



March 22, 2024

International Court of Justice

NGO submission on the Request for Advisory Opinion as to Obligations of States in respect of climate change

Brief submitted by:

<p>Camila Bustos, Assistant Professor of Law at the Elisabeth Haub School of Law at Pace University</p>	<p>Monica Iyer, Clinical Fellow and Senior Lecturing Fellow, Duke University School of Law</p>
<p>Amali Tower, Founder and Executive Director, Climate Refugees Ryan Plano, Project Officer, Climate Refugees</p> 	<p>Yumna Kamel, Co-Founder and Executive Director, Earth Refuge</p> 
<p>Julia Neusner, Founder and Principal, Human Security Initiative</p>	<p>Geneviève Minville, PhD Student, Faculty of Environmental and Urban Change, York University</p>

This brief is submitted under Section III.3 of the procedural rules followed by the International Court of Justice governing Advisory Opinions.

About Climate Displacement

There is an increasing consensus that climate change has significant implications for human rights protection and States’ human rights obligations. Climate-related displacement has

emerged as a key challenge, as climate change impacts such as flooding and agricultural disruption force millions to leave their homes.¹

While predictions are contested and there is considerable need for empirical research in this field, one World Bank study estimates that without significant climate mitigation and adaptation efforts, by 2050 there could be more than 216 million people internally displaced by slow-onset disasters, with 143 million from just three regions—Latin America, sub-Saharan Africa, and South Asia.²

Displacement related to climate factors can be temporary or permanent. It may be caused by slow-onset events of gradual progression, such as coastal erosion or droughts. Displacement can also stem from rapid-onset events such as landslides, floods, and hurricanes, or various combinations of these events.

Scholars have long documented how climate change exacerbates underlying vulnerabilities of individuals and communities. While it is true that rapid-onset weather events like increasingly powerful storms and disasters have displaced communities temporarily or for extended periods of time, climate change alone does not usually *cause* displacement.³ Instead, environmental or climate-related events, especially slow-onset events like drought and sea-level rise, tend to intensify poverty, housing insecurity, and economic inequality. Climate change compounds existing harms for people living at the margins of society, many of whom face multiple and intersecting discrimination, and materially contributes to displacement. For instance, “the world’s poorest people are especially vulnerable to climate variability and environmental degradation due to their reliance on forests and natural resources. Without adequate tools and support for the vulnerable, those pushed into migration are at risk of being exploited and abused”.⁴ Additionally, it is well-established that low-income and BIPOC (Black, Indigenous, and people of color) communities are more likely to experience negative impacts of environmental

¹ International Organization for Migration (IOM), *Migration and Climate Change*, IOM, 11 (2008), https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5866.

² Viviane Clement et al., World Bank Group, *Groundswell Part 2: Acting on Internal Climate Migration*, at 80, 83 table 6 (2021), <https://openknowledge.worldbank.org/bitstreams/158b2f56-a4db-5a2d-93b9-0070068fa084/download>.

³ Oli Brown, *Migration and Climate Change*, at 12, IOM Migration Rsch. Ser. No. 31 (2008), https://publications.iom.int/es/system/files/pdf/mrs-31_en.pdf.

⁴ Chris O’Connell, *From a Vicious to a Virtuous Cycle: Addressing climate change, environmental destruction and contemporary slavery*, ANTI-SLAVERY INTERNATIONAL (2021) https://www.antislavery.org/wp-content/uploads/2021/04/ASI_ViciousCycle_Report_web2.pdf at 4.

or climate disasters.⁵ For historically marginalized populations, climate change contributes to significant human rights losses and development setbacks that underpin their displacement.

In its 2022 Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) concluded, with high confidence, that **“the intersection of gender with race, class, ethnicity, sexuality, Indigenous identity, age, disability, income, migrant status and geographical location often compounds vulnerability to climate change impacts and creates further injustice.”**⁶

Displacement has differential human rights impacts based on gender and is influenced by several socio-political factors.⁷ Displacement, whether domestic or international, can undermine the human rights of women and girls by contributing to interrupted education, economic instability, reproductive injustice, gender-based violence, exploitation, and human trafficking.⁸ Compared to men, women face greater barriers to movement as a result of continued traditional gender roles, household obligations, and limited language skills.⁹

Relatedly, lesbian, gay, bisexual, transgender, queer, or questioning, etc. (“LGBTQ+”) groups are already at heightened risk of violence or other forms of oppression, like political persecution.¹⁰ Preexisting systemic inequities combined with discriminatory emergency response policies

⁵ Aneesh Patnaik et al., *Racial Disparities and Climate Change*, PRINCETON STUDENT CLIMATE INITIATIVE (Aug. 15, 2020), <https://psci.princeton.edu/tips/2020/8/15/racial-disparities-and-climate-change>. See generally D. Kapua’ala Sproat, *An Indigenous People’s Right to Environmental Self-Determination: Native Hawaiians and the Struggle Against Climate Change Devastation*, 35 STAN. ENV’T L.J. 157 (2016).

⁶ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Climate Change 2022: Impacts, Adaptation and Vulnerability* at 65, Working Group II (IPCC Sixth Assessment Report, 2022) https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf (emphasis added).

⁷ Rachel Sabates-Wheeler, *Mapping differential vulnerabilities and rights: ‘opening’ access to social protection for forcibly displaced populations*, 7 COMPARATIVE MIGRATION STUDIES 1, 7-9 (Sept. 2019).

⁸ Bharat H. Desai & Moumita Mandal, *Role of Climate Change in Exacerbating Sexual and Gender-Based Violence against Women: A New Challenge for International Law*, 51 GLOBAL LAW AND POLICY (2021) 137, 139-140; see generally Nancy M. Sidun & Judith L. Gibbons, *Women, girls, and climate change: Human rights, vulnerabilities, and opportunities*, 58 INT’L J. PSYCH. (Sept. 2023).

