://climatenexus.org/climate-change-news/common-but-differentiated-responsibilities-and-respective-capabilities-cbdr-rc/>.

<sup>19</sup> UNFCCC, *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, March 15, 2011, FCCC/CP/2010/7/Add.1.

<sup>20</sup> *Dhaka Principles for Migration with Dignity*, Institute for Human Rights and Business, 2012, available at: <https://dhakaprinciples.org/>.

<sup>21</sup> UN General Assembly, *New York Declaration for Refugees and Migrants*, Oct. 3, 2016., A/RES/71/1, available at: <https://www.refworld.org/docid/57ceb74a4.html>.

<sup>22</sup> “Integrating human rights at the UNFCCC,” OCHCR, <https://www.ohchr.org/en/climate-change/integrating-human-rights-unfccc>.

<sup>23</sup> “The Global Compact on Refugees,” UNHCR, 2023, <https://www.unhcr.org/about-unhcr/who-we-are/global-compact-refugees>.

<sup>24</sup> IGAD Secretariat, *Protocol on the Free Movement of Persons in the IGAD Region*, Feb. 26, 2020; Tamara Wood, “The role of free movement agreements in addressing climate mobility,” *Forced Migration Review* (March 2022), [https://www.fmreview.org/climate-crisis/wood#\\_edn4](https://www.fmreview.org/climate-crisis/wood#_edn4).

Despite this progress and distinct recognition of the intersection between human rights and climate change-induced displacement, protections for climate refugees remain piecemeal. The UNHCR has recognized climate refugees' exclusion from major refugee treaties and has moved toward including disaster-induced refugeehood in its mandate. Nonetheless, the protection agency has still argued against expanding the terms of the Convention for fear that doing so would devalue the rights already in place.<sup>25</sup> Consequently, by and large, it is still the case that "the international regime of refugee protection is the product of its time," failing to account for climate refugees who were not in mind during its establishment.<sup>26</sup> Today, there is also no clear effort within international refugee and migration governance circles and the global community to create a comprehensive new international framework (binding or otherwise) to outline or enforce climate refugees' rights. Meanwhile, policy-advocacy organizations such as the Environmental Justice Foundation have called for the establishment of such a treaty or like measure.<sup>27</sup> For instance, David Hodgkinson and colleagues at the University of Western Australia's Institute for Advanced Studies have proposed a Convention for Persons Displaced by Climate Change, which "establish[es] criteria for the designation of a mass status to climate change-displaced persons" and fairly distributes "obligations of protection and assistance" across states.<sup>28</sup> Given the challenges of creating a new convention and amending those already in place, it is crucial to look for other avenues to expand the scope of legal protection afforded to climate refugees. As proposed in this report, these avenues include leveraging other areas of international law.

### *Can Human Rights Fill the Gap?*

Like the 1951 Refugee Convention, the Universal Declaration of Human Rights (UDHR) adopted in 1948 makes no mention of climate change or the environment. This declaration seeks to establish a "common standard" for nations to promote delineated fundamental human rights and freedoms, as well as "to secure their universal and effective recognition and observance."<sup>29</sup> Since its adoption, the UDHR has been subject to significant criticism. Political theorist Hannah Arendt wrote of the paradox of human rights, which at the time of the Convention's adoption was extended to the "citizens of the most prosperous...countries" but not to the "rightless."<sup>30</sup>

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<sup>25</sup> Oliver C. Ruppel, Christian Roschmann, and Katharina Ruppel-Schlichting, eds. *Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment*. Baden-Baden: Nomos Verlagsgesellschaft MbH, 2013, <http://www.jstor.org/stable/j.ctv941vsk>, p. 750.

<sup>26</sup> Ibid.

<sup>27</sup> "The Urgent Need for Legal Protections for Climate Refugees," Environmental Justice Foundation, 2003, <https://ejfoundation.org/reports/the-urgent-need-for-legal-protections-for-climate-refugees>.

<sup>28</sup> David Hodgkinson, Tess Burton, Simon Dawkins, Lucy Young and Alex Coram, "Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses," The University of Western Australia Institute for Advanced Studies, *The New Critic* Iss. 8, Sept. 2008, <https://www.ias.uwa.edu.au/new-critic/eight/hodgkinson>; Ruppel, Oliver C., Christian Roschmann, and Katharina Ruppel-Schlichting, eds. *Climate Change: International Law and Global Governance: Volume II: Policy, Diplomacy and Governance in a Changing Environment*. Baden-Baden: Nomos Verlagsgesellschaft MbH, 2013, <http://www.jstor.org/stable/j.ctv941vsk>, 753.

<sup>29</sup> UN General Assembly, *Universal Declaration of Human Rights*, Dec. 10 1948, 217 A

(III), <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>30</sup> Hannah Arendt, *The Origins of Totalitarianism*, New York: Harcourt Brace Jovanovich, 1973, p. 279.



Moreover, the non-legally binding nature of the UDHR means that observance of its provisions is at the discretion of states, which poses an obvious limitation.

Nevertheless, human rights have become an increasingly important and impactful cornerstone of efforts to increase protections for those seeking refuge from climate change impacts in recent years.<sup>31</sup> As reflected by the international political and legal developments cited in this report, human rights provide a powerful framework for climate action. This potential has been noted by major humanitarian organizations, such as Amnesty International, and in numerous resolutions by the UN Human Rights Council (UNHRC).<sup>32</sup> Such resolutions focus on every person’s natural entitlement to live free from harm, of which climate change is an unparalleled and pervasive cause. The Office of the United Nations High Commissioner for Human Rights (OHCHR) further incorporated a panel discussion on different themes related to climate change and human rights into its annual work program, reflecting a sustained commitment to this discourse.<sup>33</sup>

The table below highlights a non-exhaustive list of human rights threatened by climate change-induced displacement.

