

# A HUMAN RIGHTS APPROACH TO CLIMATE-INDUCED DISPLACEMENT: A CASE STUDY IN CENTRAL AMERICA AND COLOMBIA

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The past decade was the warmest decade ever recorded. As climate impacts intensify, numbers of people displaced and in need of relocation increase. International law has yet to adapt to a changing climate and its implications for those most vulnerable. Experts still debate whether the existing refugee regime could provide a solution for those displaced by climate across international borders, while national governments continue to reckon with the domestic implications of internal displacement fueled by climate impacts. In this article, we apply a human rights lens to climate-induced displacement, drawing from two case studies to highlight the human rights obligations of the national governments and the international community towards individuals facing climate-induced displacement across and within borders. We explore the plight of communities in the Northern Triangle of Central America and Raizal communities in the island of Providencia, Colombia to understand and address current protection gaps in international and domestic frameworks with respect to climate-induced displacement.

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## INTRODUCTION

Climate change has increasingly become a human rights concern, particularly as it relates to migration. While scholars in political ecology, geography, and migration studies have explained how climate-related displacement is experienced by individuals and communities alike, insights from these disciplines have yet to significantly inform legal studies on the matter. Instead, legal scholars have predominantly focused on the development of a working definition of human (im)mobilities in the context of climate change in order to identify or suggest which should be the applicable legal regime. While we recognize that this is a crucial debate, we believe that dominant legal approaches to climate-induced displacement have drawn on securitisation discourses that have framed migration almost exclusively as a national security concern.<sup>1</sup> This is problematic because, on the one hand, the approach builds and reaffirms assumptions about Global South<sup>2</sup> countries and their populations. On the other hand, the discourse perpetuates and potentially places those displaced in greater levels of vulnerability in which human rights violations are more likely to occur. Therefore, in this paper, we shift the focus and analyse two cases of climate-induced displacement. Through these specific case studies, we seek to explain how human rights are implicated in situations of climate-related displacement, the way in which national and international legal frameworks may apply to those cases, and the multiple limitations and opportunities that arise vis-à-vis government response.

The structure of this article is as follows. First, we offer a brief introduction to the concept of climate-induced displacement, and the way in which it currently manifests. Second, we address the dominant approach to climate-induced displacement, its limitations, and introduce the need for a human rights lens. Third, we analyse a case study in the Northern Triangle in Central America and the island of Providencia in Colombia using a human rights approach, including current projections, challenges,

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1. Giovanni Bettini, *Climate Migration as an Adaption Strategy: De-Securitizing Climate-Induced Migration or Making the Unruly Governable?* 2 CRITICAL STUD. ON SEC. 180 (2014).

2. The Global South refers broadly to regions outside Europe and North America (such as Latin America, Asia, Africa, and Oceania). The concept puts an emphasis on geopolitical power relations. Nour Dados & Raewyn Connell, *The Global South*, 11 CONTEXTS 1, 12-13 (2012).

and an analysis of the legal frameworks applicable to each case. Finally, we propose recommendations to inform both public policy measures as well as existing legal frameworks.

## I. CONCEPTUALIZING CLIMATE-INDUCED DISPLACEMENT

We use the term climate-induced displacement to refer to a situation in which individuals experience forced displacement induced, at least in part, by a weather-related event that could be associated with climate change, such as recurring droughts, hurricanes, floods, or increasing temperature, among others.<sup>3</sup> Although the concept of climate-induced displacement might give the idea that climate change is the only trigger of displacement, we adopt an empirical migration studies approach that situates climate change as a factor that exacerbates pre-existing social problems and inequalities. According to those studies, climate-related displacement is a multi-causal phenomenon, whereby climate change interacts with existing political and socio-economic factors that ultimately cause displacement.<sup>4</sup> In other words, climate change impacts do not operate in isolation, but rather in a context with other migration drivers.<sup>5</sup> For instance, population growth, income distribution, economic mobility, non-governmental actors, and government policies may push people to live in certain places, even when there are no climate-related drivers in the first place. In this way, climate change often plays a role in accelerating pre-existing migration patterns, not necessarily creating new ones.<sup>6</sup>

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3. We refer to people forced to leave their homes at least in part because of climate change impacts as “climate displaced people” or “people displaced by climate change.” We avoid using the term “climate refugee” because of the specific legal meaning of refugee under international law. Given the complexity of climate change-induced movement, we abstain from recommending one single term to describe the plight of people displaced by climate change, who may fit under different categories such as refugees, internally displaced persons, or migrants, depending on their circumstances.

4. Andrew Baldwin & Elisa Fornalé, *Adaptive Migration: Pluralising the Debate on Climate Change and Migration*, 183 *THE GEOGRAPHICAL J.* 322 (2017); Richard Black, *Environmental Refugees: Myth or Reality?* (UNITED NATIONS HIGH COMM’R FOR REFUGEES, working paper No. 34, 2001).

5. Rafael Reuveny, *Climate Change-Induced Migration and Violent Conflict*, 26 *POL. GEOGRAPHY* 656 (2007).

6. Jon Barnett & Michael Webber, *Accommodating Migration to Promote Adaptation to Climate Change*, 58 *THE WORLD BANK POLICY RESEARCH WORKING PAPER*

Although human mobilities could be temporary or permanent, within or across state borders, planned or abrupt, migration studies suggest that displacement influenced by climate change tends to be temporary and within borders.<sup>7</sup> Climate change migration is often understood to be linked to two sets of events: rapid-onset events and slow-onset events.<sup>8</sup> Rapid onset events include events that occur rapidly and have immediate consequences on infrastructure and human lives, such as hurricanes, floods, and tropical storms.<sup>9</sup> On average, approximately 21.5 million people flee their homes as a result of rapid onset weather events every year.<sup>10</sup> On the other hand, slow onset events occur over a longer period of time.<sup>11</sup> Slow onset events nonetheless result in drastic, and often permanent, consequences for local ecosystems, including environmental degradation, desertification, drought, sea level rise, ocean acidification, salinization of agricultural land, air pollution, and shifts in precipitation patterns.<sup>12</sup> Rapid and slow onset events together disrupt livelihoods and change the incentives for local populations to remain in a particular location.<sup>13</sup>

While there are certainly cases in which climate-related impacts might trigger permanent and international migration, climate change usually

SERIES, WPS5270 (April 2010); The Government Office for Science, *Foresight: Migration and Global Environmental Change* (2011).

7. Stephen Castles, *Environmental Change and Forced Migration: Making Sense of the Debate* (UNITED NATIONS HIGH COMM'R FOR REFUGEES, working paper No. 70, 2002); Mike Hulme, *Climate Refugees: Cause for a New Agreement?*, 50(6) ENV'T 50, 50-52 (2008); Black, *supra* note 4.

8. Synthesizing the state of knowledge to better understand displacement related to slow onset events. INTERNAL DISPLACEMENT MONITORING CTR., *Synthesizing the State of Knowledge to Better Understand Displacement Related to Slow Onset Events*, WIM TFD Activity 1.2 (Aug. 2018) at 2, <https://unfccc.int/sites/default/files/resource/WIM%20TFD%20I.2%20Output.pdf>.

9. Alex de Sherbinin, *Climate Impacts as Drivers of Migration*, MIGRATION POL'Y INST. (Oct. 23, 2020), <https://www.migrationpolicy.org/article/climate-impacts-drivers-migration>.

10. *Frequently Asked Questions on Climate Change and Disaster Displacement*, UNHCR (Nov. 6 2016), <https://www.unhcr.org/en-us/news/latest/2016/11/581f52dc4/frequently-asked-questions-climate-change-disaster-displacement>.

11. INTERNAL DISPLACEMENT MONITORING CTR., *supra* note 8.

12. *Id.*

13. Oli Brown, *Migration and Climate Change*, 31 INT'L ORG. FOR MIGRATION 11, 17 (2008), [https://publications.iom.int/es/system/files/pdf/mrs-31\\_en.pdf](https://publications.iom.int/es/system/files/pdf/mrs-31_en.pdf).

interacts with other social factors that make people decide to leave their countries. The case of the Northern Triangle (comprised of Honduras, Guatemala, and El Salvador) exemplifies it. As discussed in the Northern Triangle case study, the impacts of climate change exacerbate other triggers that have defined historical patterns of migration, such as gender-based and gang violence, as well as economic and political instability.<sup>14</sup>

In contrast, some evidence suggests that climate change impacts could trigger immobility too.<sup>15</sup> This situation, which has been described as emplacement or trapped populations, refers to those people unable to leave areas highly exposed to climate risks, facing greater levels of vulnerability.<sup>16</sup> After all, disaster risk scholars have conceptualized a particular community's vulnerability to a disaster as a function of its exposure to specific climate impacts and the community's adaptive capacity.<sup>17</sup> Not everyone enjoys the physical ability, economic stability, and social networks necessary to leave their homes and end up in a safe destination. Furthermore, the social and monetary costs associated with international migration, no matter if it is through an established legal pathway or not—reduces the chances of crossing borders to those who can afford it.<sup>18</sup>

The fact that climate change exacerbates pre-existing social vulnerability conditions such as poverty and inequality ultimately means that the protection of human rights in the context of displacement is even more challenging in light of the climate crisis.<sup>19</sup> While there is increasing consensus on climate change as a human-driven phenomenon and the need to tackle rising emissions, there is still a significant gap in resources

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14. See René Leyva-Flores et al., *Migrants in Transit Through Mexico to the US: Experiences with Violence and Related Factors, 2009-2015*, 14 PLOS ONE 1, 1 (2019), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0220775>; see also LAURA PEDRAZA FARIÑA, et al., NO PLACE TO HIDE: GANG, STATE, AND CLANDESTINE VIOLENCE IN EL SALVADOR 53-54 (2010).

15. SARAH HARPER, OXFORD INST. OF POPULATION AGEING, UNIV. OF OXFORD, *MIGRATION AND GLOBAL ENVIRONMENTAL CHANGE* 17-18 (2011).

16. *Foresight*, *supra* note 6, at 9.