⁹ See generally Gaëlle Ferrant & Michele Tuccio, *How do female migration and gender discrimination in social institutions mutually influence each other?*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) DEVELOPMENT CENTRE, Working Paper No. 326, <https://www.oecd.org/dev/development-gender/WPAE%20326.pdf>; see also Amelia Bleeker et. al., *Advancing gender equality in environmental migration and disaster displacement in the Caribbean*, STUDIES AND PERSPECTIVES SERIES-ECLAC SUBREGIONAL HEADQUARTERS FOR THE CARIBBEAN, No. 98, Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), (2021). https://kmhub.iom.int/sites/default/files/publicaciones/advancing_gender_equality_in_environmental_migration_and_disaster_displacement_in_the_caribbean.pdf

¹⁰ MEREDITH L. WEISS AND MICHAEL J. BOSIA, *GLOBAL HOMOPHOBIA: STATES, MOVEMENTS, AND THE POLITICS OF OPPRESSION*, 5-6 (1st ed. 2013).

burden LGBTQ+ communities with disproportionate impacts of climate-related disasters and displacement.¹¹

Much of the academic literature and media coverage on climate displacement frames the issue through a racialized lens, primarily through the perspective of Global North nationals concerned with “unprecedented increases in cross-border migration” originating from the Global South.¹² A significant portion of the studies on and responses to climate displacement have embraced a national security framework that builds on the assumption and characterization of migration as a threat to national security.¹³ Conversations around climate migration projections and modeling often raise the specter of mass migration from the Global South to the Global North, eliciting a border security narrative as opposed to the human security narrative necessary for global cooperation. Perhaps this is best evidenced by how the wealthiest countries spend 2.3 times more on border security than on climate finance.¹⁴

This conceptualization of climate displacement as a security threat disregards the social vulnerability factors that shape displacement, while reinforcing xenophobic conceptions and “deep-seated fears and stereotypes of the dark-skinned, overbreeding, dangerous poor”¹⁵ crossing borders. Further, it lacks a human rights approach and fails to center the needs of those who are being forcibly displaced.

Climate change and human displacement are increasingly interconnected, disproportionately impacting the world’s poorest and most vulnerable people. Countries that are least responsible for climate change are often the worst impacted and experience the most displacement. By mid 2023, conflicts, violence and disasters forcibly displaced at least 114 million people in the world, with 75 percent of people hosted in low and middle-income countries.¹⁶ More than half of new

¹¹ Leo Goldsmith et. al, *Queer and present danger: understanding the disparate impacts of disasters on LGBTQ+ communities*, 46 *DISASTERS* 946, 955 (Oct. 2022).

¹² Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 *WIS. INT’L L.J.* 366, 366–68 (2019); see also Carmen G. Gonzalez, *Migration as Reparation: Climate Change and the Disruption of Borders*, 66 *LOY. L. REV.* 401, 403 (2020). *But cf.* PAC. ISLANDS STUDENTS FIGHTING CLIMATE CHANGE ET AL., *HOW TO COMMUNICATE ABOUT CLIMATE LINKED MOBILITY* 4, (2022), available at <https://drive.google.com/file/d/1H755rIfYaj3AoY3zU9m0U75Kl8IDA5cA> (advising against using “crisis language,” including phrases like “unprecedented migration,” that “feed into the threat narrative”).

¹³ See e.g., TODD MILLER, *STORMING THE WALL* (2017).

¹⁴ Todd Miller et. al., *Global Climate Wall, How the world’s wealthiest nations prioritize borders over climate action*, Transnational Institute, (Oct. 25, 2021), <https://www.tni.org/en/publication/global-climate-wall> at 15.

¹⁵ Betsy Hartmann, *Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse*, 22 *J INT’L DEV.* 233, 238 (2010); Miles Culpepper, *The Debt We Owe Central America*, JACOBIN (Nov. 1, 2018), <https://jacobinmag.com/2018/11/centralamerica-migrant-caravan-trump>; Andrew Baldwin, *Racialisation and the Figure of the Climate Change Migrant*, 45 *ENV. & PLANNING* 1474 (2013).

¹⁶ UNHCR, *Forced displacement continues to grow as conflict escalates*, (2023),

<https://www.unhcr.org/us/news/press-releases/unhcr-forced-displacement-continues-grow-conflicts-escalate>

internal displacements in 2023 were as a result of climate-related disasters such as floods, drought, wildfires and storms.¹⁷ Less is known about cross-border movements following disasters but 70 percent of all refugees live in countries neighboring their own.¹⁸ Nearly 60 percent of refugees and internally displaced people now live in countries that are among the most vulnerable to climate change.¹⁹

It should be noted that while significant efforts have been expended to provide a range of climate displacement projections, robust data on actual cross-border climate displacement is woefully lacking. The limited data available indicates that the majority of climate-related displacement is occurring internally within country borders. A majority of these displacements are happening in countries with the least capacity to respond to the social, protection and humanitarian needs of their displaced populations. And given these disproportionate displacements are happening in Global South countries with the least emissions, climate-driven displacement is an injustice thrust upon both the internally displaced individuals and their governments.

It is worth noting that the vast majority of climate-related displacement—whether internal or across borders—is happening between Global South countries, which are disproportionately vulnerable to the effects of the climate crisis. Equally, it is important to note that from a climate justice and human rights perspective, internal movements carry as much gravity as cross-border displacement. Frontline and vulnerable nations, despite contributing significantly less to greenhouse gas emissions, are enduring instability and heightened losses and damages from climate change.²⁰

Loss and Damage

Losses and damages as a result of climate change are felt disproportionately in Global South countries, who have contributed least to global carbon emissions and have benefited least from the industrialization and the fossil fuel-based economies that led to the wealth and development of Global North countries. In 2015, state parties to the United Nations Framework Convention on Climate Change (UNFCCC) adopted the Paris Agreement, which agreed in Article 8 to avert, minimize and address loss and damage associated with the adverse effects of climate

¹⁷ GRID 2023 *Internal displacement and food security*, Internal Displacement Monitoring Centre (2022), <https://www.internal-displacement.org/global-report/grid2023/> at 9

¹⁸ UNHCR, *Climate change and displacement: the myths and the facts*, (2023), <https://www.unhcr.org/us/news/stories/climate-change-and-displacement-myths-and-facts>

¹⁹ *Id.*

²⁰ Ingrid Boas et al, "Climate Change and Human Mobility in the Global South" in the Palgrave Handbook of South-South Mobility", https://link.springer.com/chapter/10.1007/978-3-031-39814-8_20

change.²¹ While there is no agreed upon definition of ‘loss and damage’ (L&D) in the UNFCCC, the phrase is generally understood to refer to the impacts—sometimes repairable, but sometimes irreversible—arising from the adverse effects of climate change, which include sudden onset events like disasters and extreme weather events, as well as slow onset events like temperature rise, drought, sea-level rise, desertification, land and forest degradation, salinization and loss of biodiversity.²²

People on the move as a result of climate change may experience various losses and damages. And while, for example, those forced to leave their homes by a tropical cyclone demonstrate this very clearly, so-called “voluntary” climate migrants can also experience L&D. In 2013, the Peninsula Principles recognized that “voluntary and involuntary relocation often result in the violation of human rights, impoverishment, social fragmentation and other negative consequences”.²³ Indeed, the binary of voluntary-involuntary obscures the fact that all people on the move experience situations of vulnerability,²⁴ especially in already climate-fragile contexts.

