Climate displacement under international law: the recent practice of human rights treaty monitoring bodies and other international judicial bodies

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Abstract: Lo "sfollamento climatico" nel diritto internazionale: la prassi recente degli organismi di monitoraggio dei trattati sui diritti umani e di altri organi giudiziari internazionali – The article examines the gradual emergence of international legal protection for persons displaced by climate-related environmental harm. It analyses recent jurisprudence and interpretative practice of international and regional human rights bodies, showing how existing legal norms – particularly the right to life and the prohibition of inhuman treatment – are increasingly applied to situations of environmental degradation and slow-onset disasters. Rather than creating a new category of "climate refugees", these bodies have expanded the scope of established obligations, especially the principle of non-refoulement, by recognising that severe environmental conditions may expose individuals to a real risk of irreparable harm. The article further explores preventive and positive duties of States, including adaptation measures and the protection of vulnerable populations. It concludes that a coherent protection framework is gradually emerging through the interpretation of existing international law, and that human rights bodies and other international judicial institutions will play a key role in further shaping it.

Keywords: Climate change; Environmental migration; Displacement; Human rights; Non-refoulement

1. Introduction

Climate change and its most problematic consequences, which include meteorological, hydrological and climatological disasters[1], affect the lives of

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[1] According to the Centre for Research on the Epidemiology of Disasters (CRED) and Munich Reinsurance Company (Munich RE), meteorological disasters are those «caused by short-lived/small to meso scale atmospheric processes», such as storms and

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millions of people worldwide and compel many to leave their homes, sometimes also prompting displacement across international borders[2]. Their adverse impacts often expose the limited adaptive capacity of affected communities, reflecting pre-existing vulnerabilities, and are very likely to affect the lives of current and future generations alike[3]. Such impacts may occur suddenly or gradually over time and may result in human, material, economic, or environmental losses, which frequently translate into violations of the victim's individual rights.

The relationship between climate change and human rights is increasingly recognised in legal doctrine, including in the decisions of human rights treaty monitoring bodies[4]. The adverse impacts of climate change and disasters have far-reaching consequences for States and societies, as well as for the well-being of individuals and the enjoyment of their rights, as acknowledged in judgments and decisions across different legal systems[5]. Such consequences may include the increased incidence, spread, and severity of new and re-emerging diseases[6]; food insecurity and famine; shrinking amounts of habitable land and drinking water; the

typhoons. Hydrological disasters are instead «caused by deviations in the normal water cycle and/or overflow of bodies of water caused by wind set-up», such as floods, landslides and avalanches. Finally climatological disasters are those «caused by long-lived/meso to macro scale processes (in the spectrum from intra-seasonal to multi-decadal climate variability)», like extreme temperatures, droughts and wildfires. See R. Below, A. Wirtz, D. Guha-Sapir, *Disaster Category Classification and peril Terminology for Operational Purposes*. Common accord Centre for Research on the Epidemiology of Disasters and Munich Reinsurance Company, Working paper, October 2009.

[2] See UNHCR, *Global Trends. Forced displacement in 2024*, 2025, www.unhcr.org/global-trends-report-2024.

[3] According to the Committee on Economic Social and Cultural Rights, «the accelerating and interconnected environmental challenges of our time, such as climate change, biodiversity loss and pollution, pose a serious threat to the ability of present and future generations to enjoy economic, social and cultural rights», CESCR, *General comment No. 27 (2025) on economic, social and cultural rights and the environmental dimension of sustainable development*, 6 November 2025, UN Doc. E/C.12/GC/27, para. 1.

[4] See, for instance, InterAmerican Court of Human Rights (IACtHR), *Advisory Opinion OC-23/17, Requested by the Republic of Colombia: The Environment and Human Rights*, 15 November 2017, stating that «[t]he Court has recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights», para. 47.

[5] The UN Human Rights Committee (HRC) recognised the complex relationship between environmental issues and human rights with reference to the right to life, maintaining that «[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life», and adding that «[t]he obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law», see HRC, *General Comment No. 36, Article 6: Right to Life*, 3 September 2019, para. 62.