Rights Threatened by Climate Change-Induced Displacement

<b>International Human Rights Law</b>		
<b>Instrument</b>	<b>Rights</b>	<b>Links with Climate Change-Induced Displacement</b>
<b>Universal Declaration of Human Rights</b>	<b>Article 3:</b> Right to life, liberty and security of person	Climate change-induced displacement threatens security at the most fundamental level. Without refuge, people are left vulnerable to numerous threats to life (such as external environmental conditions or resource scarcity), liberty (for instance, through the increased risk of

<sup>31</sup> "The Urgent Need for Legal Protections for Climate Refugees," Environmental Justice Foundation, 2023, <https://ejfoundation.org/reports/the-urgent-need-for-legal-protections-for-climate-refugees>.

<sup>32</sup> "How Does Climate Change Impact Human Rights?" Amnesty International, 2023, <https://www.amnesty.org/en/what-we-do/climate-change/>; "Human Rights Council resolutions on human rights and climate change," OHCHR, <https://www.ohchr.org/en/climate-change/human-rights-council-resolutions-human-rights-and-climate-change>.

<sup>33</sup> "Human Rights Council resolutions on human rights and climate change," OHCHR, <https://www.ohchr.org/en/climate-change/human-rights-council-resolutions-human-rights-and-climate-change>.

		exploitation), and security (both physically in terms of shelter, and socially in terms of mobility and income). <sup>34</sup>
	<b>Article 7:</b> Right to non-discrimination	Discriminatory laws, policies and social attitudes leave certain groups (particularly from groups that are already marginalized such as indigenous, Black, brown, minority-ethnic, disabled, women, LGBTQ+) vulnerable to the impacts of climate change, shape their experiences of migration or displacement and the outcomes of movement. <sup>35</sup>
	<b>Article 13:</b> Right to freedom of movement and residence within the borders of each state; right to leave any country, and to return	Insufficient and, in most places, a total lack of frameworks governing the rights and protection for IDPs and those crossing borders as the result of climate change-induced displacement hinders the exercise of free movement and residence. <sup>36</sup>
	<b>Article 14:</b> Right to seek and enjoy in other countries asylum from persecution	The glaring lack of inclusion of climate change-induced displacement in existing

<sup>34</sup> “Climate Change,” Amnesty International, 2023, <https://www.amnesty.org/en/what-we-do/climate-change/>; Michael Shank and Raúl Grijalva, Thomson Reuters Foundation, Aug. 24, 2021, <https://news.trust.org/item/20210824165842-z04tm/>.

<sup>35</sup> Mikyla Reta, “How Climate and Environmental Injustice Affects the LGBTQI+ Community,” Center for American Progress, June 16, 2022, <https://www.americanprogress.org/article/how-environmental-and-climate-injustice-affects-the-lgbtqi-community/>; “Climate-Displaced People Face Two-Fold Discrimination,” International Catholic Migration Commission, July 2, 2019, <https://www.icmc.net/2019/07/02/climate-displaced-people-face-two-fold-discrimination/>.

<sup>36</sup> “How can climate policy better address climate-driven population displacement?” The London School of Economics and Political Science and Grantham Research Institute on Climate Change and the Environment, Jan. 6, 2023, <https://www.lse.ac.uk/granthaminstitute/news/how-can-climate-policy-better-address-climate-driven-population-displacement/>.

		asylum frameworks, as outlined in this report.
	<b>Article 15:</b> Right to a nationality	First, exclusion of nationality for certain groups, such as Indigenous peoples and minorities, leads to barriers in accessing social services, protection and resilience-building programs in the context of climate change. This hampers the adaptive capacity of individuals, and limits the resources available to them whether they move or stay. <sup>37</sup> Second, the resistance of states who bear responsibility for the majority of emissions (and by proxy, climate change) to provide refuge, sanctuary or residence to inhabitants of the most affected (and least culpable) nations is stark. <sup>38</sup> Third, peoples face the risk of statelessness, which can erode the right to nationality, where climate change is making broad swaths of countries and territories uninhabitable. <sup>39</sup>
<b>International Covenant on Economic, Social and Cultural Rights</b>	<b>Article 1:</b> Right to self-determination	The impacts of climate change can threaten the autonomy of entire social

<sup>37</sup> Christopher Flavelle and Kalen Goodluck, “Dispossessed, Again: Climate Change Hits Native Americans Especially Hard,” *The New York Times*, June 27, 2021, <https://www.nytimes.com/2021/06/27/climate/climate-Native-Americans.html>.

<sup>38</sup> Owen Jones, “Think Sunak’s anti-refugee stance is bad? Just wait till the climate crisis truly ravages poorer countries,” March 6, 2023, *The Guardian*, <https://www.theguardian.com/commentisfree/2023/mar/06/rishi-sunak-anti-refugee-climate-crisis-poorer-countries>.

<sup>39</sup> Michelle Foster, Nicola Hard, Hélène Lambert and Jane McAdam, “Preventing Statelessness and Nationality Loss in the context of Climate Change,” European Network on Statelessness, May 19, 2022, <https://www.statelessness.eu/updates/blog/preventing-statelessness-and-nationality-loss-context-climate-change>.

		<p>groups, as well as that of individual persons, by forcibly displacing them and thereby leaving them without a sovereign territory. Or, if they are able to move clandestinely, the lack of rights at their destination can also significantly undermine their autonomy. Such impacts can also destroy subsistence and local economies, for instance by adversely affecting local agriculture, which can be key to economic independence.<sup>40</sup></p>
	<p><b>Article 7:</b> Right to work, and enjoy just/fair conditions of work</p>	<p>Displacement can hamper the ability to pursue and maintain employment, and put people in a position where they are forced to accept exploitative working conditions to survive. There is an undeniable link between climate change-induced displacement, and an increase in modern slavery.<sup>41</sup> International and national frameworks governing workers and migrants’ rights typically fail to recognize this crucial link between climate change-induced displacement</p>

<sup>40</sup> Jasmin L’Green and Zara Bendit-Rosser, “The Impact Of Climate Change On The Right To Self-Determination,” June 30, 2022, Australian Institute of International Affairs, <https://www.internationalaffairs.org.au/australianoutlook/the-impact-of-climate-change-on-the-right-to-self-determination/>.