Another clear theme that emerges from both literature and field research is that displacement itself often constitutes L&D, but it can also amplify or extend L&D caused by climate impacts.²⁵ The L&D—both economic and non-economic—that stem from climate displacement are various and often continue over an extended period of time. For example, someone who leaves their ancestral homeland due to flooding or drought conditions does not simply lose their physical place of abode, they may also be forced to abandon their native language and culturally

²¹ UNFCCC, *The Paris Outcome on Loss and Damage*, https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/ef_8_decision_xcp.21.pdf

²² Amali Tower & Ryan Plano, *Climate Change is Controlling Everything, Let Them Compensate Us: Stories of Loss and Damage in Kenya*, Climate Refugees (2023) <https://www.climate-refugees.org/reports/kenya-loss-and-damage>, 95

²³ The Peninsula Principles on Climate Displacement Within States, Displacement Solutions, 2013, 12 (preamble), https://www.displacementsolutions.org/_files/ugd/9ec010_a3c43e289e824b7c8f3a0229a01d03ce.pdf; Scottish Government, *Practical Action for Addressing Loss and Damage*, 40 (Mar. 2023), <https://www.gov.scot/publications/practical-action-addressing-loss-damage>

²⁴ Scottish Government, *Practical Action for Addressing Loss and Damage*, 49 (Mar. 2023), <https://www.gov.scot/publications/practical-action-addressing-loss-damage>; Climate Refugees, *supra* note 22, 98.

²⁵ *Human mobility and non-economic loss and damage: Submission to inform the NELs Technical Paper 2023*, Secretariat of the Platform on Disaster Displacement (PDD) and Loss and Damage Collaboration (L&DC), (Apr. 20, 2023), s. 2.3, <https://www.lossanddamagecollaboration.org/publication/pdd-and-l-dcsubmission-toinform-the-unfccc-non-economic-losses-nels-technical-paper-2023-human-mobility-and-non-economic-loss-and-damage>; Climate Refugees, *supra* note 22, 98.

relevant places.²⁶ This is why it is important to move beyond a simplistic analysis of migration drivers, and consider how movement shapes the impacts people experience,²⁷ which in turn, are examples of L&D. This is key to improving L&D data collection, which inadequately accounts for displacement and its various effects, and therefore fails to fully understand the scope of the issue.

Case studies on climate displacement submitted to the UN expert group on non-economic losses and damages (NELD) demonstrated that most NELD incurred as a consequence of displacement can be avoided by preparing for, adequately managing and effectively resolving situations that arise in displacement contexts.²⁸ This not only informs actions that must be taken in displacement and humanitarian contexts, but also informs the need for new forms of financing that address the unique nature and needs that arise in climate change-induced displacement situations.

After many decades of advocacy led by Global South countries, the 2023 Conference of the Parties (COP28) to the UNFCCC established a Loss and Damage Fund to support recovery and compensate communities experiencing irreversible losses due to climate change.²⁹ Given the lack of attention towards displacement outside of humanitarian contexts or other situations that receive significant media attention, L&D finance must be scaled up and made available for displaced people and their specific needs within *and* outside of specific climate change events, such as those who may already be displaced but are now particularly vulnerable to climate change as a result. In order to maximize support, knowledge-gathering must occur throughout the phases of displacement: before, during, and in the aftermath of a disaster. And of course, to truly fulfill the mandate of the Paris Agreement—specifically its call to avert, minimize, and address L&D—displacement must be a central component of efforts by all actors. For example, developing safe and regular migration pathways now can be a key tool in averting future displacement.³⁰

As civil society organizations, UN agencies, and governments grapple with the complexities of climate displacement, the inextricable link between displacement and loss and damage in the discussion is key. As advocates in the loss and damage and mobility space often articulate, attention must be paid to displacement and its impacts in order to meaningfully assess and

²⁶ Guy Jackson et al., *Passed the Point of No Return: A Non-Economic Loss and Damage Explainer*, L&DC (2022), https://uploads-ssl.webflow.com/605869242b205050a0579e87/63581776a7e3681e75e45c72_L%26DC_NELD_EXP_LAINER_FULL_BRIEF_24102022.pdf; “Practical Action,” *supra* note 23, 49, *Climate Refugees*, *supra* note 22, 99.

²⁷ PDD and L&DC, *supra* note 25, s. 2.1.

²⁸ *Ibid*, s. 2.3; *Climate Refugees*, *supra* note 22, 99.

²⁹ UNFCCC, *Operationalization of the new funding arrangements, including a fund for responding to loss and damage* (2023), https://unfccc.int/sites/default/files/resource/cma5_auv_10g_LnDfunding.pdf

³⁰ *Climate Refugees*, *supra* note 22, 98.

address L&D from climate change. And perhaps most critically, there are fundamental human rights at stake. Upholding the rights of people on the move demands all stakeholders effectively address L&D, including NELD.³¹

Addressing losses and damages as a result of climate change through the newly operationalized Loss and Damage Fund will require significant financial resources from historic polluting developed countries in order to meet the urgent needs of affected communities in time and scale. Currently, the Fund remains woefully underfunded. As many developing countries have made clear during international negotiations, funding must be new, additional, innovative, predictable, grant-based, and in line with the common but differentiated responsibilities and respective capacities (CBDR-RC) principles of the UNFCCC. It will also need to be distinctly separate from funding directed to humanitarian crises.³²

Beyond the issue of how funds are realized, it is important that funds are accessible at national, sub-national, and community levels. As civil society has made abundantly clear during international climate change negotiations, climate finance funds, especially those that specifically address L&D, must include windows for local communities to directly access funds without relying on bureaucratic, reluctant, or simply overwhelmed governments. Relatedly, L&D finance must be grant-based. Loans and other debt-incurring instruments are wholly inappropriate given the disproportionate impacts climate-vulnerable countries are facing, many of whom are already faced with a high debt burden.³³

It is important to recognize that finance for L&D is not simply a question of providing money to those harmed by climate change. It is also about protecting fundamental human rights and key development gains, and preparing for future displacement and other impacts.³⁴ A failure to act now will be devastating for communities around the globe.