17. Brown, *supra* note 13, at 18.

18. HARPER, *supra* note 15, at 79; *Foresight*, *supra* note 6, at 84.

19. See generally Neil W. Adger, *Social Vulnerability to Climate Change and Extremes in Coastal Vietnam*, 27 WORLD DEVELOPMENT, no. 2, 1999, at 249 *passim*.

devoted to support adaptation measures.<sup>20</sup> Unsurprisingly, legal systems are not yet prepared to respond to climate change—and climate-induced displacement is not an exception. In this scenario, it is imperative to devote attention to examples of communities experiencing climate-induced displacement, which in turn will allow policymakers to identify whether human rights violations occur and how they manifest. We hope that by shedding light on these dynamics, local and national governments can reflect on the way that the law should be interpreted or transformed in order to achieve justice for those most vulnerable.

## II. DOMINANT SECURITIZATION DISCOURSES TO CLIMATE-INDUCED DISPLACEMENT

Legal studies on climate-related displacement have predominantly focused on the legal definition of human mobilities—in order to address the tremendous protection gap across legal frameworks—while embracing securitization discourses that build on the assumption of migration as a national security concern. There are two main problems associated with that assumption: (i) it disregards an understanding of the social vulnerability factors that shape displacement, while reinforcing xenophobic conceptions and “deep-seated fears and stereotypes of the dark-skinned, overbreeding, dangerous poor” crossing borders and (ii) it lacks a human rights approach, which is both timely and necessary.<sup>21</sup> Most of the normative literature on the matter has embraced “alarmist” approaches, claimed by early environmental studies,<sup>22</sup> in which climate

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20. See generally ADAPTATION GAP REPORT 2021: THE GATHERING STORM – ADAPTING TO CLIMATE CHANGE IN A POST-PANDEMIC WORLD. UNEP, (Henry Neufeldt et al., eds., 2021) <https://wedocs.unep.org/bitstream/handle/20.500.11822/37284/AGR21.pdf>. The latest “adaptation gap” report estimates that adaptation costs in developing countries are five to ten times greater than current public adaptation finance flows, and the adaptation finance gap is widening. *Id.*

21. Betsy Hartmann, *Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse*, 22 J. INT’L DEV. 233, 238 (2010); Carmen G. Gonzalez, *Migration as Reparation: Climate Change and the Disruption of Borders*, 66 LOYOLA L. REV. 401, 405 (2020); see Miles Culpepper, *The Debt We Owe Central America*, JACOBIN (Nov. 1, 2018), <https://jacobin.com/2018/11/central-america-migrant-caravan-trump>; see also Andrew Baldwin, *Racialisation and the Figure of the Climate Change Migrant*, 45 ENV. & PLAN. 1474, 1486 (2013).

22. Benoît Mayer, *Constructing “climate migration” as a global governance issue: essential flaws in the contemporary literature*, 9 MCGILL INT. J. SUSTAINABLE DEV.

change is deemed to be the sole trigger of migration causing an uncontrollable flow of refugees. Initial numerical estimations of “environmental refugees”<sup>23</sup> were reported by Jodi Jacobson and Norman Myers, in an attempt to predict the *unfolding tragedy* of people fleeing their countries as a result of environmental disasters. Jacobson, in analysing the impacts of droughts in West African Sahel, calculated approximately ten million environmental refugees in the 1980s.<sup>24</sup> This figure was cautious and conservative, according to Myers, one of the most influential scholars on climate-related migration.<sup>25</sup> In 1995, Myers and Jennifer Kent published the report *Environmental Exodus: An Emergent Crisis in the Global Arena*, in which they estimated that there were twenty-five million environmental refugees and anticipated that the number could double by 2010.<sup>26</sup> The authors also stressed that if global warming predictions take place, in the course of time there would be 200 million people at risk of displacement.<sup>27</sup> On this basis, some scholars have suggested that those flows of environmental refugees are likely to trigger violent conflicts in the receiving areas.<sup>28</sup>

While a number of legal studies have historically embraced the concept of “climate” or “environmental refugee” based on the previous *alarming* projections, those have been severely criticised for the following reasons:

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L. & POL’Y, 87 (2013); see generally Jodi L. Jacobson, *Environmental Refugees: a Yardstick of Habitability*, 8 BULL. SCI., TECH., & SOC’Y, no. 3, 1988, at 257-58; see generally Norman Myers, *Environmental Refugees in a Globally Warmed World*, 43 BIOSCIENCE, no. 11, 1993, at 752 *passim*; see generally NORMAN MYERS & JENNIFER KENT, ENVIRONMENTAL EXODUS: AN EMERGENT CRISIS IN THE GLOBAL ARENA 1 *passim* (1995).

23. On the terminology surrounding the phenomenon on climate displacement, see *supra* text accompanying note 3.

24. Jacobson, *supra* note 22, at 257.

25. Myers, *supra* note 22, at 752.

26. MYERS & KENT, *supra* note 22, at 1.

27. *Id.* See also O’Lear, Shannon, *Migration and the Environment: A Review of Recent Literature*, 78(2) SOC. SCI. Q. 606, 612 (1997); Rajendra Ramlogan, *Environmental refugees: A Review*, 23(1) ENV’T CONSERVATION 81, 86-87 (1996); Arthur H. Westing, *Environmental Refugees: A Growing Category of Displaced Persons*, ENV’T CONSERVATION 201 (1992).

28. Rafael Reuveny, *Climate Change-Induced Migration and Violent Conflict*, 26(6) POL. GEOGRAPHY 656, 657 (2007); NICHOLAS STERN, THE ECONOMICS OF CLIMATE CHANGE: THE STERN REVIEW 541 (2007); Paul J. Smith, *Climate Change, Mass Migration and the Military Response*, 51(4) ORBIS 617, 632 (2007).

i. Early environmental studies build on a mono-understanding of climate-related displacement.<sup>29</sup> These studies often avoid addressing climate-related complexities and the way that different types of human mobility occur in a context of a climate-related disaster.<sup>30</sup> This evasion benefits the *depoliticization of the causes of displacement*, which means overlooking the social vulnerability conditions that put people at uneven levels of risk in the context of climate-related stressors in the first place.<sup>31</sup>

ii. Presenting the ‘imminent’ flow of “climate refugees” as a tragedy<sup>32</sup> has served securitization discourses that present migration as *an existential threat*, particularly to the national security and stability of Global North countries.<sup>33</sup> This approach has nevertheless led to deeper levels of rejection and neglect against people forced to migrate influenced by environmental stressors<sup>34</sup> and a mainstream discourse that reinforces xenophobia.<sup>35</sup>

iii. The predictions of millions of “climate refugees” overlook other forms of responses to climate disaster different from migration, for example, community adaptative initiatives to remain in place.<sup>36</sup> This

29. Giovanni Bettini, *Where Next? Climate Change, Migration, and the (Bio)politics of Adaptation*, 8(S1) GLOB. POL’Y 33, 34 (2007).

30. MIGRATION AND GLOBAL ENVIRONMENTAL CHANGE 55 (Gov’t Office for Sci., 2011); Richard Black et al, *Migration and Global Environmental Change*, in 21 GLOBAL ENV. CHANGE 51, 51 (2011).

31. Gaim Kibreab, *Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate*, 21(1) DISASTERS 20, 21 (1997).

32. Georgios Karyotis, *The Fallacy of Securitizing Migration: Elite Rationality and Unintended Consequences*, in SEC., INSECURITY AND MIGRATION IN EUR. 13, 14 (2011).

33. See e.g., CAITLIN WERRELL & FRANCESCO FEMIA, *DHS to Congress: Climate Change a Threat Multiplier to Global Security*, CLIMATE & SEC. (July 9, 2015), <https://climateandsecurity.org/2015/07/09/dhs-to-congress-climate-change-a-threat-multiplier-to-global-security/>.

34. Giovanni Bettini, *One Step Forward, Two Steps Back? The Fading Contours of (In)justice in Competing Discourses on Climate Migration*, 182(4) THE GEOGRAPHICAL J. 348-58 (2017).

35. See *supra* note 14, at 73.

36. See Black, *supra* note 30.

trend also tends to overlook the agency of communities.<sup>37</sup> A human rights lens requires amplifying the voice of those in vulnerable conditions and the provision methodologies for engaging the participation of, and consultation with, key stakeholders in the formulation of climate and development strategies.<sup>38</sup> This approach also ignores migration as an adaptive strategy in itself that may be promoted through planned relocation and resettlement.<sup>39</sup>

iv. Besides the lack of an empirical scientific basis to affirm that climate-related mobilities constitute a security threat, the securitization discourse justifies forcing people to stay in places affected by climate-related stresses in order to “protect” borders in the Global North.<sup>40</sup> The framing of “environmental” or “climate refugee” is problematic given that it obscures the role institutional responses play in triggering permanent migration of people forced to leave their homes.<sup>41</sup> Permanent migration ultimately depends on “who is most

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37. The Nansen Principles provide guidance and one of the most significant framework on climate induced mobility. Principle 10 emphasizes that all policies and responses need to be implemented on the basis of non-discrimination, consent, empowerment, participation and partnerships with those directly affected with due sensitivity to age, gender, and diversity aspects, always incorporating the voices of the displaced. The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, (December 2015) <https://www.nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME1.pdf> (“Protection Agenda Vol 1”)

38. Edward Cameron, *Human Rights and Climate Change: Moving from an Intrinsic to an Instrumental Approach*, 38 GA. J. INT’L & COMP. L. 673, 712 (2010); see also Manoj Roy et al., *It’s Too Early to Talk About Climate Change Refugees in Bangladesh*, THE CONVERSATION (Nov. 11, 2016), <http://theconversation.com/its-too-early-to-talk-about-climate-change-refugees-in-bangladesh-68444> (critiquing media and scholarly narratives that present Bangladeshis as helpless victims with no agency whatsoever to resist).

39. Lauren Nishimura, *Climate Change Migrants’: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, 27 INT. J. OF REFUG. L. 107 (2015); EMILY WILKINSON ET AL., *Climate-Induced Migration and Displacement: Closing the Policy Gap* (2016); see generally KIRA VINKE, UNSETTLING SETTLEMENTS – CITIES, MIGRANTS, CLIMATE CHANGE. RURAL-URBAN CLIMATE MIGRATION AS EFFECTIVE ADAPTATION? (Lit Verlag 2019).