<sup>41</sup> Aubrey Calaway, “Dr. Chris O’Connell on the Intersection Between Climate Change and Modern Forms of Slavery in South America,” Earth Refuge, March 5, 2021, <https://earthrefuge.org/dr-chris-oconnell-on-the-intersection-between-climate-change-and-modern-forms-of-slavery-in-south-america/>.

		and the right to work and to do so in just conditions. <sup>42</sup>
	<b>Article 9:</b> Right to social security	The link to (a lack of) social security is significant both prior to and following climate change-induced displacement. First, members of already-marginalized groups (such as immigrant, Black, and brown communities, as well as women) remain more vulnerable to the impacts of climate change, and are also less likely to have access to social security mechanisms. Second, severe climate change events can lead to a breakdown of social as well as physical infrastructure, which can impede access to social security at the site of disaster. <sup>43</sup> Third, following displacement as the result of disaster (and without legal recognition of their position as climate refugees), individuals may be left without access to social security due to a lack of immigration status or residence. <sup>44</sup>
	<b>Article 11:</b> Right to an adequate standard of living, including adequate	Climate change impacts can leave people without shelter and basic necessities, a

<sup>42</sup> Sarah Sax, “Farm Workers Exposed to Climate Change Effects Are Demanding Protections,” PBS, May 24, 2022, <https://www.pbs.org/wnet/peril-and-promise/2022/05/farm-workers-exposed-to-climate-change-effects-are-demanding-protections/>.

<sup>43</sup> “Social Security Administration 2021 Climate Action Plan,” USA Social Security Administration, August 25, 2021, <https://www.sustainability.gov/pdfs/ssa-2021-cap.pdf>.

<sup>44</sup> “Social security developments and trends – Africa 2023,” International Social Security Association, <https://www.issa.int/html/developments-trends-Africa2023/#introduction>.

	<p>food/housing and improved living conditions</p>	<p>fundamental baseline for an adequate standard of living both in their nation of origin and the nations they seek refuge in. Climate change can also diminish access to food, clean drinking water, education, health care, and numerous other public goods and services.<sup>45</sup></p>
	<p><b>Article 12:</b> Right to enjoy the highest attainable physical and mental health standard</p>	<p>The adverse effects of climate change pose barriers to accessing healthcare services. They may also directly damage people’s physical health.<sup>46</sup> For example, severe heat waves are already causing tens of thousands of excess deaths around the world each year, while other forms of climate disaster such as more frequent and severe extreme weather events are also causing significant loss of life. The slow onset effects of climate change can further cause loss of life, including by reducing agricultural yields and thereby contributing to food insecurity and by extension, global poverty and hunger.<sup>47</sup> Additionally, all of these effects may take a grave psychological toll on climate change victims, including displaced persons. Already,</p>

<sup>45</sup> “Climate Change,” Amnesty International, 2023, <https://www.amnesty.org/en/what-we-do/climate-change/>.

<sup>46</sup> Ibid.

<sup>47</sup> “What You Need to Know About Food Security and Climate Change,” The World Bank, Oct. 17, 2022, <https://www.worldbank.org/en/news/feature/2022/10/17/what-you-need-to-know-about-food-security-and-climate-change>.

		the mere anticipation of such effects is producing a new and growing phenomenon of “climate anxiety.” <sup>48</sup>
	<b>Article 13:</b> Right to education	The adverse effects of climate change pose barriers to accessing education, particularly for women and girls. As livelihoods are threatened, many will be forced to seek employment in lieu of education, or sold into exploitation or marriage. When people are displaced, barriers to education increase and many do not have the skills, training, or agency necessary to access just and fair employment in the areas where they resettle. <sup>49</sup>
	<b>Article 15:</b> Right to take part in cultural life	Climate change impacts can both directly and indirectly threaten the ability of individuals and entire peoples to practice and maintain cultural traditions, including through a loss of sovereign territory as more and more land becomes uninhabitable due to rising sea levels, extreme heat, and other impacts. This threat is particularly salient for Indigenous peoples, who are

<sup>48</sup> Joseph Dodds, “The psychology of climate anxiety,” *BJPsych Bull* 45(4), Aug. 2021, p. 222–226, doi: [10.1192/bjb.2021.18](https://doi.org/10.1192/bjb.2021.18).

<sup>49</sup> “How climate change and displacement affect the right to education,” UNESCO, <https://www.unesco.org/en/right-education/climate-change-displacement>.

		disproportionately affected by climate change. <sup>50</sup>
<b>International Covenant on Civil and Political Rights</b>	<b>Article 26:</b> Right to equal protection of the law	Insufficient frameworks have led to a vast legal protection gap in international as well as much domestic law for climate change-displaced persons, particularly those who are displaced across borders. Without proper recognition, these persons are often left unable to access basic protection of fundamental rights. Furthermore, the adverse effects of climate change can pose barriers to accessing legal representation. <sup>51</sup>
<b>UN Convention on the Elimination of All Forms of Discrimination Against Women</b>	<b>Article 2:</b> Obligation of states parties to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women	Women are uniquely vulnerable to climate change impacts due to the cultural roles and outsize familial and economic responsibilities often assigned to them. Thus, states must undertake targeted measures to ensure that women have their fundamental rights protected against such impacts. Otherwise, climate change can exacerbate pre-existing gender inequality. Pursuing policies for women’s empowerment is also, for this

<sup>50</sup> “Climate Change,” Department of Economic and Social Affairs - Indigenous Peoples, United Nations, <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>.