[6] See UN Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on gender-related dimensions of disaster risk reduction in a changing climate*, 13 March 2018, UN Doc. CEDAW/C/GC/37, para. 66.

growing risk of exploitation and human trafficking[7]; and human, material, economic, or environmental losses, including the loss of income, housing, livelihoods, and even of life itself[8]. The negative effects of climate change and disasters are often compounded by other factors, such as poor governance, the erosion of public order, scarcity of natural resources, fragile ecosystems, demographic change, socioeconomic inequality, xenophobia, and political or religious tensions that in some cases lead to violence[9]. As a result of these phenomena, individuals may be forced to leave their homes in search of acceptable living conditions elsewhere within their country or even abroad.

This article seeks to examine recent developments regarding the forms of protection currently available under international law for two categories of individuals: those who flee their country, or are unable to return thereto, as a consequence of events related to climate change, and those who find themselves in a similar predicament, but have not crossed an international border. The very question of whether it is possible to identify a distinct legal category encompassing persons who, for such reasons, leave their place of origin – or can no longer safely return to it – has given rise to a wide range of scholarly positions. A thorough engagement with this debate, however, falls beyond the scope of the present contribution[10].

Nevertheless, before delving into the subject, a few terminological clarifications are due. The first concerns the term "environmental migrant", which is sometimes used to refer to the individuals whose status is the object of the present inquiry. According to the United Nations' International Organization for Migration (IOM), the term refers to «a person or group(s) of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are forced to leave their places of habitual residence, or choose to do so, either temporarily or permanently, and who move within or outside their country of origin or habitual residence»[11]. As this definition suggests, persons

[7] The UN Committee on the Rights of the Child, very well exemplifies the negative impact that shocks deriving from climate change might have on the daily lives of minors: «[t]he financial hardships, food and clean water shortages and fragile child protection systems brought about by such shocks undermine families' daily routines, place an extra burden on children and increase their vulnerability to gender-based violence, child marriage, female genital mutilation, child labour, abduction, trafficking, displacement, sexual violence and exploitation and recruitment into criminal, armed and/or violent extremist groups», see CRC, *General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*, 22 August 2023, UN Doc. CRC/C/GC/26, para. 35.

[8] UN General Assembly (UNGA), *Climate change and poverty. Report of the Special Rapporteur on extreme poverty and human rights*, 17 July 2019, UN Doc. A/HRC/41/39, para. 7.

[9] UN High Commissioner for Refugees (UNHCR), *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1-10-2020, para. 3.

[10] For a more comprehensive analysis, see A. Sironi, L. Guadagno, *The Protection of Migrants in Disasters*, in F. Zorzi Giustiniani, E. Sommario, F. Casolari, G. Bartolini (Eds.), *Routledge Handbook of Human Rights and Disasters*, London-New York, 2018, 308 ss.; G. Sciaccaluga, *International Law and the Protection of "Climate Refugees"*, Cham, 2020; M. Scott, *Climate Change, Disasters and the Refugee Convention*, Cambridge, 2020.

[11] International Organisation on Migration, *IOM Glossary on Migration*, 2019, 64.

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displaced as a result of climate change (often referred to as "climate migrants") constitute a subcategory of the broader category of "environmental migrants". The latter encompasses not only those affected by climate-related phenomena, but also individuals compelled to move due to sudden-onset natural hazards (such as earthquakes, volcanic eruptions, or tsunamis), technological and human-induced disasters (including large-scale oil spills or nuclear accidents) and other forms of environmental degradation. Nevertheless, for the purposes of this contribution, the two terms will be used interchangeably, given that migration is typically driven by a combination of factors, which makes it difficult to isolate a single, determinative cause of displacement.

A second clarification concerns the use of the expression "climate/environmental refugee", employed to describe a subset of environmental migrants whose movement across State borders is clearly forced in nature. The term was initially adopted by scholars and advocacy groups as a means of drawing attention to the issue and of advocating for the creation of international protection mechanisms for individuals compelled to leave their habitual homes for environmental or climate-related reasons[12]. It is now widely acknowledged, however, that the expression can be misleading. Indeed, the notion of a "climate refugee" is not a term of art in international law. Individuals forced to leave their country because of environmental or climatic processes or events would not necessarily meet the definition of a "refugee" under Article 1A(2) of the 1951 Convention Relating to the Status of Refugees[13]. According to the provision, a refugee is a person who has a «well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country». Beyond a few exceptional cases an individual displaced to a foreign State by the effects of a disaster is not being persecuted on any of the Convention's grounds. "Persecution" entails violations of human rights that are sufficiently serious owing to their nature or repetition[14]. Although adverse climate impacts (such as sea-level rise or salinization) and the increasing frequency and intensity of extreme weather events (including storms and floods) may be highly detrimental, and in some cases even fatal, they do not in themselves satisfy the legal threshold of "persecution" as currently understood in international law[15]. The very concept of "persecution" presupposes a violation of an individual's human rights