40. Ingrid Boas et al., *Climate migration myths*, 12(9) NATURE CLIMATE CHANGE 901 (2019).

41. See generally PIERS BLAIKIE ET AL., AT RISK: NATURAL HAZARDS, PEOPLE’S VULNERABILITY, AND DISASTERS (1st ed. 1994).

vulnerable . . . [and] what kind of aid/relief is provided and who receives it.”<sup>42</sup> The construction of the imaginary threat around the shocking flows of ‘*climate refugees*’ is dangerous insofar it seeks to replace objective findings with unfounded predictions.<sup>43</sup>

In sum, what started as an international concern for cross-border migration as a result of climate change has influenced most of the academic literature and political attention devoted to the issue.<sup>44</sup> A preoccupation of people fleeing their homes as a result of climate change impacts has served to bolster securitization discourses framing migration as an international threat, no matter its root causes.<sup>45</sup>

### III. THE RELEVANCE AND APPLICATION OF REFUGEE LAW

The ‘*climate refugee*’ frame has been discussed and partly promoted by well-intentioned scholars and international organizations who call for international protection of ‘climate refugees’ under the 1951 Convention Relating to the Status of Refugees (Convention or Refugee Convention) and the 1967 Protocol to the Convention (the Protocol). The Convention and Protocol form the basis of the international refugee regime, defining who qualifies as a refugee and detailing the social, economic civil, and political rights to which refugees are entitled—including the guarantee of non-refoulement, which is protection from return to a country where a refugee’s life is in danger.<sup>46</sup> The international refugee protection regime steps in to provide surrogate protection when an applicant’s home state has failed to protect that person’s basic human rights under one of the five

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42. *Id.*

43. LORRAINE ELLIOTT, *Climate Migration and Climate Migrants: What Threat? Whose Security?*, in CLIMATE CHANGE AND DISPLACEMENT 175 (2010).

44. KHALID KOSER, *Climate change and internal displacement: challenges to the normative framework*, in MIGRATION AND CLIMATE CHANGE 289 (Etienne Piguet et al. eds., 2011).

45. GEORGIOS KARYOTIS, *The fallacy of securitizing migration : elite rationality and unintended consequences*, in SECURITY, INSECURITY AND MIGRATION IN EUROPE, 13-30 (2011)

46. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.S.T. 6259, 606 U.N.T.S. 267; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

Refugee Convention grounds.<sup>47</sup> The grounds—race, religion, nationality, membership in a particular social group, and political opinion—identify characteristics, founded in principles of non-discrimination, that fundamentally marginalize or disenfranchise persons from their societies.<sup>48</sup>

While there has been much debate over the applicability of refugee law to the plight of those displaced or forced to flee their homes due to climate change, developments in the last few years indicate an increasing recognition that climate change displacement claims may meet criteria for protection under the Refugee Convention.<sup>49</sup> Specifically, in 2020, the United Nations High Commissioner for Refugees (UNHCR) issued the “2020 Legal Considerations Regarding Claims for International Protection Made in the Context of Climate Change and Disasters,” an important document on the applicability of refugee law to climate displacement.<sup>50</sup> The guidance “sets out key legal considerations concerning the applicability of international and regional refugee and human rights law when cross-border displacement occurs in the context of the adverse effects of climate change and disasters.”<sup>51</sup> This document also reflects an increasing recognition among the international community that people displaced by climate change may meet the criteria for protection under international refugee law, depending on the facts of their claims.<sup>52</sup> Similarly, in his treatise, Matthew Scott presents different scenarios in which persons fleeing or fearing return to climate change-related harm may qualify for status and protection under the Refugee Convention.<sup>53</sup>

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47. JAMES C. HATHAWAY & MICHELE FOSTER, *THE LAW OF REFUGEE STATUS* 51 (2d ed. 2014); see generally JAMES C. HATHAWAY, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* (2005).

48. HATHAWAY & FOSTER, *supra* note 47, at 1-17.

49. See Jane McAdam, *Climate Change and Displacement: Multidisciplinary Perspectives* (2012).

50. United Nations High Commissioner for Refugees, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* (Oct. 1, 2020), <https://www.refworld.org/docid/5f75f2734.html>.

51. *Id.*

52. *Id.*

53. MATTHEW SCOTT, *CLIMATE CHANGE, DISASTERS, AND THE REFUGEE CONVENTION* (Cambridge Univ. Press 2020) (noting that Scott based his work on international refugee law, rather than U.S. refugee law). See also Camila Bustos et al., *Shelter from the Storm: Policy Options to Address Climate Induced Migration from the*

Thus, rethinking domestic refugee law to consider climate change and the ways in which climate impacts interact with protected grounds is essential to expanding protection for climate displaced individuals.

However, addressing the complex phenomenon of climate-induced displacement exclusively or primarily through the Refugee Convention seems inadequate to accommodate situations where communities are displaced internally. Indeed, there is widespread consensus that most displacement related to climate change will, in fact, be within countries' borders.<sup>54</sup> Amending the Refugee Convention could undermine one of the few international law treaties offering protection from persecution globally, ultimately placing refugees who fit in the current definition in greater levels of uncertainty and vulnerability.<sup>55</sup>

In a more nuanced position but still rooted in a crisis narrative that ignores social and place dynamics of (im)mobility in the context of climate-related stresses, the scholars Bierman and Boas argue that the 1951 Refugee Convention might not manage effectively the unfolding crisis of climate refugees and propose “a separate independent legal and political regime created under a Protocol on the Recognition, Protection, and Resettlement of Climate Refugees to the United Nations Framework Convention on Climate Change (UNFCCC).<sup>56</sup> This proposal builds on the basis that having crossed a state border does not make a difference when it comes to protecting people who lost their homes, meaning that the measures contemplated in the protocol could apply to both internal and cross-border migration.<sup>57</sup>

In contrast, some other scholars—applying the *refugee* definition stipulated in the Refugee Convention—argue that the use of the term

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Northern Triangle, Harvard Immigration and Refugee Clinical Program, HLS Immigration Project, the University Network for Human Rights, Yale Immigrant Justice Project, and Yale Environmental Law Association, Apr. 2021.

54. 10 Ways to Tackle Climate Displacement in the Run Up to 2030, INTERNAL DISPLACEMENT MONITORING CENTRE (Dec. 2020), <https://www.internal-displacement.org/expert-opinion/10-ways-to-tackle-climate-displacement-in-the-run-up-to-2030>.

55. Augustine Yelfaanibe and Roger Zetter, *Policies and labels for negotiating rights protection for the environmentally displaced in Ghana: the Dagara farmer in perspective*, 37 AFR. GEOGRAPHICAL R. (2017).

56. Frank Biermann and Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10 GLOB. ENV'T POL. (2010).

57. *Id.*

*refugee* is legally inaccurate. First, climate change is not a “persecuting agent” and second, the current patterns of environmental migration are mainly within national borders, which eliminates the cross-border element of the *refugee* definition.<sup>58</sup> Therefore, from a strictly legal analysis, people forced to migrate because of environmental or climate impacts do not fit in the definition of *refugees* stipulated in the Refugee Convention.<sup>59</sup> From a practical approach, some scholars have suggested re-negotiating the *refugee* definition under the Convention or even creating a parallel international instrument.<sup>60</sup> However, this would likely introduce major difficulties to the limited protections that currently exist, which could ultimately diminish protection standards for refugees.<sup>61</sup>

In summary, the policy routes proposed by scholars—to extend the scope of protection under the 1951 Refugee Convention or create an ad-hoc legal instrument to recognize the status of climate refugees—can make little in the way of contributing to progressive agendas that effectively protect those vulnerable to climate impacts.<sup>62</sup> These humanitarian discourses often converge with securitization approaches—both are part of the framing “in which migrants are either victims to rescue or illegals to capture—rather than for instance persons with a right to move.”<sup>63</sup>

Significantly, sometimes these discourses develop in a disconnected manner from the communities most vulnerable to the negative consequences of climate change. For instance, the people in the Pacific Islands have been usually presented by media and international bodies as the poster child of “climate refugees.”<sup>64</sup> In his research, Silja Klepp

58. Yelfaanibe, *supra* note 55; Shweta Jayawardhan, *Vulnerability and Climate Change Induced Human Displacement*, 17 CONSILIENCE: J. SUSTAINABLE DEV. 103-42 (2017).

59. Issa Ibrahim Berchin et al, *Climate change and forced migrations: An effort towards recognizing climate refugees*, 84 GEOFORUM 147-50 (2017).

60. Betsy Hartmann, *Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse*, 22 J. INT’L DEV. 233-46 (2010); Augustine Yelfaanibe and Roger Zetter, *Policies and labels for negotiating rights protection for the environmentally displaced in Ghana: the Dagara farmer in perspective*, 37 AFR. DEV. R. (2017).

61. *Id.*

62. Bettini, *supra* note 34.

63. *Id.*

64. See e.g., Isabelle Austin, *Kiribati children at the mercy of climate change* – Unicef, UNICEF Australia (November 27, 2015),

showed how some people in Kiribati reject the category of refugees and are calling for solutions based on solidarity and climate justice.<sup>65</sup> The citizens of Kiribati, according to President Tong's government, refuse to accept a humanitarian refugee status as a basis for their future, calling instead for migration programs that should be responsive to a more dignified conception of agency.<sup>66</sup> The citizens of Kiribati do not view a life of dependence on host societies and in refugee centers as acceptable options.<sup>67</sup> To circumvent this situation, President Tong relies on long term planning, so that when people migrate, they will "migrate with dignity" and on merit.<sup>68</sup>

Oversimplifying the debate, the mainstream discourse on these issues tells us nothing about where "[people] are likely to go to, for how long, or whether or not this is occurring in a way that is problematic for individuals and public policy."<sup>69</sup> Furthermore, the current narrative rarely addresses the underlying social vulnerability conditions and people's relationship with place that shape (im)mobility. The discussion on the delimitation of the refugee definition and the legal regime applicable to those forced to migrate outside borders is crucial; however, we need to link that discussion with the complexities of already existing patterns of migration. That understanding is key to developing effective policies and laws as well as clarifying comprehension of the human rights violations that are implicated.<sup>70</sup> This is why approaches that do not deem human mobilities as a threat are needed. Furthermore, applying a human rights lens can help illuminate and translate people's concerns and claims into useful channels to address them.