³¹ Climate Refugees, *supra* note 22, 99.

³² *Id.*

³³ *The Vicious Cycle: Connections Between the Debt Crisis and Climate Crisis*, ActionAid (Apr. 2023), <https://actionaid.org/publications/2023/vicious-cycle#downloads>, Climate Refugees, *supra* note 22, 99-100.

³⁴ Reinhard Mechler, Colin McQuistan & Barbara Rosen Jacobson, *Falling through the gaps: how global failures to address the climate crisis are leading to increased losses and damages*, Zurich Flood Resilience Alliance 76, (2023) 76,

<https://floodresilience.net/resources/item/falling-through-the-gaps-how-global-failures-to-address-the-climate-crisis-are-leading-to-increased-losses-and-damages/>.

Human Rights-Based Approach to Loss and Damage

Loss and Damage can be seen as human rights losses, development setbacks, and woefully inadequate efforts to protect displaced people. Given states' obligations under international human rights law, such rights must be a part of any approach to truly address L&D.³⁵

Civil society organizations and impacted communities have highlighted key areas where human rights principles must inform the development and operationalization of the fund. For example, commitments to the principle of non-discrimination³⁶ are a critical starting point to ensure that marginalized communities—who tend to bear the brunt of climate impacts³⁷—have their unique needs recognized and ultimately met as part of L&D finance provision.³⁸

A human rights-based approach is also vital in ensuring L&D finance and other tools maximize public benefit and protections and do not end up causing negative social and environmental impacts.³⁹ Various safeguards would help prevent a L&D-specific form of maladaptation, in which climate change adaptation measures actually increase vulnerability,⁴⁰ such as mandatory involvement of vulnerable communities in decision-making and adherence to international

³⁵ *Human Rights as a Compass for Operationalizing the Loss and Damage Fund*, Center for International Environmental Law (CIEL) (Feb. 2023),

https://www.ciel.org/wp-content/uploads/2023/02/Human-Rights-as-a-Compass-for-Operationalizing-the-Loss-Damage-Fund_submission-Amnesty-and-CIEL_Feb-2023.pdf, Climate Refugees, *supra* note 22, 101

³⁶ Sustainable Development Goal 10 is “Reduced Inequalities”. See *The 17 Goals*, UN Department of Economic and Social Affairs - Sustainable Development. In addition, various instruments encompass this principle, most notably the International Covenant on Economic, Social and Cultural Rights (including General Comment No. 20), the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women. See also *The Core International Human Rights Instruments and the monitoring bodies*, Office of the UN High Commissioner for Human Rights (OHCHR), n.d., <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>; General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights,” UN Committee on Economic, Social and Cultural Rights (July 2 2009), <https://www.refworld.org/docid/4a60961f2.html>, Climate Refugees, *supra* note 22 101

³⁷ Report: *Inequalities exacerbate climate impacts on poor*, UN Department of Public Information, (Oct. 3, 2016), <https://www.un.org/sustainabledevelopment/blog/2016/10/report-inequalities-exacerbate-climate-impacts-on-poor/>. See also *Marginalised communities bear the brunt of climate crisis in USA: New report*, (Oct. 5, 2021), Environmental Justice Foundation, <https://ejfoundation.org/news-media/marginalised-communities-bear-the-brunt-of-climate-crisis-in-usa>, Climate Refugees, *supra* note 22, 101

³⁸ *Human Rights as a Compass for Operationalizing the Loss and Damage Fund*, (CIEL) (Feb. 2023), https://www.ciel.org/wp-content/uploads/2023/02/Human-Rights-as-a-Compass-for-Operationalizing-the-Loss-Damage-Fund_submission-Amnesty-and-CIEL_Feb-2023.pdf, Climate Refugees, *supra* note 22, 101.

³⁹ *Id.* 8-9, Climate Refugees, *supra* note 22, 101; Camila Bustos, Bruni Pizarro, & Tabitha Sookdeo, *Climate Migration and Displacement: A Case Study of Puerto Rican Women in Connecticut*, 55 CONN. L. REV. 781 (2023); Juliana Vélez-Echeverri & Camila Bustos, *A Human Rights Approach to Climate Displacement: Examples from Central America and Colombia*, 31 MICH. ST. INT’L L. REV. 403 (2023).

⁴⁰ Lisa Schipper, *Catching maladaptation before it happens*, NATURE CLIMATE CHANGE 12 (2022), <https://doi.org/10.1038/s41558-022-01409-2>, Climate Refugees, *supra* note 22, 101.

obligations on gender, labor rights and standards, and cultural preservation,⁴¹ to name just a few.

International human rights provide a compass for addressing the harms already caused by climate change and preventing or, when not possible, minimizing future harms. The rights recognized in the International Bill of Human Rights—the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)—together, form the foundation of international human rights law, including the right to an adequate standard of living, the right to housing, and the right to movement, among others.⁴² Failing to take meaningful action on L&D, and therefore allowing climate change to harm communities around the world, especially in disproportionate and unjust ways, constitutes a failure to uphold these rights which apply to every human being.

Existing Gap in Protection

Existing law at the international, regional, and domestic level is insufficient to provide adequate protection to climate displaced people.⁴³ Climate impacts alone do not usually qualify an applicant for refugee status. To the extent climate displaced individuals can access cross-border protection, it is typically through ad hoc and discretionary measures that fail to guarantee long-term status.

In the United States, for instance, climate displaced people may qualify for Temporary Protected Status (TPS), a program that temporarily protects people already present in the United States from return to countries with dangerous conditions, including conditions caused by environmental disasters.⁴⁴ In other contexts, receiving countries may extend other forms of temporary protection such as humanitarian visas or private sponsorship programs. For example, Argentina has created a humanitarian program for climate displaced people relocating from

⁴¹ *Human Rights as a Compass*, *supra* note 38, 8; Climate Refugees, *supra* note 22, 101.

⁴² Universal Declaration of Human Rights, UNGA, arts. 25, 26 and 13; International Bill of Human Rights, OHCHR, <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>, Climate Refugees, 101

⁴³ See generally Hoseein Ayazi & Elsadig Elsheikh, *Climate Refugees - The Climate Crisis and Rights Denied*, OTHERING & BELONGING INSTITUTE (Dec. 10, 2019), <https://belonging.berkeley.edu/climaterefugees> (arguing “that a comprehensive framework for climate-induced displaced persons forced to cross international borders to be considered “climate refugees” is necessary.”).