<sup>51</sup> Ylam Nguyen, “Constitutional Protection for Future Generations from Climate Change,” *Hastings West Northwest Journal of Environmental Law & Policy* 23: 183 (2017) Available at: [https://repository.uchastings.edu/hastings\\_environmental\\_law\\_journal/vol23/iss1/2/](https://repository.uchastings.edu/hastings_environmental_law_journal/vol23/iss1/2/); Terry Ann Campbell, “Environmental Constitutionalism: Marrying the Due Process Clause and the Equal Protection Clause with Climate Change,” (September 20, 2019). Available at SSRN: <https://ssrn.com/abstract=3457043>.



		reason, a central component of taking effective climate action and particularly, of building climate resilience in local communities. <sup>52</sup>
	<b>Article 3:</b> Obligation of states parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men	A lack of representation for women in political and economic institutions can prevent needed policies for climate action and sustainable development from coming into place. Indeed, a documented correlation exists between investment in women’s empowerment and rights and the adoption of environmental treaties. <sup>53</sup> Without women being placed into decision-making roles, their basic rights and freedoms remain at risk due to climate change impacts, inhibiting women’s advancement and social progress more broadly.
<b>UN Convention on the Rights of the Child</b>	<b>Article 6:</b> Obligation of states parties to ensure to the maximum extent possible the survival and development of the child	Children are uniquely vulnerable to climate change impacts. They are more susceptible to the adverse physical health effects of environmental pollution, for example, because their bodies are in key stages of development. Their psychological health is also at risk, as climate change

<sup>52</sup> “Five Reasons Why Climate Action Needs Women,” UNFCCC, March 8, 2023, <https://unfccc.int/news/five-reasons-why-climate-action-needs-women>.

<sup>53</sup> “Invest in Women to Tackle Climate Change and Conserve the Environment,” Women Deliver, <https://womendeliver.org/investment/invest-women-tackle-climate-change-conserve-environment/>.

		<p>impacts can cause trauma and engender lasting anxiety. Children’s dependence on adults for safety also means that any impacts which harm or otherwise impede access to their caretakers can also adversely affect children's survival and development.<sup>54</sup></p>
<p><b>UN Declaration on the Rights of Indigenous Peoples</b></p>	<p><b>Article 1:</b> Right of Indigenous peoples to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law</p>	<p>Particularly as many Indigenous peoples face numerous forms of social, economic, and political marginalization, Indigenous people are uniquely vulnerable to climate change impacts.<sup>55</sup> These impacts impede access to public goods and services that are already limited to Indigenous peoples. Climate disasters and the sudden onset effects of climate change can also cause grave damage to infrastructure, which is poor in many Indigenous communities, and erode subsistence economies. Forced displacement by climate change impacts can further jeopardize Indigenous culture and sovereignty, making the preservation and practice of Indigenous</p>

<sup>54</sup> “Climate Change and Children’s Health,” U.S. EPA, May 30, 2023, <https://www.epa.gov/climateimpacts/climate-change-and-childrens-health>.

<sup>55</sup> “Climate change and the health of Indigenous populations,” U.S. Environmental Protection Agency, <https://www.epa.gov/climateimpacts/climate-change-and-health-indigenous-populations>.

		traditions increasingly difficult. <sup>56</sup>
<b>Regional Human Rights Law</b>		
<b>Instrument</b>	<b>Rights</b>	<b>Links with Climate Change-Induced Displacement</b>
<b>Inter-American Convention on Human Rights</b>	<b>Article 5:</b> Right to humane treatment, including respect for one’s physical, mental, and moral integrity	Climate change-induced displacement can create myriad humanitarian crises, to which countries lack either the resources or willingness to respond. <sup>57</sup> As a result, the integrity of climate change-displaced persons may be severely compromised, particularly as there remains a grave ethical failing in international law to not only address but even recognize these persons’ precarious situation and protect their rights.
<b>African Charter on Human and Peoples’ Rights</b>	<b>Article 5:</b> Right to respect of inherent human dignity and recognition of legal status; right to non-exploitation and degradation	As mentioned previously in this chart, climate change impacts can leave people and particularly, marginalized social groups, vulnerable to physical and social hazards. These hazards include

<sup>56</sup> Nikoleta Vasileva, “Former UN Human Rights Committee Member Professor Martin Scheinin on Climate Change and Human Rights Litigation,” Earth Refuge, April 2, 2021, <https://earthrefuge.org/professor-martin-scheinin-on-climate-change-and-human-rights-litigation/>.

<sup>57</sup> Kristalina Georgieva, Vitor Gaspar, and Ceyla Pazarbasioglu, “Poor and Vulnerable Countries Need Support to Adapt to Climate Change,” International Monetary Fund, March 23, 2022, <https://www.imf.org/en/Blogs/Articles/2022/03/23/blog032322-poor-and-vulnerable-countris-need-support-to-adapt-to-climate-change>.

		inhumane and unjust living and working conditions. <sup>58</sup>
	<b>Article 16:</b> Right to enjoy the best attainable state of physical and mental health	Also as mentioned previously, climate change can have adverse and even life-threatening physical and mental effects. Many healthcare systems are currently ill-equipped to address these effects, particularly amid accelerating climate change impacts. <sup>59</sup>
<b>European Convention on Human Rights</b>	<b>Article 2:</b> Right to life	As elaborated on above, the right to life, which includes protection from the deprivation of life, can be fundamentally jeopardized by climate change impacts. This threat holds for both present and future generations, whose lives may be irrevocably altered and undermined by such impacts. <sup>60</sup>
	<b>Article 8:</b> Right to respect for privacy and family life	Climate change destabilizes people’s ability to enjoy privacy and family life in myriad ways, including through potential displacement and by introducing threats of bodily harm in the form of climate disaster not only to individuals but also to their

<sup>58</sup> Shelly Steward and David K. Gibson, “When Climate Change Meets a Bad Work Environment, Disaster Can Strike,” The Aspen Institute, April 21, 2022, <https://www.aspeninstitute.org/blog-posts/when-climate-change-meets-a-bad-work-environment-disaster-can-strike/>.

<sup>59</sup> Vanessa Kerry and Paul Hudson, “Climate change is our greatest health crisis. The same investments can often address both threats,” *Fortune*, Oct. 19, 2023, <https://fortune.com/2023/10/19/climate-change-health-crisis-investments-threats-health-environment-kerry-hudson/>.