Starting in 2011, the Foresight report *Migration and Global Environmental Change* and following studies shifted the approach to a

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<https://www.stuff.co.nz/environment/climate-news/74490358/kiribati-children-at-the-mercy-of-climate-change---unicef>

65. SILJA KLEPP & LIBERTAD CHAVEZ-RODRIGUEZ, *Governing Climate Change: The Power of Adaptation*, In A CRITICAL APPROACH TO CLIMATE CHANGE ADAPTATION, 4 (2018).

66. *Id.*

67. *Id.*

68. Sarah Louise Hemstock, et al., *Professionalizing the 'resilience' sector in the Pacific Islands*, In A CRITICAL APPROACH TO CLIMATE CHANGE ADAPTATION, 257 (2018).

69. FORESIGHT, *supra* note 6, at 31.

70. *Id.*

multi-causal and complex understanding of environmental migration.<sup>71</sup> Unlike previous studies, environmental migration was portrayed as a positive and adaptive response to the impacts of climate change.<sup>72</sup> Although this new direction encouraged a multi-dimensional comprehension of climate-related (im)mobilities, it paid little attention to the socio-economic factors that put people at risk in the first place and force them to move or stay.

Although we recognize that the previous discussion is far from encompassing most of the interdisciplinary studies on climate-induced displacement, this discussion shows the limitations of this set of studies in addressing climate-induced displacement as a human rights issue, fully considering the socio-economic and political context in which it occurs. There are limited studies from a “bottom-up” perspective that reflect on people’s harms, concerns, and claims when they experience climate-induced displacement, which is context-specific.<sup>73</sup> In an attempt to contribute to this gap in the literature, we explain and compare two cases in the Americas of climate-induced displacement. These cases will illustrate the legal complexity of climate displacement and the need to develop legal theories that address this complexity. As a starting point, we propose a human rights lens to comprehend the different harms faced by people experiencing climate-related displacement and the need for remedies.

#### IV. THE NORTHERN TRIANGLE IN CENTRAL AMERICA

Despite relatively low levels of emissions compared to other Latin American countries such as Mexico or Brazil, Central American countries already face disproportionate burdens of global climate change.<sup>74</sup> Under a scenario of no more than 1.5°C or 2.7°F of average global warming—a very ambitious scenario given that the planet has already experienced

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71. Bettini, *supra* note 34; KLEPP, *supra* note 65.

72. Bettini, *supra* note 1.

73. Alex Arnall et al., *Climate displacement and resettlement: the importance of claims-making ‘from below’*, CLIMATE POLICY 665-71 (2019) (This work is an exception to the statement made).

74. ECLAC et al., *Climate Change in Central America: Potential Impacts and Public Policy Options*, UNITED NATIONS 1, 32 (2015), [https://repositorio.cepal.org/bitstream/handle/11362/39150/7/S1800827\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/39150/7/S1800827_en.pdf).

warming of 1°C or 1.8 °F above pre-industrial levels—significant changes in Central America’s climate system are expected.<sup>75</sup> The Northern Triangle—the area that includes Guatemala, El Salvador, and Honduras—is among the world’s most vulnerable regions.<sup>76</sup> Both Guatemala and El Salvador are among the top fifteen countries with highest exposure to environmental disasters in recent decades.<sup>77</sup> In Guatemala, climate change has exacerbated erratic rainfall patterns and drought conditions in rural agricultural areas, while also contributing to rising sea levels and intense heat in low lying coastal areas.<sup>78</sup> In addition, environmental degradation as a result of deforestation has reduced the resilience of local ecosystems and increased the likelihood of landslides.<sup>79</sup> Further still, El Salvador has seen a steady increase in extreme weather events during the last thirty years; projected impacts of climate change include decreased precipitation and longer and drier periods of drought.<sup>80</sup> El Salvador has already experienced a rise in sea level and sea surface temperature, both of which are eroding beaches and threatening mangroves, fish stocks, and wetlands.<sup>81</sup> Honduras will experience similar impacts, including an increase in frequency and severity of water scarcity and climate-related hazards.<sup>82</sup>

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75. *1.5°C of Global Warming on Natural and Human Systems*, IPCC 1, 177 (2019), [https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15\\_Chapter3\\_Low\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter3_Low_Res.pdf).

76. LAURA SIGELMAN, *THE HIDDEN DRIVER: CLIMATE CHANGE AND MIGRATION IN CENTRAL AMERICA’S NORTHERN TRIANGLE* 1, 7 (Am. Sec. Project 2019), <https://www.americansecurityproject.org/wp-content/uploads/2019/09/Ref-0229-Climate-Change-Migration-Northern-Triangle.pdf>.

77. Hans-Joachim Heintze et. al., *World Risk Report 2018*, BÜNDIS ENTWICKLUNG HILFT 1, 40 (2018), <https://reliefweb.int/sites/reliefweb.int/files/resources/WorldRiskReport-2018.pdf>.

78. Kumari Rigaud et al., *Groundswell: Preparing for Internal Migration Policy Note 3- Internal Climate Migration in Latin America*, WORLD BANK (MAR. 16, 2018).

79. *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Part B Regional Aspects*, IPCC (2014), [https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-PartB\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-PartB_FINAL.pdf).

80. *Climate Change Risk Profile: El Salvador*, USAID (2017), [https://www.climatelinks.org/sites/default/files/asset/document/2017\\_USAID%20ATLAS\\_Climate%20Change%20Risk%20Profile\\_EI%20Salvador.pdf](https://www.climatelinks.org/sites/default/files/asset/document/2017_USAID%20ATLAS_Climate%20Change%20Risk%20Profile_EI%20Salvador.pdf).

81. *Id.* at 3.

82. Honduras is expected to see an increase in “average temperature by 1°–2.5°C by 2050 and 3°–4.3°C by 2100, decreased annual rainfall of 9–14 percent by 2050 and 20–31 percent by 2100, and bi-coastal sea level rise of 0.4–0.86 m by 2100.” *Climate Change Risk Profile: Honduras*, USAID (2017),

Climate scientists predict the Northern Triangle as a whole will experience an increase in average temperatures, decreased water availability, and more extreme weather events.<sup>83</sup> Central America has been identified as the tropical region most affected by climate change, with “a steady increase in extreme events, including storms, floods, and droughts.”<sup>84</sup> Since the mid-twentieth century, rainfall patterns have become increasingly erratic, with the onset of the rainy season starting later than usual.<sup>85</sup> In turn, water shortages are expected to affect urban water supply and agricultural production.<sup>86</sup>

The Northern Triangle has already experienced an increase from 0.7°C to 1°C in the last four decades.<sup>87</sup> As a result of these climate impacts, the Intergovernmental Panel on Climate Change, the world’s leading authority on the matter, predicts a range of effects on human wellbeing.<sup>88</sup> Variations in the risks among countries are “strongly influenced by local socio-economic conditions.”<sup>89</sup> Poverty levels and economic inequality are expected to increase as average global temperatures rise by 1.5°C and higher.<sup>90</sup> An increase in temperature is also expected to reduce soil moisture and have significant health impacts, including the spread of heat-related and vector-borne diseases.<sup>91</sup>

As discussed earlier, complex social contexts often mean that there is rarely a single cause for migration.<sup>92</sup> According to researchers, the “consequences of climate change for infrastructure, tourism, migration, crop yields and other impacts interact with underlying vulnerabilities . . .

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[https://www.climatelinks.org/sites/default/files/asset/document/2017\\_USAID%20ATLAS\\_Climate%20Change%20Risk%20Profile\\_Honduras.pdf](https://www.climatelinks.org/sites/default/files/asset/document/2017_USAID%20ATLAS_Climate%20Change%20Risk%20Profile_Honduras.pdf).

83. Pablo Imbach et al., Future Climate Change Scenarios in Central America at High Spatial Resolution, 13(4) PLOS One 1 (Apr. 25, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5919078>.

84. *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Central and South America*, IPCC (2018) [https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap27\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap27_FINAL.pdf) at 1508.

85. SIGELMAN, *supra* note 76, at 7.

86. *Id.*

87. *Impacts of 1.5°C of Global Warming on Natural and Human Systems*, *supra* note 75.

88. *Id.* at 179-180.

89. *Id.*, at 179.

90. *Id.*, at 179-180.

91. SIGELMAN, *supra* note 76, at 7.

92. *See supra* Part I. Conceptualizing Climate-Induced Displacement

to affect livelihoods and poverty.”<sup>93</sup> In addition, several factors such as type of work, education level, quality of life, family ties, and access to resources may influence an individual’s decision to migrate.<sup>94</sup> In many cases, individuals do not have a choice in deciding whether to leave their home, particularly when they are forced to flee violence or persecution.<sup>95</sup> In the Northern Triangle, the changing climate is increasingly becoming a significant factor driving displacement, particularly as a result of impacts on livelihoods.<sup>96</sup> In the absence of a robust government response, individuals and families are often “forced to flee because their homes are no longer habitable.”<sup>97</sup> Furthermore, environmental degradation and the mismanagement of natural resources have also rendered some land infertile and unstable, while improper use and disposal of chemicals has undermined agricultural productivity.<sup>98</sup> Subsistence economies are thus impacted by both climate-induced changes as well as other forms of environmental mismanagement and degradation.<sup>99</sup>

Climate change is expected to reduce agricultural yields of crops such as corn, rice, and wheat across Central America.<sup>100</sup> These climate impacts on agriculture are likely to drive migration in agriculture-dependent communities.<sup>101</sup> In addition, climate change is predicted to reduce water

93. *Impacts of 1.5°C of Global Warming on Natural and Human Systems*, *supra* note 75, at 211-12.

94. *Id.* at 245.

95. ANANDA S. MILLARD & GLORIA LARA-FLORIAN, CAUSE OR CONSEQUENCE? REFRAMING VIOLENCE AND DISPLACEMENT IN GUATEMALA 8 (Internal Displacement Monitoring Ctr. 2018), <https://www.internal-displacement.org/sites/default/files/inline-files/201809-guatemala-cause-or-consequence-en.pdf>.