⁴⁴ Carey DeGenaro, Comment, *Looking Inward: Domestic Policy for Climate Change Refugees in the United States and Beyond*, 86 U. COLO. L. REV. 991, 992–96 (2015) (explaining why current processes are insufficient and proposing new legislation to fill the gaps); see also INT’L REFUGEE ASSISTANCE PROJECT, ADVOCACY MEMO ON CLIMATE DISPLACEMENT: KEY LEGAL LEVERS 2 (2022), <https://refugeerights.org/wp-content/uploads/2022/11/Climate-Displacement-Advocacy-Memo-Nov-2022.pdf>.

Central American and Caribbean countries who meet certain eligibility criteria.⁴⁵ The program requires civil society organizations to sponsor eligible applicants. As of March 2024, however, the private sponsorship program has not yet been implemented.

Another example is that of Brazil following the devastating 2010 Haiti earthquake,⁴⁶ which killed hundreds of thousands of Haitians, and caused hundreds of thousands more to be displaced, and to flee to other countries in pursuit of safety and stability. Though earthquakes are caused by tectonic processes, and therefore categorized as environmental (relating to topography or terrain) as opposed to climate (trends in weather conditions) events,⁴⁷ Brazil's response to the significant influx of Haitian migrants exemplifies the type of protection that could benefit people displaced in the context of climate change. Brazil had never before experienced such a phenomenon, and sought to address the issue in 2012 through the introduction of Normative Resolution 97 by Brazil's National Council of Immigration, which granted temporary visas to Haitians for a period of five years on humanitarian grounds.⁴⁸ The initiative allowed for the migration of tens of thousands of Haitians to Brazil in the years that followed. However the resolution did not explicitly reference environmental (or climate) displacement; nor did it account for longer term social or economic integration, leaving recipients exposed to racial discrimination, and job insecurity years after they arrived.⁴⁹

One challenge of humanitarian relief is that it is often granted in the aftermath of rapid-onset events, leaving those displaced by slow-onset events like droughts or erosion without adequate protection. Another challenge is that existing humanitarian pathways are generally not designed to provide permanent protection or a pathway to permanent residence and citizenship. This is especially difficult for those without a safe place to return after temporary protection ends, especially if they were displaced by slow-onset disasters.

Asylum and Refugee Law

Refugee and asylum law provides limited protection for climate-displaced people who experience persecution. Research has shown many asylum seekers experience devastating climate-related disasters such as hurricanes, droughts, and floods, which exacerbate their

⁴⁵ Disposition No. 891/2022, May 19, 2022, [34.923] B.O. 63 (Arg.).

⁴⁶ Lindsey N. Kingston, *Haitians Seeking Refuge in Brazil*, 28 PEACE REVIEW 482-489 (2016)

⁴⁷ A. Buis, *Can Climate Affect Earthquakes, Or Are the Connections Shaky?*, NASA Climate Change (2019) <https://climate.nasa.gov/news/2926/can-climate-affect-earthquakes-or-are-the-connections-shaky/>

⁴⁸ David Cremins, *The ABCs of South American Policy Responses to Climate Displacement*, Earth Refuge (Feb. 28 2024), <https://earthrefuge.org/the-abcs-of-south-american-policy-responses-to-climate-displacement/>

⁴⁹ Id.

conditions of social and economic vulnerability.⁵⁰ Asylum seekers have identified the destruction of their homes, agricultural lands, and businesses due to climate-related causes as a contributing factor to their decisions to flee their home country.⁵¹ Refugee protection is available to individuals who fear persecution in their nation of origin.⁵² Persecution in the context of this framework requires proof of a targeted threat against that individual on the basis of their identity (e.g., nationality, race, religious belief, political opinion, or belonging to a particular social group). Thus, individuals displaced by climate impacts alone generally do not qualify for refugee protection.⁵³

Although the international refugee framework was not designed to protect climate displaced people, it certainly offers the possibility of protection for those individuals who can demonstrate that they meet the eligibility requirements under the law. For instance, environmental defenders who can show that they were persecuted on account of a protected identity may be eligible for asylum.⁵⁴ The U.N. High Commissioner for Refugees has issued special guidance in the climate displacement context, reflecting an increasing recognition among the international community that people displaced by climate change may meet the criteria for protection under international refugee law.⁵⁵

In 2024, UNHCR released additional guidance to clarify the application of international law to the protection of people displaced across borders in the context of climate change and environmental disasters, building on 2020 guidance.⁵⁶ UNHCR recognized that under the 1951 Refugee Convention, the following groups of people may fall under the “refugee” definition:

⁵⁰ International Refugee Assistance Project (IRAP), U.S. Committee for Refugees and Immigrants, and Human Security Initiative (HUMSI), *Climate of Coercion: Environmental and Other Drivers of Cross-Border Displacement in Central America and Mexico*, (March 2023) <https://refugeerights.org/news-resources/climate-of-coercion-environmental-and-other-drivers-of-cross-border-displacement-in-central-america-and-mexico>.

⁵¹ *Id.*

⁵² United Nations Convention relating to the Status of Refugees, Article 1(2), *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

⁵³ See e.g., International Refugee Assistance Project (IRAP), *Climate Displacement Client Story: Isabel*, <https://refugeerights.org/issue-areas/climate-displacement>; Flora Bensadon, *France’s First Climate Refugee – A Sign of a Promising Future for Climate Migration?*, Earth Refuge (March 18, 2021), <https://earthrefuge.org/frances-first-climate-refugee-a-sign-of-a-promising-future-for-climate-migration/>.

⁵⁴ UNHCR, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* ¶¶ 7–9 (2020), <https://www.refworld.org/docid/5f75f2734.html>.

⁵⁵ *Id.*

⁵⁶ UNHCR, *Climate change impacts and cross-border displacement: International refugee law and UNHCR’s mandate* (2024), <https://www.unhcr.org/media/unhcr-note-climate-change-international-refugee-law-and-unhcrs-mandate-dc-2023>

1. “People fleeing conflict or violence which may be **caused or exacerbated** by the effects of climate change or disaster, rendering the State unable or unwilling to protect the victims and leaving them at risk of persecution.”
2. “Environmental defenders, activists or journalists targeted and persecuted for defending, conserving or reporting on ecosystems and resources or Government responses to climate change effects, which may be considered a **political stance.**”
3. “People belonging to **particular groups** – such as women, **children**, the **elderly** and **disabled** - disproportionately suffering the greatest impact of climate change, compounded by pre-existing discrimination, gender-based violence, human trafficking and child marriage. In addition, **minority groups, indigenous people** or others who are already **marginalized or vulnerable** - who are denied access to resources or assistance or are excluded from disaster risk reduction strategies before or after a climate-induced disaster. Further, where the adverse effects of climate change lead to **food insecurity or famine**, and where the State is unwilling or unable to ensure non-discriminatory access to food for certain groups, a risk of persecution for those people may arise.”