[12] For an overview and a critique of the use of the term, see R. Black, *Environmental Refugees: Myth or Reality?*, in UNHCR Working Paper No. 34 (2001), www.unhcr.org/media/environmental-refugees-myth-or-reality-richard-black.

[13] *Convention relating to the Status of Refugees*, adopted 28 July 1951, entered into force 22 April 1954; amended by the *Protocol relating to the Status of Refugees*, adopted 31 January 1967, entered into force 4 October 1967.

[14] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/1P/4/Eng/REV.2, reissued in 2019, www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967.

[15] J. McAdam, *From Economic Refugees to Climate Refugees?*, in 10 *Melbourne J. Int'l L.* 579 (2009).

attributable to direct or indirect conduct, whether by State authorities or by non-State actors whose actions are tolerated or not effectively prevented by the territorial State. Consequently, even life-threatening circumstances arising from natural disasters or environmental degradation do not, in and of themselves, establish a well-founded fear of persecution[16]. Moreover, typically environmental disasters have a general impact on the population of a given region rather than on members of specific groups, who may accordingly find it difficult to claim that they have been exposed to acts of persecution[17]. Lastly, unlike victims of persecution, people fleeing from disasters would in most cases be able to seek protection or help from their own government in the first place[18]. Therefore, the term "environmental/climate refugees" will not be used in the present article.

Against this background, this contribution will begin by examining the forms of legal protection available under international human rights law to environmental migrants who have left their State of nationality and do not wish to be sent back to their country of origin (Section 2). Drawing on a recent pronouncement of the UN Human Rights Committee (HRC), it will demonstrate why the legal instruments currently in place remain insufficient to ensure adequate protection for individuals compelled to cross international borders as a result of climate change. The analysis will then examine recent developments that appear to indicate possible avenues for addressing this legal gap. The article next turns to States' obligations to prevent and address internal displacement triggered by the consequences of climate change (Section 3). While the primary focus is on displacement driven by climate change impacts, the emerging situation of displacement resulting from climate mitigation and adaptation measures is also examined. The discussion reviews the most significant practice of international bodies, both in their individual communication procedures and in their advisory jurisdiction. By way of conclusion, the main arguments will be summarized and avenues for further legal developments will be briefly illustrated.

2. Legal protection of environmental migrants crossing an international border

As is known, the international community has long acknowledged the growing significance of environmental migration[19]. Nevertheless, States have so far failed to develop a specific legal framework granting protection

[16] A. Zimmermann, F.M. Herrmann, *Art. 1 A, para. 2 1951 Convention*, in A. Zimmermann, T. Einarsen and F.M. Herrmann (Eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, Second Edition, 2024, Oxford, 525.
[17] J. McAdam, *Displacement in the Context of Climate Change and Disasters*, in C. Costello, M. Foster, and J. McAdam (Eds.), *The Oxford Handbook of International Refugee Law*, Oxford, 2021, 836.
[18] C. Kozoll, *Poisoning the Well, Persecution, the Environment, and Refugee Status*, in 15 *Colorado J. Int'l Env'l L. Pol.* 272 (2004).
[19] See *Global Compact for Safe, Orderly and Regular Migration*, UN Doc. A/RES/73/195, 19 January 2019, Annex, Objective 2, para. 18, lett. h–l; and UNHCR, *No Escape: On the Frontlines of Climate Change, Conflict and Forced Displacement*, November 2024, www.unhcr.org/publications/no-escape-frontlines-climate-change-conflict-and-forced-displacement.