96. *Id.*

97. *Id.*

98. *Id.* at 19.

99. While indigenous communities are often viewed as subsistence economies, scholars have documented the ways in which communal ways of life provide much more than subsistence alone. Other scholars have also compared and discussed how economic interests driving deforestation and climate vulnerability are similarly leading to land grabbing and attacks on indigenous sovereignty and livelihoods. *See generally* WILLIAM ROBINSON, TRANSNATIONAL CONFLICTS: CENTRAL AMERICA, SOCIAL CHANGE, AND GLOBALIZATION (2003).

100. *Impacts of 1.5°C of Global Warming on Natural and Human Systems*, *supra* note 75, at 179-80.

101. *Id.* at 180.

availability and access.<sup>102</sup> In Guatemala, eighty to ninety percent of the population relies on groundwater for drinking, which is ultimately derived from precipitation.<sup>103</sup> Approximately thirty percent of the rural population does not have household water connections, making them particularly vulnerable to droughts.<sup>104</sup> Across the region, people are likely to migrate away from rain-fed croplands due to increasing agricultural marginality related to climate impacts.<sup>105</sup> The last five years have been characterized by consistent droughts.<sup>106</sup> The 2014-2016 drought—exacerbated by global climate change—left 1.6 million people moderately or severely food insecure across El Salvador, Guatemala, and Honduras due to substantial losses of crops and livestock.<sup>107</sup>

Climate scientists currently predict that an increase in global temperatures will also increase the likelihood and intensity of extreme weather events, such as hurricanes and tropical storms.<sup>108</sup> 2020 had the most active Atlantic hurricane season ever recorded, with thirteen hurricanes ravaging Central America.<sup>109</sup> In particular, tropical storm Amanda, which landed on June 2020 in El Salvador, battered the country and was described by the World Food Programme (WFP) as “the most devastating weather disaster in El Salvador since Hurricane Mitch in

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102. SIGELMAN, *supra* note 76, at 7.

103. Diego Pons, Matthew J. Taylor, Daniel Griffing, Edwin J. Castellanos & Kevin J. Anchukaitis, *On the Production of Climate Information in the High Mountain Forests of Guatemala*, 107 ANNALS OF THE AMERICAN ASSOCIATION OF GEOGRAPHERS 323, 326 (2016), <https://www.tandfonline.com/doi/abs/10.1080/24694452.2016.1235481>

104. WHO/UNICEF *Water Supply Statistics*, WORLD HEALTH ORG. (2015), <https://knoema.com/WHOWSS2014/who-unicef-water-supply-statistics-2015?locationD1000970-guatemala>.

105. Jeff Masters, *Fifth Straight Year of Central American Drought Helping Drive Migration*, SCI. AM. (Dec. 23, 2019), <https://blogs.scientificamerican.com/eye-of-the-storm/fifth-straight-year-of-central-american-drought-helping-drive-migration>.

106. *Id.*

107. *Climate Risk Profile: El Salvador*, CLIMATELINKS (Apr. 2017), <https://www.climatelinks.org/resources/climate-risk-profile-el-salvador>; Renato Vargas et al., *Climate Risk and Food Availability in Guatemala*, 23 ENV'T & DEV. ECON. 558, 559 (2018).

108. U.S. ENV'T. PROT. AGENCY, CLIMATE CHANGE INDICATORS: WEATHER AND CLIMATE, <https://www.epa.gov/climate-indicators/weather-climate>.

109. Sarah Marsh & Sofia Menchu, *Storms that Slammed Central America in 2020 Just a Preview, Climate Change Experts Say*, REUTERS (Dec. 3, 2020), <https://www.reuters.com/article/us-climate-change-hurricanes/storms-that-slammed-central-america-in-2020-just-a-preview-climate-change-experts-say-idUSKBN28D2V6>.

1998.”<sup>110</sup> The storm resulted in fifty-seven major floods and 1,114 landslides, causing property damage and claiming the lives of at least thirty people.<sup>111</sup>

In Honduras, communities living along the Caribbean coast already experience climate disruption due to encroaching sea and flooding.<sup>112</sup> An unprecedented number of Garifuna families (an Afro-indigenous group) in the coastal city of Tela have been forced to leave the region and join caravans.<sup>113</sup>

### Climate Change and Movement to Urban Areas

Factors such as food insecurity and water scarcity interact with existing dynamics in the Northern Triangle—including violence, insecurity, weak governance, corruption, lack of access to services, and income variability<sup>114</sup>—to drive people out of the countryside and into urban areas.<sup>115</sup> For most vulnerable communities already living on the margins, climate change will push them closer to the edge. When climate change-induced stress overwhelms livelihood systems, people migrate.<sup>116</sup> In this sense, while there may be more than one factor involved in the decision to

110. *WFP El Salvador Situation Report #1 - Tropical Storm Amanda*, RELIEFWEB (June 4, 2020), <https://reliefweb.int/report/el-salvador/wfp-el-salvador-situation-report-1-tropical-storm-amanda-3-june-2020>. In 1999, the Attorney General designated Honduras and Nicaragua for TPS due to “severe flooding and associated damage” and “substantial disruption of living conditions” resulting from Hurricane Mitch. Designation of Honduras Under Temporary Protected Status, 64 Fed. Reg. 524-26 (Jan. 5, 1999); Designation of Nicaragua Under Temporary Protected Status, 64 Fed. Reg. 526-27 (Jan. 5, 1999).

111. *WFP El Salvador Situation Report #2 - Tropical Storm Amanda*, RELIEFWEB (June 22, 2020), <https://reliefweb.int/report/el-salvador/wfp-el-salvador-situation-report-2-tropical-storm-amanda-17-june-2020>.

112. María José Méndez, *The Silent Violence of Climate Change in Honduras*, 52 *ACLA REP. ON AMS.* 436, 439 (2020).

113. *Id.*

114. David J. Wrathall et al., *Migration Amidst Climate Rigidity Traps: Resource Politics and Social-Ecological Possibilism in Honduras and Peru*, *ANNALS ASS’N AM. GEOGRAPHERS* 292, 293 (2014).

115. Sarah Bermeo, *Climate Migration and Climate Finance: Lessons from Central America*, *BROOKINGS* (Nov. 19, 2021), <https://www.brookings.edu/blog/future-development/2021/11/19/climate-migration-and-climate-finance-lessons-from-central-america>.

116. Wrathall, *supra* note 114 at 294.

leave, climate change intensifies existing drivers of migration and displacement.

As a result of climate change impacts, the World Bank estimates that two million people will be displaced by 2050 in Central America.<sup>117</sup> For communities, migration can reduce household vulnerability by moving the family away from the risks, and also by enabling economic survival and potential wealth accumulation for the benefit of those who remain.<sup>118</sup> Those who migrate often transfer income back to others in their communities of origin in the form of remittances.<sup>119</sup>

When people flee rural areas as a result of droughts, floods, and overexploitation of natural resources, they often move to urban areas.<sup>120</sup> Some, though not most, relocate to pastoral and rangeland areas.<sup>121</sup> Across Latin America over the past half-century, there has been a gradual shift in population from rural to urban areas.<sup>122</sup> Climate change displacement will intensify this existing hemispheric trend.<sup>123</sup> There is increasing evidence that this is already happening; one study concludes that young people facing heat waves “are more likely to move to urban centers than when exposed to disasters endemic to the region.”<sup>124</sup> It is expected that major cities like Guatemala City will become “hotspots of climate in-migration.”<sup>125</sup> Evidence suggests that internal climate migrants generally move “from areas of increasing climate risks, including small towns and areas affected by hydro-meteorological hazards, to locations with better environmental conditions, particularly urban areas able to provide

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117. Rigaud et al., *supra* note 78, at 4.

118. Andrea Milan & Sergio Ruano, *Rainfall Variability, Food Insecurity and Migration in Cabricán, Guatemala*, 6 CLIMATE & DEV. 61 (2014) (explaining that in many cases, however, the poorest and most vulnerable cannot move, even if they would like to, because of their lack of financial means).

119. Fany Delavelle, *Climate Induced Migration and Displacement in Mesoamerica*, THE NANSSEN INITIATIVE 1, 10 (2013), [https://disasterdisplacement.org/wp-content/uploads/2015/07/270715\\_FINAL\\_DISCUSSION\\_PAPER\\_MESOAMERICA\\_screen.pdf](https://disasterdisplacement.org/wp-content/uploads/2015/07/270715_FINAL_DISCUSSION_PAPER_MESOAMERICA_screen.pdf).

120. Rigaud et al., *supra* note 78, at 5.

121. *Id.*

122. *Id.*, at 6.

123. *Id.*

124. Javier Baez et al., *Heat Exposure and Youth Migration in Central America and the Caribbean*, 107 AM. ECON. R. 446, 450 (2017), <https://www.aeaweb.org/articles?id=10.1257/aer.p20171053>.

125. Rigaud et al., *supra* note 78, at 5.

employment opportunities.”<sup>126</sup> Thus, most movement will likely continue towards urban areas.<sup>127</sup>

Even among communities living in situations of vulnerability, certain groups face a differentiated impact due to their limited movement or dependence on their environment. For instance, some studies have found that youth are more likely to migrate in response to droughts and hurricanes, exhibiting stronger inclination towards relocating to urban centers.<sup>128</sup> According to another study, migration from rural areas disproportionately affects men and youth.<sup>129</sup> Women are also forced to migrate as they and their families and communities suffer; however, women face greater barriers to movement as a result of the maintenance of traditional gender roles, household obligations, and limited language skills. One third of rural indigenous women in Guatemala, are monolingual in their local, non-Spanish language.<sup>130</sup> In Honduras, Garífuna people are on the frontlines of vulnerability to climate change given that villages are particularly susceptible to land loss and tropical storm surges.<sup>131</sup> Repetitive flooding displaced hundreds of households between 1998 and 2009.<sup>132</sup> In summary, climate change is expected to displace people internally and towards urban centers.