UNHCR’s recent guidance also discussed regional refugee legal instruments, including the 1969 OAU Convention on Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees of 1984 in the Americas.

Several advocacy organizations have started training immigration lawyers working on asylum cases on how climate change may intersect with their clients’ claims. For example, the International Refugee Assistance Project⁵⁷ and the Center for Gender and Refugee Studies have published training materials on the ways in which climate displaced individuals may be able to avail themselves of protection under U.S. law and considerations for advocates arguing for eligibility within the existing asylum framework.⁵⁸ In a recent advisory, CGRS recommends:

Although not all cross-border displacement caused by climate change will give rise to asylum eligibility, climate change often exacerbates existing inequalities in a society by contributing to conflict, violence and severe economic deprivation

⁵⁷ International Refugee Assistance Project, *Practice Guide: Climate Change, Environmental Disasters, and U.S. Refugee Protection* (March 2022).

<https://refugeerights.org/news-resources/practice-guide-climate-change-environmental-disasters-and-u-s-refugee-protection>.

⁵⁸ Center for Gender and Refugee Studies, *Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters: Making the Best Use of Existing Legal Frameworks* (June 14, 2023),

<https://cgrs.uclawsf.edu/our-work/publications/asylum-claims-individuals-fleeing-climate-change-or-environmental-disasters>.

tioned to the [1951 Refugee] Convention's protected grounds. Therefore, rather than assume that asylum [] is unavailable for climate-displaced individuals, advocates may be able to build cases with careful background research, factual development, and legal analysis to include persons adversely affected by climate change and disasters.⁵⁹

Regional and Bilateral Initiatives

Internationally, regional and bilateral initiatives have emerged to address climate displacement. In Africa, the recently launched African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers⁶⁰ and a companion Study on African Responses to Migration and the Protection of Migrant Rights⁶¹—adopted by the African Commission on Human and Peoples' Rights—included a broad definition of migrant, as well as the first global definition of a climate migrant and climate refugee.⁶²

The Kampala Convention is the world's only legally binding regional instrument on internal displacement. The Kampala Convention seeks to uphold the 1998 Guiding Principles on Internal Displacement across all African States, observing that, "States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change."⁶³ At least 33 Member States of the African Union have become Parties to the Kampala Convention thus far.

In the Americas, several Latin American and select Caribbean countries have adopted the broader refugee definition developed in the 1984 Cartagena Declaration, which defines refugees as people "who have fled their country because their lives, safety or freedom have been threatened by . . .", among other threats, "massive violations of human rights" or "other

⁵⁹ *Id.*

⁶⁰ African Commission on Human and Peoples' Rights, African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers, (Oct. 20, 2023), <https://achpr.au.int/en/soft-law/african-guiding-principles-human-rights-all-migrants-refugees>

⁶¹ African Commission on Human and Peoples' Rights, Study on African Responses to Migration and the Protection of Migrant Rights, (Nov. 8, 2023), <https://achpr.au.int/en/soft-law/study-african-responses-migration-and-protection-migrant-rights>

⁶² Also in Africa, the Intergovernmental Authority on Development (IGAD) has adopted the Free Movement Protocols of Persons, which recognizes the "positive effects of migration that can mitigate the impacts of poverty, conflict, unemployment and underemployment, but also drought, disasters, climate change and environmental degradation that drive displacement and migration," as well as the IGAD Protocol on Transhumance, which aims to address the specific needs of pastoralists affected by drought and the extreme effects of climate change. Amali Tower and Ryan Plano, "Climate Change is Controlling Everything, Let Them Compensate Us": Stories of Loss and Damage in Kenya at 86-87, (Aug. 14, 2023), <https://www.climate-refugees.org/reports/kenya-loss-and-damage>

⁶³ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Art. V(4), https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf

circumstances which have seriously disturbed the public order.”⁶⁴ This definition has been used in the past to offer protection to individuals displaced by environmental disasters.

More recently, Australia and Tuvalu signed the Falepili Union treaty. The treaty sets a precedent by explicitly identifying climate change as an existential threat to Tuvalu and its citizens.⁶⁵ The treaty recognises that “climate change is Tuvalu’s greatest national security concern”, and seeks to provide the citizens of Tuvalu with a special human mobility pathway to access Australia underpinned by a shared understanding and commitment to ensuring human mobility with dignity”.⁶⁶ The Falepili Treaty is novel for a number of reasons. It is explicitly dedicated to human mobility linked to climate change without deeming this the ultimate solution to such a nuanced challenge. The treaty recognizes both introducing a safe and legal route to movement, and preservation of the right to stay in response to a changing climate. Most importantly, it is the first legally binding bilateral instrument at the intersection of climate change and migration.

Legislative Proposals

A recent legislative example of protection comes from Colombia, where a group of lawmakers introduced legislation in 2023 to recognize forced displacement as a result of climate change.⁶⁷ If passed, the legislation would “recognize the existence of forced internal displacement due to causes associated with climate change and environmental degradation”, providing social and legal protections amongst others.⁶⁸ Other examples include marker legislation in the United States, where Senator Markey and Representative Velázquez have introduced the Climate Displaced Persons Act (CDPA). The CDPA would “enact a national strategy that would provide a more equitable immigration pathway to the United States for people displaced by climate change and critical support for people affected by climate disasters internationally.”⁶⁹

⁶⁴ UNHCR, Table No. 1. Definition of refugees (Cartagena) Latin American countries that have incorporated it into their National legislation (in chronological order) (June 2017) <https://www.refworld.org/es/docid/59c29a094.html>

⁶⁵ Yumna Kamel, *What Does the World’s First Bilateral Climate Mobility Treaty Mean for Tuvalu?* (Nov. 15, 2023), <https://earthrefuge.org/what-does-the-worlds-first-bilateral-climate-mobility-treaty-mean-for-tuvalu/>