<sup>60</sup> ECtHR, *Duarte Agostinho and Others v. Portugal and 32 Other Member States*, no. 39371/20, Communicated Case, 30 November 2020, relinquished to the Grand Chamber on 29 June 2022.

		family members, as well as to future generations of family members. <sup>61</sup> Already, fears of future climate change impacts are affecting many people's decisions about whether or not to have children. <sup>62</sup>
	<b>Article 13:</b> Right to an effective remedy	Insufficient recognition of government responsibility for greenhouse gas emissions and consequent climate change impacts continues to prevent many climate change victims, including displaced persons, from accessing protections for their basic rights and receiving just compensation for suffering climate change-related loss and damage of/to their persons and possessions. <sup>63</sup>

*The Right to a Healthy Environment*

In addition to the rights listed above, climate change-induced displacement reflects a serious violation of the right to a healthy environment, which arguably includes the right to a stable climate or at least, an environment free from climate change harms. This right is only recently gaining widespread recognition, particularly, as a tool to establish state obligations for securing

<sup>61</sup> Sarah Macdonald, “Taking a human rights-based approach to climate litigation,” UNSW Sydney and UNSW Australian Human Rights Institute, <https://www.humanrights.unsw.edu.au/students/blogs/human-rights-based-approach-climate-litigation>.

<sup>62</sup> Damien Gayle, “More people are not having children due to climate breakdown fears, finds research,” *The Guardian*, Nov. 9, 2023, <https://www.theguardian.com/environment/2023/nov/09/more-people-not-having-children-due-to-climate-breakdown-fears-finds-research>.

<sup>63</sup> “What Is 'Loss & Damage'? Everything to Know About Funding Climate Change Recovery,” Global Citizen, Nov. 29, 2023, [globalcitizen.org/en/content/loss-and-damage-climate-change-explainer/](https://globalcitizen.org/en/content/loss-and-damage-climate-change-explainer/); Kristel De Smedt and Michael Faure, *Compensation for victims of climate change disasters*, Study Requested by the Peti Committee, European Parliament, July 2023, [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/751375/IPOL\\_STU\(2023\)751375\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/751375/IPOL_STU(2023)751375_EN.pdf).

climate stability. Yet it has been an explicit and/or implicit principle in the constitutions of numerous UN member states and regional human rights documents for much longer.<sup>64</sup>

In a historic move in July 2022, the UN General Assembly adopted a resolution that recognized the human right to a clean, healthy, and sustainable environment, as well as the importance of exercising human rights in order to protect such an environment.<sup>65</sup> This right is also enshrined in a groundbreaking Latin American and Caribbean environmental treaty established in 2018 known as the Escazú Agreement, which aims to protect such a right for not only the present but also for future generations and calls on parties to protect this right as well as other related universal rights. The right to a healthy environment was also previously recognized by the 1981 African Charter on Human and People's Rights and the 1998 European Aarhus Convention, building on the 1972 Stockholm Declaration which laid out the 'fundamental right of man' to inhabit "an environment of a quality that permits a life of dignity and well-being."<sup>66</sup>

More recently, in March 2023, the UN General Assembly adopted a resolution put forward by the Pacific Island nation of Vanuatu and advocated for largely by Pacific Islander youth calling on the International Court of Justice, the UN's highest judicial body, to provide an advisory opinion on countries' obligations to address climate change.<sup>67</sup> The resolution invoked the language of human rights, suggesting a right to a healthy environment, and could play a key role in galvanizing greater rights-based responses to climate change-induced displacement by the international community. Just a few months earlier in January 2023, Chile and Colombia requested an advisory opinion from the Inter-American Court of Human Rights (IACtHR) on the scope of state obligations for climate action under the frame of international human rights law.<sup>68</sup> Progress on climate reparations and having the international community reckon with the unfair distribution of costs from climate change loss and damage, which was a major theme at the last two Conferences of Parties (COP27 and COP28), also represent promising signs for rights-based approaches to and greater discourse around climate change-induced displacement.<sup>69</sup>

### *Taking the Human Rights-Climate Connection to Court*

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<sup>64</sup> David R. Boyd, "The Implicit Constitutional Right to Live in a Healthy Environment," *Review of European, Comparative & International Environmental Law*, Dec. 20, 2011, <https://doi.org/10.1111/j.1467-9388.2011.00701.x>.

<sup>65</sup> "General Assembly recognizes the human right to a healthy environment in line with the Escazú Agreement," CEPAL, July 18, 2022, <https://www.cepal.org/en/notes/un-general-assembly-recognizes-human-right-healthy-environment-line-escazu-agreement>.

<sup>66</sup> "The Right to a Healthy Environment," Oct. 29, 2021, IUCN, <https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>.

<sup>67</sup> "UN resolution billed as a turning point in climate justice," March 31, 2023, <https://www.unep.org/news-and-stories/story/un-resolution-billed-turning-point-climate-justice>.

<sup>68</sup> "Request for an advisory opinion on the scope of the state obligations for responding to the climate emergency," Sabin Center for Climate Change Law, <https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/>.

<sup>69</sup> "COP27 Reaches Breakthrough Agreement on New "Loss and Damage" Fund for Vulnerable Countries," UNFCCC, Nov. 20, 2022, <https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries>.

The developments listed above follow a number of rulings on claims made across legal jurisdictions in recent years that have brought the intersection of climate change and human rights to the fore in international and national political systems. These rulings have made clear the liability of state actors who refuse to take urgently-needed action on climate change and resulting humanitarian crises. Some of these rulings respond to claims for asylum. Others have direct implications for protecting rights in the context of climate change impacts, including but not limited to displacement. Crucially, even where these cases may not bear directly on claims related to climate change-induced displacement, they nonetheless hold value for understanding how such claims can be formulated and advanced using the language of human rights, as well as provide precedents for these rights' enforcements that can be invoked in displacement cases.

Below are summaries and analyses of the significance of a few such cases, based primarily on features in the Earth Refuge Legal Database and the U.S. Litigation Chart published by the Sabin Center for Climate Change Law at Columbia University (in collaboration with Arnold & Porter Kaye Scholer LLP). Also included are the rights implicated by these cases and the legal instruments to which they appealed or under which such rights fall.