### Climate Change and Movement to the United States

Once driven to urban centers in the Northern Triangle, individuals often face intensification of a range of problems, including gang and state-sanctioned violence, as well as the inability of authorities to protect communities.<sup>133</sup> Scholars have documented how Central American States have effectively waged war against people from local communities who

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126. Roberto Ariel Abeldaño Zuñiga & Javiera Fanta Garrido, *Internal Displacement Due to Disasters in Latin America and the Caribbean*, CLIMATE CHANGE, HAZARDS AND ADAPTATION OPTIONS 389, 406 (Walter Leal Filho et al. eds., 2020).

127. Rigaud et al., *supra* note 78, at 6.

128. Javier Baez et al., *supra* note 124, at 450.

129. Milan & Ruano, *supra* note 118.

130. *Id.*

131. Wrathall, *supra* note 114, at 294-95.

132. *Id.*

133. Amelia Cheatham & Diana Roy, *Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (June 22, 2022), <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>.

have been forced to relocate.<sup>134</sup> Furthermore, Northern Triangle governments have been found to work directly or indirectly with local gangs, drug cartels, and death squads.<sup>135</sup> In addition, high unemployment rates, lack of services, and precarious socioeconomic conditions interact with climate variability and food insecurity, driving many Central Americans to flee their countries.<sup>136</sup> People displaced to urban areas often face discrimination, and migrants from rural areas lack the cultural and technical skills necessary to compete for jobs in cities.<sup>137</sup> For instance, Guatemalans with agricultural backgrounds have access to relatively few job opportunities in Guatemala City, and many seek temporary or semi-permanent migration to the United States as a result.<sup>138</sup> In short, while many rural individuals will first move to other areas in the country, particularly large urban areas,<sup>139</sup> they may subsequently be forced to flee internationally.<sup>140</sup> It is worth noting that many of these individuals are from indigenous communities and suffer years of systemic persecution

134. See MARIA CRISTINA GARCIA, *SEEKING REFUGE: CENTRAL AMERICAN MIGRATION TO MEXICO, THE UNITED STATES, AND CANADA* (2006).

135. As a result, many asylum seekers are persecuted for being politically active and opposing the government. See generally José Miguel Cruz, *Criminal Violence and Democratization in Central America: The Survival of the Violent State*, 53 *LATIN AM. POL. AND SOC'Y* 1 (2011) (“[P]ublic security reforms carried out during the political transitions shaped the ability of the new regimes to control the violence produced by their own institutions and collaborators . . . The survival of violent entrepreneurs in the new security apparatus and their relationship with new governing elites foster the conditions for the escalation of violence in northern Central America.”).

136. Bermeo, *supra* note 115.

137. *Guatemala*, IDMC (2019), <https://www.internal-displacement.org/countries/guatemala>.

138. Sergio Ruano & Andrea Milan, *Climate Change, Rainfall Patterns, Livelihoods and Migration in Cobricán, Guatemala*, INST. FOR ENV'T AND HUM. SEC. (UNU-EHS) (Feb. 2014), <https://collections.unu.edu/eserv/UNU:1852/pdf11648.pdf>.

139. Jorge Rodríguez Vignoli, *Cities and Migration in Latin America and the Caribbean: Updated Estimates of Key Socio-Demographic Effects*, UNITED NATIONS EXPERT GROUP MEETING ON SUSTAINABLE CITIES, HUMAN MOBILITY, AND INT'L MIGRATION (Sept. 5, 2017), <https://www.un.org/en/development/desa/population/events/pdf/expert/27/papers/III/paper-Rodriguez-final.pdf>.

140. SIGELMAN, *supra* note 76, at 1.

and discrimination before facing additional challenges as a result of climate-related factors.<sup>141</sup>

In addition to flight from rural to urban areas, experts have documented and predict further flight from urban areas to the United States as a result of lack of economic opportunities, violence, and food insecurity.<sup>142</sup> An internal Customs and Border Protection report issued under the Trump Administration found that crop shortages resulting from climate change were driving record-setting migration rates from Guatemala to the United States.<sup>143</sup> The report found that migration rates for Guatemalans increased in areas without reliable subsistence farming or commercial farming jobs, like Guatemala's Huehuetenango, Chiquimula, and Zacapa departments.<sup>144</sup> Instead of addressing food insecurity, climate-induced crop failures, or a fungus known as coffee leaf rust affecting coffee production, the Trump Administration decided to increase funding for law enforcement efforts to deter migration to the United States.<sup>145</sup>

On average, 407,000 people have left the Northern Triangle in each of the past five years, with the majority bound for the United States.<sup>146</sup> Recently, the number of apprehensions of people originating from the

141. *Guatemala: Violence and Discrimination Drive Indigenous Migration Elsewhere*, MINORITY RIGHTS, <https://minorityrights.org/trends2018/guatemala/> (last visited Oct. 23, 2022).

142. According to research cited by the Inter-American Commission on Human Rights (IACHR), "The main factors leading to forced displacement in [Guatemala] include extortion and threats, the presence of organized crime and drug trafficking activity, expansion of megaprojects and large scale business activities (such as monoculture of sugarcane and oil palm, extensive cattle ranching and expansion of grazing pastures, logging of fine wood, metal and non-metal mining, hydroelectric plants, archaeological extraction, tourism), extreme poverty, social exclusion, different forms of violence such as intrafamily and gender violence, as well as factors linked to climate change and natural disasters." *Situation of Human Rights in Guatemala*, IACHR 1, 110 (Dec. 31, 2017), <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf> (internal citations omitted).

143. Jacob Soboroff & Julia Ainsley, *Trump Admin Ignores Its Own Evidence of Climate Change's Impact on Migration from Central America*, NBC NEWS (Sept. 20, 2019), <https://www.nbcnews.com/politics/immigration/trump-admin-ignored-its-own-evidence-climate-change-s-impact-n1056381>.

144. *Id.*

145. *Id.*

146. Peter J. Meyer & Maureen Taft-Morales, *Central American Migration: Root Causes and U.S. Policy*, U.S. CONG. RSCH. SERV. IF11151 <https://sgp.fas.org/crs/row/IF11151.pdf> (Mar. 31, 2022).

Northern Triangle exceeded that of Mexicans at the U.S. border.<sup>147</sup> In 2019, families from El Salvador, Guatemala, and Honduras made up about seventy-one percent of the total number of apprehensions at the U.S. border.<sup>148</sup> Relatedly, the number of Central American asylum seekers has significantly increased and surpassed Mexican asylum seekers.<sup>149</sup> In 2019, about eighty percent of people detained along the U.S.-Mexico border consisted of families and unaccompanied minors from Guatemala, Honduras, and El Salvador.<sup>150</sup> The over 63.9 percent increase in unaccompanied minors is unprecedented, from 10,146 in FY2012 to 55,109 in FY2019.<sup>151</sup>

### The Role of Global North Countries in Tackling Climate-Induced Displacement

Global North countries like the United States have contributed disproportionately to global climate change through their emissions over the last century.<sup>152</sup> Principles of fairness and justice underscore the historic responsibility of wealthy countries not only to reduce their emissions and transition towards more sustainable energy systems, but also to help other countries—particularly those in the Global South—adapt to climate

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147. Kristen Bialik, *Border Apprehensions Increased in 2018 – Especially for Migrant Families*, PEW RSCH. CNT. (Jan. 16, 2019), <https://www.pewresearch.org/fact-tank/2019/01/16/border-apprehensions-of-migrant-families-have-risen-substantially-so-far-in-2018> (as the time of the article).

148. Melissa Boughton, *Monday Numbers: A Closer Look at What's Happening at the U.S.-Mexico Border*, NC POL'Y WATCH (Nov. 4, 2019), <https://ncpolicywatch.com/2019/11/04/monday-numbers-a-closer-look-at-whats-happening-at-the-u-s-mexico-border>.

149. SIGELMAN, *supra* note 76, at 1.

150. U.S. CUSTOMS AND BORDER PROT., *U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019* (June 2019), <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions-07/23/2019>.

151. SIGELMAN, *supra* note 76, at 2; *Migration Trends in Central America North America and the Caribbean*, IOM and UN Migration, Nov. 2019, [https://rosanjose.iom.int/site/sites/default/files/Reportes/sitrep\\_p2\\_compr\\_eng.pdf](https://rosanjose.iom.int/site/sites/default/files/Reportes/sitrep_p2_compr_eng.pdf), at 3.

152. Simon Evans, *Analysis: Which countries are historically responsible for climate change?* CARBON BRIEF (Oct. 10, 2021), <https://www.carbonbrief.org/analysis-which-countries-are-historically-responsible-for-climate-change/>.

impacts.<sup>153</sup> Wealthy countries must also be held accountable for their role in creating the climate crisis in the first place. Global North countries have an obligation not only to reduce emissions and provide adaptation finance to highly vulnerable countries, but also to provide reparations to climate displaced persons by allowing them to migrate with dignity and access relocation and resettlement programs.<sup>154</sup>

The United States bears a special responsibility to the Northern Triangle, given its role in creating and fomenting violence in the region. Scholars have noted the historical connections between decades of U.S. intervention in Latin American politics—including support for authoritarian regimes responsible for grave rights abuses and instability—and the contemporary flows of people from Central America to the United States.<sup>155</sup> Much of the violence fueling migration from the Northern Triangle is connected to U.S. policies on mass incarceration, drug enforcement, and counterinsurgency.<sup>156</sup> As one scholar has observed, “[t]he atrocities committed by U.S.-trained soldiers and U.S.-aligned paramilitaries during the Salvadoran and Guatemalan civil wars, including executions of targeted populations and the use of rape as a tool of social control, have left a lingering legacy.”<sup>157</sup> This history of violence merged with U.S. immigration policy in the 1990s to foster the creation and intensification of gang violence in the Northern Triangle.<sup>158</sup>

153. Paul G. Harris, *Affluence, Consumption and Atmospheric Pollution*, in *WORLD ETHICS AND CLIMATE CHANGE – FROM INTERNATIONAL TO GLOBAL JUSTICE* 123, 161 (2010). See also Thomas Pogge, *Severe Poverty as a Violation of Negative Duties*, 19 *ETHICS & INT’L AFF.S* 1, 55-83 (2005). Joseph H. Carens, *An Overview of the Ethic of Immigration*, 17 *CRITICAL REV. OF INT’L SOC. POL. PHIL.* XXX, 538-59 (2014).