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to individuals who have left their State of origin due to the adverse impact of climate change. Several authors have observed that refugee status may, in certain limited circumstances, be applicable to movements triggered by various types of disaster events[20]. However, international human rights law may offer an additional layer of protection, as it imposes on States a prohibition to send a person to another country where they are at a real risk of serious harm[21], establishing an obligation of *non-refoulement*. Unlike refugee status, the principle does not confer specific rights and entitlements on the beneficiary, and its rationale is simply that the act of transferring a person to a situation where they face serious harm would in itself violate the sending State's own human rights obligations[22]. In addition to the Refugee Convention[23], explicit obligations of *non-refoulement* are included in the United Nations Convention against Torture[24] and in the Convention on Enforced Disappearances[25]. Moreover, regional human rights courts and United Nations Treaty Monitoring Bodies have expanded States' protection obligations to extend the application of the principle (at least) to people who, if sent to a given country, would be at risk of arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment[26]. Given the widespread acceptance the notion has received, *non-refoulement* is recognized as a principle of customary international law and may be 'ripe for recognition' as a rule of *jus cogens*[27]. The scope of the principle was at the heart of the HRC's decision in the case *Teitiota v. New Zealand*[28]. At stake was the applicant's claim that New Zealand should not send him back to Kiribati, his country of origin, as the effects of climate change there put him at risk of being exposed to life-threatening events and inhumane living conditions. Despite a disappointing outcome for the applicant, the case already had an impact at the international[29] and domestic level[30], as it has been used to define human rights obligations of host States vis-à-vis environmental migrants.

[20] A. Zimmermann, F.M. Herrmann, *Art. 1 A, para. 2 1951 Convention*, cit., 524; J. McAdam, *Climate Change, Forced Migration, and International Law*, Oxford, 2012, 39-51.
[21] C. Wouters, *International Refugee and Human Rights Law: Partners in Ensuring International Protection and Asylum*, in S. Sheeran, N. Rodley (Eds.) *Routledge Handbook of International Human Rights Law*, Abingdon, 2013, 231.
[22] E. Lauterpacht, D. Bethlehem, *The Scope and Content of the Principle of Non-refoulement: Opinion*, in E. Feller, V. Türk, F. Nicholson (Eds.), *Refugee Protection in International Law, UNHCR's Global Consultations on International Protection*, Cambridge, 2003, 87.
[23] *Convention relating to the Status of Refugees*, art. 33.
[24] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted on 10 December 1984, entered into force 26 June 1987, art. 3.
[25] *Convention for the Protection of All Persons from Enforced Disappearance*, adopted on 20 December 2006, entered into force 23 December 2010, art. 16.
[26] J. McAdam, *Complementary protection*, in C. Costello, M. Foster, and J. McAdam (Eds.), *The Oxford Handbook of International Refugee Law*, Oxford, 2021, 667.
[27] C. Costello, M. Foster, *Non-Refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test*, in 46 *Netherlands YB Int'l L.* 273-327 (2016).
[28] HRC, *Ioane Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016, 24 October 2019.
[29] See for instance the advisory opinions rendered by the IACtHR and the ICJ on State obligations with respect to the climate emergency, *infra*, para. 2.2.
[30] F. Perrini, *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della corte di cassazione*, in *Ord. internaz. Dir. um.*, 2021, 8, 349.

2.1 The case law of international treaty monitoring bodies: the Human Rights Committee's decision in Teitiota v. New Zealand

The HRC's pronouncement in the *Teitiota* case was widely welcomed as a landmark case[31], and yet its outcome is very much in line with the Committee's recent pronouncements on matters of *non-refoulement*. The applicant was a citizen of the small-island State of Kiribati located in the central Pacific Ocean. For the great majority, the livelihood in Kiribati is at the subsistence level and heavily depends on natural resources. The situation is particularly dire in South Tarawa, the area of origin of Mr Teitiota[32]. Over the last three decades the island has experienced a rapid population growth, uncontrolled urbanisation, and limited infrastructure development. All of these factors were exacerbated by the effects of both sudden-onset environmental events (storms) and slow-onset processes (sea-level rise).