⁶⁶ Australia-Tuvalu Falepili Union treaty, Austl.-Tuvalu, Art. 1 ¶ b, Austl. Dept. of Foreign Affairs and Trade, Nov. 9, 2023, <https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty>

⁶⁷ INFORME DE PONENCIA PARA PRIMER DEBATE DEL PROYECTO DE LEY NO. 299 DE 2022 -CÁMARA- “POR MEDIO DE LA CUAL SE ESTABLECE LA DEFINICIÓN DE DESPLAZAMIENTO FORZADO POR CAUSAS CLIMÁTICAS, SE FIJAN LINEAMIENTOS PARA SU IDENTIFICACIÓN Y SE DICTAN OTRAS DISPOSICIONES, (Mar. 2023) <https://www.camara.gov.co/camara/visor?doc=/sites/default/files/2023-03/Informe%20de%20Ponencia%201er%20Debate%20PL%20299%20de%202022%20-%20Desplazamiento%20por%20causas%20clim%C3%A1ticas.docx>”

⁶⁸ Amali Tower and Rahul Balasundaram, *Colombia Moves Closer to Recognizing Internal Climate Displacement*, Climate Refugees, (May 30, 2023). <https://www.climate-refugees.org/spotlight/2023/5/30-colombia>

⁶⁹ Press Release, Edward Markey, Senator, Nydia Velazquez, Representative, *Ahead of COP28, Senator Markey, Congresswoman Velázquez Announce Legislation to Create Pathway for People Displaced by Climate Change*, (Nov. 16, 2023),

Managed Retreat and Planned Community Relocation

Some practitioners and scholars have cautiously proposed “managed retreat” as an interim solution while countries and organizations work towards long term solutions to mitigate the effects of climate change. This refers to the planned relocation of communities facing severe climate risks. However, these processes can often be riddled with significant political, social, and economic challenges. To conduct managed retreat or planned relocation effectively, the following factors are essential: (1) steady and robust communication between all stakeholders,⁷⁰ (2) just compensation for the loss of those relocating,⁷¹ (3) voluntary participation of those relocating,⁷² (4) taking into account the considerations of receiving areas,⁷³ and (5) designing plans to be specific and localized to best serve a community.⁷⁴ It is essential that managed retreat and/or planned community relocation processes center the preferences of impacted communities and individuals.

Enabling the Right to Stay

While it is necessary to close protection gaps for those migrating in the context of climate change, it is also imperative to take immediate and forceful climate mitigation actions and enable community-driven in situ adaptation options that will permit people to choose to stay in their homes. As migration is a right,⁷⁵ then in the climate context, policies addressing climate change impacts must also uphold the rights of communities and individuals to stay.⁷⁶ In international law, support for the right to stay can be found in Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which the United Nations Human Rights Committee has interpreted as necessarily containing protections against both internal and

<https://www.markey.senate.gov/news/press-releases/ahead-of-cop28-senator-markey-congresswoman-velazquez-announce-legislation-to-create-pathway-for-people-displaced-by-climate-change>

⁷⁰ Bragg et al., *Communicating Managed Retreat in California*, 13 WATER 1, 8 (2021).

⁷¹ A.R. Siders, *Social Justice Implications of U.S Managed retreat buyout programs*, 239 CLIMATIC CHANGE 1, 4-5 (2018); Katherine Lieberknecht & Mueller, *Planning for Equitable Climate Relocation: Gaps in Knowledge and a Proposal for Future Directions*, 38 JOURNAL OF PLANNING LITERATURE 229, 231 (2023).

⁷² *Id.* at 6.

⁷³ Robert R.M. Verchick & Lynsey R. Johnson, *When Retreat is the Best Option: Flood Insurance after Biggert-waters and Other Climate Change Puzzles*, 47 J. MARSHALL L. REV. 695, 700 (2013).

⁷⁴ Elizabeth Feris, *Climate Change, Migration, Law, and Global Governance*, 44 N.C. J. INT’L 425, 456 ;Robin Bronin, *Rights, Resilience and Community-Led Relocation: Creating a National Governance Framework*, 45 HARBINGER 25, 34 (2021).

⁷⁵ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at Art. 13 (1948).

⁷⁶ See generally Monica Iyer & Kerilyn Schewel, *Articulating and Claiming the Right to Stay*, 38 GEO. IMMIGRATION L. J. (forthcoming 2024).

cross-border displacement.⁷⁷ It is also informed by the right to adequate housing⁷⁸ and the right to protection from interference with private and family life,⁷⁹ both of which recognize the importance of home as an element of a life lived with dignity. Protection from environmental displacement has also been interpreted by the U.N. Special Rapporteur on human rights and the environment to be an element of the right to a clean, healthy and sustainable environment.⁸⁰

Particular legal protections apply to Indigenous Peoples, whose ties to their traditional land are recognized and preserved in the International Labour Organization (ILO) Convention on Indigenous Peoples, the U.N. Declaration on the Rights of Indigenous Peoples, and the ICCPR, as affirmed by decision CCPR/C/135/D/3624/2019 of the United Nations Human Rights Committee regarding Daniel Billy and others against Australia (the “Torres Strait Islanders case”).⁸¹ The Committee considered the complaint brought by the Indigenous Islanders which outlined Australia’s various failures to protect four Islands—Boigu, Poruma, Warraber and Masig—and their Indigenous inhabitants from the impacts of climate change, thereby violating amongst other things, “the Islanders’ close, spiritual connection with their traditional lands, and the dependence of their cultural integrity on the health of their surrounding ecosystems.”⁸² The Committee’s decision in favor of the Islanders placed the onus on Australia to take appropriate measures to mitigate the impacts of climate change upon the Islands and Islanders, and to engage in meaningful discourse with the Islanders with a view to compensation for the losses suffered due to Australia’s shortcomings. The Committee’s landmark decision has provided clarity as to the interpretation of States’ obligations under the ICCPR to protect the human rights of their inhabitants through climate change mitigation and compensation.

While many assume that climate impacts will inevitably lead to relocation, many of those in climate-affected communities are both clearly expressing a preference for staying in their homes and offering policy and practical solutions, such as turning back to traditional agricultural and land management techniques, that will enable them to do so.⁸³ Though many others might

⁷⁷ U.N. Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), U.N. Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999).

⁷⁸ Ronan McDermott & Pat Gibbons, *Human rights and proactive displacement: determining the appropriate balance between the duty to protect and the right to remain*, 41 *DISASTERS* 587, 592 (2017).