154. Gonzalez, *supra* note 21, at 402; Tendayi Achiume, *Migration as Decolonization*, 71 *STANFORD L. REV.* 1509 (2019).

155. Gonzalez, *supra* note 21, at 402; Culpepper, *supra* note 20.

156. Gonzalez, *supra* note 21, at 417.

157. *Id.*

158. *Id.* at 19 (“The U.S. government’s mass incarceration of young Central American immigrants in the 1980s during the so-called “war on drugs” created the training ground for the militarized, hierarchical gangs that currently threaten the region. When these gang members were deported in large numbers in the 1990s, they began to terrorize the local population, initially in El Salvador and later in Honduras and Guatemala.”) (footnotes omitted); see also FARIÑA, ET AL, *supra* note 14 (“At the very least, the deportation of gang members from the United States in the late 1990s helped trigger the rapid development of organized gang activity in El Salvador.”).

## V. THE ISLAND OF PROVIDENCIA, COLOMBIA

Colombia is a geographically vulnerable country to climate impacts. Rapid-onset events in Colombia, especially floods caused by the Niña phenomenon and the hurricane Iota triggered 64,000 new displacements in 2020.<sup>159</sup> According to the Third National Communication to the United Nations Framework Convention on Climate Change (UNFCCC), San Andrés and Providencia is the department at most risk from climate change in the country.<sup>160</sup> Climate change is, without doubt, increasing the frequency and intensity of hurricane season.<sup>161</sup> While Islanders in Providencia experience hurricane season annually (from June to November), prior hurricanes had never before brought the level of disaster that people experienced in 2020.<sup>162</sup>

Providencia is a Caribbean Island, located in the archipelago of San Andrés, Providencia and Santa Catalina, Colombia and home to the Raizal people, an ethnic community that makes up around thirty-five percent of the inhabitants of the island.<sup>163</sup> Historically, the Raizal people have defended their right to self-determination, ancestral land, and collective ownership of the territory, which has been threatened by the tourism industry and the military.<sup>164</sup>

In November 2020, category five hurricane Iota caused damage to ninety-eight percent of the island.<sup>165</sup> Iota devastated a large number of

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159. See Generally INTERNAL DISPLACEMENT MONITORING CENTRE, GLOBAL INTERNAL DISPLACEMENT IN 2020 (2021).

160. INSTITUTO DE HIDROLOGÍA, METEOROLOGÍA Y ESTUDIOS AMBIENTALES (IDEAM), RESUMEN EJECUTIVO TERCERA COMUNICACIÓN NACIONAL DE CAMBIO CLIMÁTICO (2017).

161. Kevin A. Reed, Michael F. Wehner & Colin M. Zarzycki, *Attribution of 2020 Hurricane Season Extreme Rainfall to Human-Induced Climate Change*, 13 NAT. COMMUN. 1905 (2022).

162. INFOBAE, *Iván Duque confirma la destrucción de Providencia tras el paso de Iota* (2020), <https://www.infobae.com/america/colombia/2020/11/17/ivan-duque-confirma-la-destruccion-de-providencia-tras-el-paso-de-iota/>.

163. *Comunidad Raizal*, UNIVERSIDAD DEL ROSARIO, <https://www.urosario.edu.co/jurisprudencia/catedra-viva-intercultural/ur/Comunidades-Etnicas-de-Colombia/Comunidad-Raizal/> (last visited Oct. 10, 2022).

164. DEJUSTICIA, *Providencia: un paraíso en ruinas e inseguro para sus líderes* (Nov. 26, 2021),

<https://www.dejusticia.org/providencia-un-paraiso-en-ruinas-e-inseguro-para-sus-lideres/>.

165. *Id.*

houses, hotels, shops, education services, as well as the airport and the local hospital.<sup>166</sup> This situation forced people to move to the nearby island, San Andrés, and inland towns and cities in Colombia.<sup>167</sup> As a response, the National Unity for Risk Management—the agency in charge of coordinating the response to national disasters—issued a post-disaster plan for the reconstruction of the island, in which the government committed to rebuild the complete island of Providencia in 100 days.<sup>168</sup>

In November 2021, one year after the disaster, only half of the houses destroyed by the hurricane were reported as rebuilt by the Risk Management Authority.<sup>169</sup> The other half of the population remained in tents or had moved away from the island.<sup>170</sup> The disaster and emergency situation declared by the Colombian government immediately after the disaster in 2020 was extended until the end of 2022.<sup>171</sup> There is no clear and accessible information about the next steps necessary for the island's reconstruction, the procedures in place, and the timing.<sup>172</sup>

The delayed recovery of the island by the Colombian government has aggravated already existing social vulnerability conditions, such as the lack of public utilities provision, basic needs unmet, and systematic land dispossession by the tourist and military industries.<sup>173</sup> Furthermore, there are reports of non-natives/businesspeople taking advantage of the crisis,

166. EL TIEMPO, *El impresionante antes y después de Providencia tras el paso de Iota* (2020), <https://www.eltiempo.com/colombia/otras-ciudades/isla-de-providencia-antes-y-despues-delpaso-del-huracan-iota-550072>.

167. Corte Constitucional [C.C.] [Constitutional Court], Tutela 88001310400220200004200, (Colom.).

168. PORTAFOLIO, *Inició plan de 100 días para reconstruir el archipiélago* (2020), <https://www.portafolio.co/economia/san-andres-y-providencia-inicio-plan-de-100-dias-para-reconstruir-el-archipelago-tras-huracan-iota-546760>.

169. *Huffington v. Presidencia de la República y otros*, No. 88001310400220200004200, Acción de tutela

170. *See* DEJUSTICIA, *supra* note 164.

171. *Id.*

172. *Id.*

173. *Huffington v. Presidencia de la República, Unidad Nacional para la Gestión del Riesgo de Desastres, Ministerio del Interior, Ministerio de Vivienda, Ciudad y Territorio y, Gerente para la Reconstrucción del Archipiélago*, No T-8298253 2021, Intervención Clínica MASP y otros, Corte Constitucional de Colombia.

buying cheap land, or illegally possessing land left by those displaced.<sup>174</sup> In what follows, we analyse several harms inflicted on the Raizal community and the human rights violated, highlighting the gaps and opportunities in the Colombian legal system.

### Human Rights Violations Experienced By the Raizal People

While the Colombian government has disregarded Raizal people's rights, seeking to transform Providencia into a place for the tourism business or military purposes, the Constitutional Court of Colombia has recognized the collective ownership of ancestral land of Raizal people.<sup>175</sup> In various decisions, the Court has declared the Raizal people as subjects to special constitutional protection, considering among other factors, their connection between the Raizal cultural identity and the territory of the archipelago of San Andrés, Providencia and Santa Catalina.<sup>176</sup>

Although the Constitutional Court has been progressive in recognizing and protecting the rights of ethnic communities, there are no judicial decisions addressing the way in which the impacts of climate change threaten the enjoyment of the right to ancestral land and cultural identity of ethnic communities in Colombia.<sup>177</sup> Climate change policies or laws aimed at reducing dispossession and uprooting by ethnic communities forced to abandon their home in a context of environmental disaster in Colombia do not exist. Furthermore, climate adaptation and post-disaster recovery plans rarely consider creating safe and planned migration routes for those fleeing a disaster, including possibilities to return.<sup>178</sup>

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174. *Intervención del Centro de Estudios de Derecho, Justicia y Sociedad – Dejusticia*, DEJUSTICIA (Dec. 16, 2021), <https://www.dejusticia.org/wp-content/uploads/2022/01/20211215-Intervención-Providencia-EXP-T-8298253.docx.pdf>.

175. Corte Constitucional [C.C] [Constitutional Court], Sala. Cuarta, octubre 31, 2014, M.P: G. Martelo, Sentencia T-800/14, (Colom.); Corte Constitucional [C.C] [Constitutional Court], Sala. Plena, febrero 16, 2017, M.P: M. Correa, Sentencia SU-097/17, (Colom.); Corte Constitucional [C.C] [Constitutional Court], Sala. Plena, febrero 2, 1999, M.P: Dr. E. Muñoz, Sentencia C-053/99 (Colom.).

176. *See supra* note 175.

177. Castro-Buitrago & Vélez Echeverri, *Procesos de reasentamiento en Colombia: ¿Una medida de adaptación y protección de derechos humanos de las víctimas del cambio climático?* 67 UNIVERSITAS 136 (2018)..

178. Corte Constitucional [C.C] [Constitutional Court], Sala. Sépt, diciembre 16, 2021, M.P: C. Schlesinger, Radicado T-8298253 (Colom.).

Colombian climate laws and adaptation plans omit estimating forced displacement induced by climate change as a likely scenario that could impact populations, cause harm, and violate human rights. This omission shows that the Colombian state is not considering and gathering data aimed at comprehending the phenomenon in the country. There is no official data on human mobilities in the context of climate change, which means that there is a scarce understanding of how displacement occurs, the distances travelled, the time, the migration destinations, and whether people displaced return home or not. In this sense, there is scarce knowledge about the role that social vulnerability conditions play in triggering displacement in the context of climate change and the way in which displacement could result in human rights violations to ethnic communities located in the insular areas of the country.

Although there is no official recognition of the category of climate-displaced person in the Colombian legal system, there are several laws and Constitutional Court decisions addressing protection measures for people forcibly displaced by the Colombian armed conflict.<sup>179</sup> There is also a consolidated jurisprudence on the right to adequate housing<sup>180</sup> and the protection of the ancestral territory of the Raizal community, but there is no reference to the threats posed by the impacts of climate change to those rights.<sup>181</sup>

Currently, any person impacted by a climate-related disaster is labelled in Spanish as *damnificado*, which translates to ‘affected person’.<sup>182</sup> In this sense, an individual forced to move and an individual who lost their belongings in a climate-related disaster are classified under the same category, without differentiating the degree of harm and human rights violations in either situation. The remedies for those who lost their

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179. Corte Constitucional [C.C.] [Constitutional Court], Sala. Terc., enero 22, 2004, M.P: M. Espinosa, Sentencia T-025/04 (Colom.).