### *Right to Life Cases*

#### **Pending (filed 2020) - Duarte Agostinho and Others v. Portugal and 32 Other States**

**Rights Implicated:** right to life, right to privacy, and right to not experience discrimination

**Legal Instrument:** Articles 2, 8, and 14 of the European Convention on Human Rights

Six Portuguese youth are bringing Portugal and 32 other countries to court in the European Court of Human Rights (ECtHR). They argue that these countries have violated human rights by failing to take sufficient climate action and thereby allowing for damaging climate change effects to occur. These effects include unprecedented heatwaves; indeed, in June-August of 2022, European countries saw over 20,000 heat-related deaths as a result of heat waves in what became the hottest summer on record.<sup>70</sup> This case will now be examined by the ECtHR's Grand Chamber, given its implications for the interpretation of part of the European Convention on Human Rights. In formulating their case, youth plaintiffs have invoked their unique vulnerability to climate change as young people and the ways in which its increasing effects are already adversely affecting their health and jeopardizing their right to life. Notably, the plaintiffs argue that the 33 countries in question exercise extra-territorial jurisdiction, meaning that they exercise legal jurisdiction beyond their conventional national boundaries, in light of causing cross-border climate change impacts.<sup>71</sup> Another unique feature of this case is that Duarte Agostinho applicants are seeking a ruling without having exhausted remedies from domestic courts, instead arguing

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<sup>70</sup> Juliette Portalá, "Europe's heatwave may have caused more than 20,000 'excess' deaths," *Reuters*, Nov. 24, 2022, <https://www.reuters.com/business/cop/europes-heatwave-may-have-caused-more-than-20000-excess-deaths-2022-11-24/>.

<sup>71</sup> Angela Hefti, "What's next in Climate Litigation before the European Court of Human Rights? Duarte Agostinho and Others v Portugal and 32 other States," Oxford Human Rights Hub, May 2, 2023, <https://ohrh.law.ox.ac.uk/whats-next-in-climate-litigation-before-the-european-court-of-human-rights-duarte-agostinho-and-others-v-portugal-and-32-other-states/>.

that the urgency of climate action and barriers to pursuing such remedies as young people merit bypassing this conventional requirement.

**Pending (filed 2020) - KlimaSeniorinnen v Switzerland (ECtHR)**

Rights Implicated: right to life, right to private and family life; right to a fair trial; right to an effective remedy

Legal Instrument: Articles 2,8, 6, 13 of the European Convention on Human Rights

This case against the Swiss government was brought by the association of Swiss Women for Climate Protection Switzerland in the ECtHR. The association claims that their right to life and health is being violated by the government's failure to implement robust climate policy and sufficiently reduce greenhouse gas emissions and consequent contribution to climate change impacts, including extreme heat waves. In doing so, the association has invoked Articles 2 (right to life) and Article 8 (right to respect for private and family life) of the European Convention of Human Rights, laying possible groundwork for similar complaints across European legal jurisdictions. After initially accepting the case, the ECtHR Chamber passed it onto the Grand Chamber of the Court. As of December 2022, the applicants had submitted a petition highlighting the case's merits. In their most recent petition, applicants highlighted the unique vulnerability of older women as a demographic to climate change impacts (page 65), as well as the urgency of combating dangerous climate change (page 61). They also invoked numerous precedents for recognizing the urgency of climate action and the legal standing of climate change victims from European courts including in Ireland, Germany, and France (page 59).<sup>72</sup>

*Right to a Healthy Environment Case*

**Ruled – August 2023 - Held v. State of Montana**

Rights Implicated: right to a clean and healthful environment

Legal Instrument: Montana State Constitution

Sixteen young people in Montana sought the declaration of a right to a stable climate system and to compel the state accordingly to curb greenhouse gas emissions, challenging the Montana State Energy Policy. They based their arguments on the Montana state constitution, which guarantees the right to a healthy environment; the public trust doctrine; and state climate legislation — namely, the Montana Environmental Policy Impact. Youth plaintiffs cited their disproportionate vulnerability as children to the effects of climate change, including both physical and mental health harms, both now and in the future. In a historic decision in August 2023, a Montana trial court ruled in favor of the youth plaintiffs and deemed the state's failure to consider climate change in the approval of fossil fuel projects unconstitutional, striking down two state laws. The court found that there was a clear contribution by Montana's greenhouse gas emissions to the climate change harms experienced by youth plaintiffs and further that these harms could be

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<sup>72</sup> Verein KlimaSeniorinnen and Others v Switzerland (Application no. 53600/20), available at <http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>.



redressed through state policy change to curb emissions.<sup>73</sup> As a result, *Held v. State of Montana* represents the first successful rights-based and youth plaintiff-led climate change lawsuit in the United States, with plaintiffs overcoming obstacles faced by youth plaintiffs making similar claims in a parallel U.S. federal court case *Juliana v. United States* and other state-level cases.

### *Right to Asylum Cases*

#### **Ruled - February 2021 - I.L. v. Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona**

Rights Implicated: right to life, right to humanitarian protection

Legal Instrument: Italy Consolidated Immigration Act (Legislative Decree) No. 286/1998

A ruling in Italy’s highest court weighed in on an initial denial of asylum to a Nigerian refugee, I.L., fleeing armed conflict fueled in part by environmental degradation. The Court recognized the role of environmental instability as a legitimate factor for grounding I.L.’s claim to asylum. Specifically, it established the need to account for such instability in evaluating whether the “minimum essential limit below which the right to life and the right to a dignified existence of an individual are not guaranteed” had been breached. Pages 8-9 of the ruling state “that limit must be appreciated by the trial judge not only with specific reference to the existence of a situation of armed conflict, but in relation to any context that is, in practice, able to put the fundamental rights to life, liberty and self-determination of the individual at risk of zeroing or reduction below the aforementioned minimum threshold, therein specifically including — if their existence in a given geographical area is concretely established — situations of environmental disaster, [...] climate change, and unsustainable exploitation of natural resources.” Thus, this decision supports the understanding that environmental conditions and, importantly, climate change impacts — including but not limited to sudden onset effects or climate disasters — can trigger humanitarian protections. Notably, the ruling also invoked the UN Human Rights Committee decision in Teitiotia case. Future litigants could draw on the Italian decision to explicitly invoke the climate crisis as infringing upon their most fundamental rights and substantiating their need for asylum.