⁷⁹ See, e.g., *Cyprus v. Turkey*, Apps. Nos. 6780/74 & 6950/75, 99 (July 10, 1976), <https://perma.cc/67QN-EAXM>.

⁸⁰ David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Right to a healthy environment: good practices*, ¶¶ 68-69, U.N. Doc. A/HRC/43/53 (Dec. 30, 2019).

⁸¹ OHCHR, (2022) *Australia violated Torres Strait islanders’ rights to enjoy culture and family life, UN Committee finds*. <https://www.ohchr.org/en/press-releases/2022/09/australia-violated-torres-strait-islanders-rights-enjoy-culture-and-family>

⁸² *Id.*

⁸³ See generally Monica Iyer & Kerilyn Schewel, *Articulating and Claiming the Right to Stay*, 38 *Geo. IMMIGRATION L. J.* (forthcoming 2024).

prefer to opt for relocation as an adaptation solution, they are unable to do so due to resource constraints or other considerations.⁸⁴ The ultimate goal should be neither preventing nor requiring relocation, but rather creating a system that allows all people to choose their place of residence in safety, equality, and dignity.

One key element of accomplishing this goal is limiting climate change to the maximum extent possible. States, particularly those that have contributed significantly to greenhouse gas emissions, have a human rights obligation to move immediately and decisively towards ending such emissions, in particular by ending global reliance on fossil fuels. This is also enshrined in the legal principle of “common but differentiated responsibilities” within the UNFCCC.⁸⁵ One important step that States can take in this area is to end fossil fuel subsidies. However, a 2020 study recognized that G20 countries, at least, “are moving in the wrong direction” when it comes to ending their support for fossil fuels.⁸⁶ A strengthened commitment to climate change mitigation efforts is a key element of addressing the human rights impacts of climate-related displacement.

States that have contributed the most to climate change also have an obligation to support adaptation efforts through international cooperation.⁸⁷ This means not just providing sufficient levels of climate finance (noting that all of the UNFCCC Annex 1 countries evaluated by the Climate Action Tracker are currently rated as “Insufficient,” “Highly Insufficient,” or “Critically Insufficient” in the area of climate finance)⁸⁸ and ensuring that such finance is equitably distributed between mitigation and adaptation efforts and addressing loss and damage, but also ensuring that funding for climate adaptation projects goes to community-led projects that incorporate a human rights-based approach.⁸⁹

⁸⁴ E.g., Ingrid Boas et al., *Climate mobilities: migration, im/mobilities and mobility regimes in a changing climate*, 48 J. ETHNIC & MIGRATION STUD. 3365 (2022).

⁸⁵ United Nations Framework Convention on Climate Change, opened for signature 4 June 1992, 1771 UNTS 30822 (entered into force 21 March 1994), Art. 3, para. 1; Art. 4, para. 1.

⁸⁶ INT’L INST. SUSTAINABLE DEV. ET AL., DOUBLING BACK AND DOUBLING DOWN: G20 SCORECARD ON FOSSIL FUEL FUNDING iv (2020), <https://www.iisd.org/publications/g20-scorecard>.

⁸⁷ Such a position was formally adopted in 2009 in Copenhagen at the United Nations Conference of the Parties 15 (COP15), when developed countries (historic polluters) committed to mobilizing 100 billion USD annually to help developing countries (historic non-polluters) adapt to climate change. To date, this commitment has not been fully met, with annual climate adaptation funding falling woefully below the 100 billion USD goal. Organization for Economic Co-operation and Development, *Climate Finance and the USD 100 billion goal*, (Nov. 16, 2023) OECD, <https://www.oecd.org/climate-change/finance-usd-100-billion-goal/>.

⁸⁸ CLIMATE ACTION TRACKER, <https://climateactiontracker.org> (last visited Feb. 28, 2023).

⁸⁹ See also Hossein Ayazi & Elsadig Elsheikh, *Climate Refugees Facts, Findings, and Strategies for ‘Loss and Damage’*, (July 27, 2023), Othing & Belonging Institute (July 27, 2023), <https://belonging.berkeley.edu/climate-refugees-facts-findings-strategies> (arguing that “Global North countries, institutions, and industries as culpable for the climate crisis and asserts that action on their part is essential to mitigating the crisis of climate-induced displacement by ensuring the safe resettlement of climate refugees, and fostering diversified climate-resilient economies and just transitions across the Global South and Global North

Conclusion

Supporting communities who wish to stay in place, while affirming international migration as an important adaptation strategy, is essential to building an equitable response to the climate crisis. National governments should develop procedures in place to facilitate planned migration, resettlement, and relocation, but keep them in mind as last resort measures. Communities' right to stay in place and return when possible must be upheld.

From a human rights perspective, pushback⁹⁰ policies that force people back to their country of origin and/or to unsafe third countries and physically prevent arriving migrants and asylum seekers from entering a State's territory, violate that State's protection obligations under international law. Displaced persons, refugees, and migrants alike should be free to "exercis[e] their rights to leave any country or territory, not to be detained arbitrarily, to seek and enjoy asylum, and to have individual rights and duties determined in a due process proceeding."⁹¹

As the Global Compact on Migration states we must "ensure effective respect, protection and fulfillment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle", while "reaffirm[ing] the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance against migrants and their families."⁹²

alike."); see also Jane McAdam, *How the ICJ could shape protection for people displaced in the context of climate change*, Researching Internal Displacement (Jan. 24, 2024), https://researchinginternaldisplacement.org/short_pieces/how-the-icj-could-shape-protection-for-people-displaced-in-the-context-of-climate-change (recognizing that "[d]islocation from home, loss of land and cascading effects on ecosystems, livelihoods and knowledge represent some of the greatest forms of loss and damage for our people – for both current and future generations. We recognise that movement away from home can result from, be a form of, and cause loss and damage of an economic and non-economic nature.").

⁹⁰ Special Rapporteur on the human rights of migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, (May 2021), <https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea>. The Special Rapporteur describes "pushbacks" as "various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement."

⁹¹ *Id.* at 12.

⁹² Global Compact for Safe, Orderly and Regular Migration, Art. 15 para. 6, 13 July 2018, U.N. Doc. A/CONF.231/3(2018).

https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf

Climate displacement poses a tremendous challenge, but it is one for which we still have time to plan and prepare. By protecting communities' right to stay, implementing a human-rights based approach to migration policies, and strengthening international commitments to climate change mitigation, States can lead the way in building a just and inclusive response to the climate crisis.