180. See Corte Constitucional [C.C.] [Constitutional Court], Sala. Seg., febrero 11, 2015, M.S: M. Cuervo, Sentencia T-046/15 (Colom.); Corte Constitucional [C.C.] [Constitutional Court], Sala. Sexta, mayo 12, 2015, M.P: J. Palacio, Sentencia T-269/15 (Colom.); Corte Constitucional [C.C.] [Constitutional Court], Sala. Sépt, noviembre 18, 2019, M.P: C. Schlesinger, Sentencia T-547/19 (Colom.).

181. Corte Constitucional [C.C.] [Constitutional Court], Sala. Plena, Febrero 2, 1999, M.P: Dr. E. Muñoz, Sentencia C-053/99 (Colom.).

182. *Damnificado*, WORDREFERENCE, <https://www.wordreference.com/es/en/translation.asp?spen=damnificado> (last visited Oct. 10, 2022).

belongings should be different in comparison to those forced to relocate in a context of a disaster.

With regards to the rights to cultural identity, ancestral land, and collective ownership, there is a need to integrate protection measures into climate adaptation policies and plans in order to guarantee people inhabit their territories with dignity. This should address forced displacement in a context of a climate-related disaster, as well as creating the necessary conditions for communities to stay in their territory safely. This case is an example where failing to address the implications of climate-induced displacement led to reinforcement of the dispossession and uprooting faced by the Raizal community.

Furthermore, it is necessary to expand the scope of the right to adequate housing, considering the impacts of climate change on safe infrastructure and habitat. Understanding migration patterns and displacement internally as well as across international borders in the context of the climate crisis is key. However, looking at the particular dynamics in specific places will further confirm that migration is not always a desirable or possible option for many people exposed to climate risks.

In sum, there is an urgent need to protect the rights to adequate housing and ancestral territory of the Raizal people. The destruction of ninety-eight percent of Providencia Island was not caused by the landing of the hurricane alone.<sup>183</sup> Indeed, the lack of the implementation of climate adaptation plans, deficient housing, aqueduct and sewer infrastructure, and poverty are all factors that played a role.<sup>184</sup> The current situation of the Raizal people is concerning. The likelihood of another hurricane is very likely.<sup>185</sup> The vulnerability of the community is aggravated by the failure to properly recover from Iota thus far. Moreover, the Raizal people are excluded from decision-making spaces in which the future of the island is being decided.

This case illustrates how communities' needs and demands in a climate disaster relate to their specific context. International approaches to climate-related migration are as important as the understanding the way in which climate change shapes local dynamics. Addressing these complexities through the law is challenging. As Hari Osofsky puts it, we

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183. See *supra* text accompanying notes 162-74.

184. *Id.*

185. See Reed, *supra* note 161.

need to “move past the “too big” arguments and recognize climate change as a multi-scalar problem that needs multi-scalar regulatory approaches.”<sup>186</sup>

## VI. GENERAL RECOMMENDATIONS

### 1. Improve Localized Data on Climate-Related (Im)mobilities

While there is increasing data on climate impacts, a significant data gap exists in certain contexts.<sup>187</sup> Similarly, there is limited information on age, gender, and specific vulnerabilities.<sup>188</sup> Collecting data on climate-related (im)mobilities by local authorities would help to understand: (i) how many people are displaced in events associated with climate change; (ii) who these people are (e.g. women, children, elders, indigenous people, Raizal people); and (iii) the harms experienced considering their individual characteristics and socio-economic circumstances, etc. This data should inform laws and administrative procedures. National governments, with financial and technical support from international agencies and climate finance institutions, should aim to improve data collection and monitoring.

### 2. Prioritize Adaptation When Possible and Promote Safe Territories.

Developing safe and adapted territories as a way to materialize justice and reduce the impacts of climate change is crucial. Among the obligations of national governments regarding land planning and human rights is to make sure that people can live with dignity in the places they dwell. Adapting places to climate change will reduce the likelihood of forced displacement following environmental or climate disasters.

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186. Hari M. Osofsky, *Is Climate Change ‘International’? Litigation’s Diagonal Regulatory Role*, 49 VA. J. INT’L L., 585, 631-33, 2008.

187. Barbara Essig, *10 Ways to Tackle Climate Displacement in the Run up to 2030*, INTERNAL DISPLACEMENT MONITORING CTR. (December 2020), <https://www.internal-displacement.org/expert-opinion/10-ways-to-tackle-climate-displacement-in-the-run-up-to-2030>.

188. *Id.*

3. Develop Procedures in Place to Facilitate Planned Migration, Resettlement, and Relocation, but Keep in Mind These as Last Resort Measures.

The lack of proper procedures in place that integrate a human rights lens places people at greater levels of vulnerability. In many cases, planned relocation or resettlement will be inevitable, but these processes should be always a last resort measure as they can be very traumatic. After all, climate risk is one of multiple other risks that communities face that aggravate and stem from social vulnerability conditions. National agencies working on disaster risk management and preparedness should develop plans and procedures to facilitate planned migration, resettlement, and relocation in consultation with affected communities and other relevant stakeholders. Drawing lessons from past experiences is vital to ensure that future efforts can have the most positive outcome possible.<sup>189</sup> These plans should be integrated into national climate change plans and executed in coordination with communities, local and national entities, and international organizations.

4. Develop Legal Recognition Of Climate-Induced Displacement and Emplacement Across Domestic Legal Frameworks.

Legal recognition of climate-induced displacement might facilitate the development of laws and administrative procedures addressed to protect the rights of those displaced by climate change or who are trapped. Tapping into existing legal mechanisms could provide pathways for protecting individuals displaced by climate change. For example, many governments, like the United States, offer immigration relief based on humanitarian reasons.<sup>190</sup> Increasingly, legal scholars and practitioners are exploring the applicability of asylum and refugee law to claims by individuals displaced in the context of climate change.<sup>191</sup> Further clarity

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189. *Planned Relocations, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future*, BROOKINGS (March 14, 2014), <https://www.brookings.edu/research/planned-relocations-disasters-and-climate-change-consolidating-good-practices-and-preparing-for-the-future/>.

190. *The Use of Parole Under Immigration Law*, AM. IMMIGR. COUNCIL (Jan. 24, 2018), <https://www.americanimmigrationcouncil.org/research/use-parole-under-immigration-law>.

191. See Part III. The Relevance and Application of Refugee Law

about the ways in which legal regimes are adapting to climate change would also facilitate the work of immigration officials processing or adjudicating climate-related displacement cases.

##### 5. Reconceptualize Environmental Crises to Include Slow-Onset Weather Events

Given the role of slow-onset events on climate induced displacement, governments should not only consider rapid-onset events driving displacement but slow-onset events such as droughts, desertification, sea-level rise, and environmental degradation. For instance, the United States has historically afforded temporary protection to persons either displaced from or unable to return to nations affected by sudden crises, whether environmental disasters or armed conflict, through the Temporary Protected Status (TPS) program.<sup>192</sup> However, certain features of TPS limit its potential efficacy at addressing the needs of climate displaced people. First, TPS applies only to individuals already present in the United States at the time of designation.<sup>193</sup> Second, while people with TPS status are legally able to work, they are not placed on a path to permanent residency or citizenship by virtue of the designation itself.<sup>194</sup> Finally, U.S. federal agencies retain discretion over which nations receive TPS designation.<sup>195</sup> Because initial TPS designations last only six, twelve, or eighteen months and renewal requires the exercise of discretion, people protected by TPS are subject to a perpetually precarious immigration status.<sup>196</sup> Because climate displacement will result from both rapid and slow-onset weather events, governments should consider solutions that protect individuals facing slow-onset events as both urgent and worthy of special attention.

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192. Madeline Messick & Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief that is Less than Permanent*, MIGRATION POL'Y INST. (July 2, 2012),

<https://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent>; *Temporary Protected Status: An Overview*, AM. IMMIGR. COUNCIL (Feb. 8, 2021), <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview>.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

## 6. Expand Temporary Emergency Programs to Individuals Outside the United States

One of the challenges in securing pathways to those displaced or in danger of being displaced due to climate change is that existing protections may only apply when individuals already left their home country. For example, in the United States, the most robust temporary protection programs are offered only to individuals severely affected or displaced by environmental disasters who are already in the United States.<sup>197</sup> While these programs are crucial and should be expanded, they are nonetheless insufficient to address the needs of the vast majority of climate displaced persons worldwide, most of whom face significant barriers to entry to the United States. Thus, the government should extend protections to individuals outside the United States who face climate displacement so that they may seek relief regardless of their location or nationality. A more proactive approach would prioritize protection *before* disaster strikes.

## 7. Integrate Climate Change in the Domestic Asylum Frameworks.

National governments in consultation with non-governmental organizations and the United Nations High Commissioner for Refugees ought to issue guidelines for considering climate change displacement, where appropriate, in the current asylum framework. In the United States, there is precedent for issuance of such guidelines for claims of women to asylum and withholding of removal or non-refoulement and subsequently for claims of children.<sup>198</sup> The latest UNHCR guidance can serve as a starting place given its recognition that people displaced by climate change may meet the criteria for protection under refugee law, depending on the facts of their claims.

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197. *Temporary Protected Status and Deferred Enforce Departure*, U.S. CONG. RSCH. SERV., RS20844 Oct. 26, 2020), <https://fas.org/sgp/crs/homesec/RS20844.pdf>; Chelsea Krombel, *The Prospective Role of Temporary Protected Status: How Discretionary Designation Has Hindered the United States' Ability to Protect Those Displaced by Environmental Disaster*, 28 CONN. J. INT'L L. 153 (2012).

198. Memorandum from Phyllis Coven, to INS Office of Int'l Affairs, Considerations for Asylum Officer Adjudicating Asylum Claims from Women (May 26, 1995), <http://www.unhcr.org/refworld/docid/3ae6b31e7.html>; Memorandum from Jeff Weiss, Acting Director, to INS Office of Int'l Affairs, Guidelines for Children's Asylum Claims (Dec. 10, 1998).

## 8. Mitigation

While questions of relocation and resettlement are incredibly important, they should not be used to remove attention from the imperative to reduce greenhouse gas emissions. Ultimately, a transition away from a fossil-fuel based economy is necessary to prevent further climate change. Adaptation and mitigation are not mutually exclusive. In light of the existing ‘adaptation gap’ discussed earlier, national governments ought to prioritize decarbonization.