#### **Ruled – March 2021 - Bundesverfassungsgericht, Order 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20**

Rights Implicated: right to asylum

Legal Instrument: German Federal Climate Change Act

In this landmark case for intergenerational climate justice, the Federal Constitutional Court of Germany ruled that a seminal national climate policy violated the fundamental human rights of future generations by unduly burdening these generations with greenhouse gas emissions reductions to combat dangerous climate change. The policy in question was the German Climate Protection Act, which seeks to align the nation with its espoused and European emissions reduction goals. Only a few months after the ruling in June 2021, the German national Parliament passed an amended version of the Act which set more ambitious targets, bolstered

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<sup>73</sup> Sam Bookman, “Held v. Montana: A Win for Young Climate Advocates and What It Means for Future Litigation,” Environmental & Energy Law Program, Harvard University, Aug. 30, 2023, <https://eelp.law.harvard.edu/2023/08/held-v-montana/>.

regulatory measures for achieving carbon neutrality, and made available an additional eight billion Euros in funding to implement the Act.<sup>74</sup> The ruling supports clearly the legal standing and rights of future generations in German and potentially broader European courts, and is particularly salient amid an international surge in youth plaintiff-led cases pursuing the right to a stable climate for present and future generations. With respect to climate change-induced displacement, the German legal ruling opens a pathway for those potentially facing or likely to face climate change-induced displacement to appeal for the protection of their fundamental rights through measures like asylum more immediately, prior to actual displacement. It also affirmed that non-governmental organizations cannot bring these kinds of legal action on their own behalf but rather, must bring such cases on the grounds that a specific individual or group's (i.e., one or more climate migrants/refugees) fundamental rights are being or risk being violated. Finally, the ruling suggested that states such as Germany can be held legally accountable for adversely affecting the rights and well-being of citizens of other states — as the complainants included individuals from Bangladesh and Nepal — through inadequate climate action.

**Ruled – December 2020 – Court of Administrative Appeal de Bordeaux, 2ème chambre, 20BX02193, 20BX02195**

Rights Implicated: right to asylum

Legal Instrument: Provision 11 of Article L.313-11 of the French Code for Entry and Residence of Foreigners and the Right to Asylum

French courts ruled in favor of a Bangladeshi national known as “Mr. Sheel” who sought asylum after contending that he could not access adequate healthcare services to address his asthma and other respiratory conditions in his home country. The impacts of climate change in Bangladesh — particularly with respect to extreme heat — played a significant role in Mr. Sheel’s characterization of the inadequacy of national conditions for maintaining his health. This ruling holds broader significance despite its narrowness or the court’s refusal to apply such a ruling beyond Mr. Sheel’s individual case. The clear recognition of the intimate link between climate change and health suggests that medical evidence, as well as concrete data about environmental conditions and climate pollution could support the cases of future litigants seeking asylum on the basis of climate change. Most centrally, the ruling sets a clear precedent for the consideration of environmental circumstances by French courts in issuing deportation orders. This outcome in France may further inspire other European legal systems to embrace similar considerations.

**Ruled – December 2009 - Refugee Review Tribunal of Australia 1168**

Rights Implicated: right to asylum

Legal Instrument: Australia Migration Act 1958, 1951 Refugee Convention

The Refugee Review Tribunal of Australia issued a decision against the acceptance of climate change-displaced persons from outside national borders. The ruling effectively dismissed a national obligation to accept such persons, adhering to narrow grounds for refugee status based on a fear of persecution that was similar to that originally outlined by the 1951 Refugee Convention. This ruling came in response to the application of a citizen of Kiribati for a migrant

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<sup>74</sup> “Federal Climate Change Act 2021,” IEA, May 25, 2023, <https://www.iea.org/policies/13518-federal-climate-change-act-2021>.

protection visa under the Migration Act of 1958. His application appealed to a broader understanding of persecution by environmental and economic conditions as, he claimed, the swallowing of land by rising sea levels and other knock-on effects of climate change on availability. Of drinking water and agriculture impeded his ability to maintain a reasonable quality of life. Ultimately, the Tribunal maintained that there had to be a discriminatory motivation as well as a clear agent — for which climate change did not qualify — to justify claims of persecution. While this ruling clearly set a negative precedent for advancing the asylum claims of persons displaced by climate change, the reasoning of the Tribunal also provides crucial insight into how Australian courts view such claims and thus, how such claims might be formulated differently in the future, such as by drawing more robust links between individual claimants and particular social groups.

To expand on a point made earlier, while not all of the above cases focus directly on climate change-induced displacement, or indeed have achieved a successful outcome, they nonetheless have contributed to a growing body of evidence and legal arguments available for bringing a rights-based approach to the climate crisis as a whole. Thus, they have helped to solidify and grow a rights-based approach to change-induced displacement in domestic and international legal jurisdictions. In the process of this, they have both helped to clear the path forward for more cases of this nature and to foster a social and political environment more favorable to the international community and nations honoring the protections owed to climate refugees.

It is worth noting that the success of a rights-based approach may also depend on the legal jurisdictions in which cases are brought. To date, European and international jurisdictions have maintained a more favorable disposition to these arguments than U.S. courts, as evidenced by the dismissal of the youth-led suit *Juliana v. United States* calling for climate action on behalf of young people and future generations, as well as the lack of progress in other U.S. state-level cases advancing similar arguments. It is also worth noting that litigation is also only one of many tools available for advancing a rights-based approach to climate change-induced displacement. As discussed in this report, UN resolutions and international discourse can also provide crucial avenues for policy change. More conventional human rights monitoring and reporting mechanisms may also have valuable applications in this context, helping to clarify key points of rights-based intervention in cross-border climate change-induced displacement scenarios.

Furthermore, petitioning UN agencies and international tribunals to adopt robust stances on the issue of climate change-displacement may provide another viable alternative to litigation for those seeking to advance protections for such displaced persons. The *Daniel Billy and others v. Australia* petition, commonly known as the “Torres Strait Islanders Petition,” provides one example of success here, which opens the door for further related action. In September 2022, the U.N. Human Rights Committee decided in favor of Indigenous Torres Islanders against the Australian government over allegations of Australia’s climate change policy being inadequate. The effort represented the first successful petition of this kind and the first human rights-based climate legal action in Australia. Reflecting their human rights basis, petitioners claimed that Australia had violated their fundamental rights under the International Covenant on Civil and

Political Rights through a failure to adapt to climate change, with consequent climate change impacts impeding Indigenous people’s traditional agricultural forms of sustenance and forms of cultural practice, including by washing away graveyards. The decision set a new precedent for recognition of people’s right to culture being jeopardized by climate change impacts, and included recognition of a violation of the right to family life as well from these impacts.<sup>75</sup> It also provides an instructive model for how international and regional human rights instruments can be directly harnessed to compel recognition of state duties to both respond to and preemptively address climate change-induced displacement.

### *Limitations of a Human Rights-Based Approach*

While a human rights-based approach to tackling climate change displacement is promising, it is does not come without limitations. Many foundational international legal documents remain inextricably tied to histories of imperialism and colonialism, just as vulnerability to climate change remains inextricably linked to racial and gender inequity and discrimination.<sup>76</sup> International human rights actors must and, indeed, are starting to reckon with this history.

As discussed, many human rights instruments remain legally non-binding and so largely unenforceable. Leaving enforcement to nations’ discretion has left room for the continual violation of human rights, particularly of marginalized groups on the front lines of the climate crisis. After being compelled to cross borders to preserve their human rights, climate refugees are forced into increasingly perilous positions. In refugee camps, they face egregious conditions of what scholar Parekh terms “minimum conditions of human dignity”. In the current system, Parekh writes, “refugees must choose from among the options of impoverished camps, urban poverty and insecurity, or risking life and limb to seek asylum.”<sup>77</sup> Even with a growing recognition of climate refugees’ human rights on paper, therefore, it is essential to recognize the need for more than theoretical overtures — the international community must take practical steps to ensure the robust implementation and enforcement of these rights by member states.

### *Conclusion*

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<sup>75</sup> “Torres Strait Islanders win historic human rights legal fight against Australia,” Client Earth, <https://www.clientearth.org/latest/press-office/press/torres-strait-islanders-win-historic-human-rights-legal-fight-against-australia/>.

<sup>76</sup> H.O. Pörtner et. al, “Summary for Policymakers,” in *Climate Change 2022: Impacts, Adaptation, and Vulnerability*, contribution of Working Group II to the *Sixth Assessment Report* of the Intergovernmental Panel on Climate Change, Cambridge University Press: Cambridge, UK and New York, NY, pp. 3-33, doi:10.1017/9781009325844.001.

<sup>77</sup> *No Refuge*, 19. “Refugees are effectively offered a false choice between three dismal options: encampment, urban destitution, or perilous journeys. For refugees, these inadequate options — camps, urban destitution, and boats — are the modern global refugee regime.” Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World*, New York: Oxford University Press, 2017, 55.

In December of 2023, world governments signed a historic agreement at COP28 that called for a just, orderly, and equitable transition away from fossil fuels.<sup>78</sup> The move signaled a new willingness of such governments to acknowledge and confront the root causes of the climate crisis, which is crucial for mitigating the worst effects of climate change. Still, the world remains far from on track to limit global warming in accordance with Paris Agreement goals, which makes ever more imperative the establishment of robust protections for people now and in the future who are forcibly displaced by climate change.<sup>79</sup>

This report has illuminated the powerful potential and fundamental importance of employing a rights-based approach to climate change-induced displacement across borders. Despite their limitations, human rights frameworks can prove invaluable for conceptualizing and actualizing protections for climate refugees. International and regional human rights instruments, from the Universal Declaration of Human Rights to the Inter-American Convention on Human Rights, provide a crucial foundation for recognizing the different rights violated by climate change and the responsibilities of states to uphold and take action to ensure the realization of these rights.

Moreover, with increasing frequency, people vulnerable to climate change around the world are invoking human rights to demand greater climate action from states. The *Held v. State of Montana* ruling offers only the latest example in a growing string of successes for rights-based climate litigation, with several more such cases pending before the European Court of Human Rights. This surge in legal action has been accompanied by increasing pressure from states themselves on human rights bodies and courts to proactively issue decisions that clarify states' obligations with respect to addressing the climate crisis, from the International Court of Justice to the Inter-American Court of Human Rights. In September 2023, the International Tribunal for the Law of the Sea became the first international court to address climate and ocean protection, holding public hearings on the matter following a request from the Commission of Small Island States on Climate Change and International Law, comprised of states facing severe inundation and mass displacement from rising sea levels.<sup>80</sup> All of these developments provide increasing promise for recognition of the rights of people displaced by climate change across borders, creating a new legal scaffolding for which these rights can be advanced. They also reflect the absence of a panacea for protecting climate change-displaced persons; there is a myriad of strategies that can and must work in tandem to advance such protections.

Ultimately, addressing the growing crisis of climate change-induced displacement — as it unfolds within the broader climate crisis — is imperative if the rights of billions of people over the coming decades are to be upheld, alongside the rights of those already suffering such displacement now. The slower the international community is to act, the greater the

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<sup>78</sup> "COP28 Agreement Signals "Beginning of the End" of the Fossil Fuel Era," UNFCCC, Dec. 13, 2023, <https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>.

<sup>79</sup> Fiona Harvey, "World likely to breach 1.5C climate threshold by 2027, scientists warn," *The Guardian*, May 17, 2023, <https://www.theguardian.com/environment/2023/may/17/global-heating-climate-crisis-record-temperatures-wmo-research>.

<sup>80</sup> "Climate Opinion Awaited as Historic Hearings Conclude at ITLOS," Center for International Environmental Law, Sept. 25, 2023, <https://www.ciel.org/news/climate-opinion-awaited-as-historic-hearings-conclude-at-itlos/>.

consequences will be for those already facing climate change-induced displacement and future generations who will inherit a world in which basic human rights are increasingly vulnerable. This report provides an instrumental table and case analyses linking climate change to varied human rights violations, framed within a crucial historical context, with the aim of providing a launching point for civil society actors ready to advocate for protecting climate change-displaced persons at the global and national levels, including through legal and policy advocacy.

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