In light of the hardship they had to endure, Mr Teitiota and his wife migrated to New Zealand in 2007 and remained there after their visa expired in October 2010. Although their three children were born in New Zealand, none were entitled to New Zealand citizenship. In May 2012 Mr Teitiota applied for refugee status under section 129 of the Immigration Act 2009[33] or for protected person status under section 131[34], claiming that he had been forced to leave Kiribati by the life-threatening effects of sea-level rise. He argued that conditions on Tarawa had become increasingly unstable and

[31] For comments on the decision, see F. Ippolito, *Environmentally Induced Displacement: When (Ecological) Vulnerability Turns into Resilience (and Asylum)*, in 20 *Int'l J.L. Context* 74 (2024); M. Di Filippo, *Garanzia di non-refoulement per i migranti ambientali e riconoscimento della protezione complementare: un contributo al dibattito*, in F. Amato, V. Carofalo, A. Del Guercio, A. Fazzini, V. Grado, E. Imparato, A. Liguori (Eds.), *Climate change, human rights and international migration - Cambiamento climatico, diritti umani e migrazioni internazionali*, Naples, 2025, 169–203; E. Sommario, *When climate change and human rights meet: A brief comment on the UN Human Rights Committee's Teitiota decision*, in 77 *QIL* 51 (2021); J. McAdam, *Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-refoulement*, in 114 *AJIL* 709 (2020). Amongst the many scholars providing analysis and criticism on the *Teitiota* decision are: G. Le Moli, *The Human Rights Committee, Environmental Protection and the Right to Life*, in 69 *ICLQ* 735 (2020); V. Rive, *Is an Enhanced Non-refoulement Regime underthe ICCPR the Answer to Climate Change-related Human Mobility Challenges in the Pacific? Reflections on Teitiota v New Zealand in the Human Rights Committee'*, in 75 *QIL* 7; S. Behrman, A. Kent, *The Teitiota Case and the Limitations of the Human Rights Framework*, in 75 *QIL* 25 (2020); A. Maneggia, *Non-refoulement of Climate Change Migrants: Individual Human Rights Protection or 'Responsibility to Protect'? The Teitiota Case Before the Human Rights Committee*, in *Dir. Um. Dir. Internaz.*, 2020, 14, 635; L. Imbert, *Premiers éclaircissements sur la protection internationale des "migrants climatiques"*, in *La Revue des Droits de l'Homme*; A. Prechtl, *Die Auffassungen des UN-Menschenrechtsausschusses vom 24.10.2019 in der Sache Teitiota/Neuseeland, CCPR/C/127/D/2728/2016*, in 58 *Archiv des Völkerrechts* 366 (2020).

[32] IPCC, *AR5 Climate Change 2014: Impacts, Adaptation, and Vulnerability*, Geneva, 2014, 1623.

[33] Section 129 refers to the test for refugee status set out in the 1951 Refugee Convention. The full text of the act is available at www.legislation.govt.nz/act/public/2009/0051/latest/whole.html#DLM1440804.

[34] Section 131 offers complementary protection based on art 6 (right to life) of the *International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force 23 March 1976 (ICCPR).

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precarious. Fresh water had grown scarce as a result of saltwater intrusion and significant overcrowding, while efforts to counter sea-level rise had proved largely ineffective. In addition, coastal erosion had reduced available land, contributing to a severe housing crisis and fuelling land disputes that had resulted in multiple fatalities. In his view, Kiribati had therefore become an untenable and increasingly dangerous environment for himself and his family.

In August 2012, a *Refugee and Protection Officer* rejected his claim and, in June 2013, the *Immigration and Protection Tribunal* denied his appeal[35]. Besides asserting that he was not a "refugee" as defined by the 1951 Refugee Convention, the Tribunal concluded that no substantial grounds existed for believing that he or any of his family members would be in danger of a violation of their right to life if expelled from their country of origin. According to the tribunal, the applicant had failed to establish that there was a sufficient degree of risk to his life in Kiribati. His application for leave to appeal was later denied by the *New Zealand High Court* in 2013[36], the *New Zealand Court of Appeal* in 2014[37], and finally by the *New Zealand Supreme Court* in 2015[38].

Having exhausted domestic remedies, Mr Teitiota submitted a communication to the HRC in September 2015, alleging that his removal to Kiribati by New Zealand exposed him to a real risk to his life, in violation of Article 6 of the ICCPR, and that the national authorities had failed to properly assess the risks inherent in his deportation. He contended that at least two specific threats to his life awaited him in Kiribati. First, sea-level rise had drastically reduced the availability of habitable land, leading to violent land disputes that placed his life in danger. Second, the country was undergoing an irreversible process of environmental degradation which would similarly endanger his life upon return[39].

In developing its reasoning, the HRC recalled its most recent General Comment on the right to life[40], describing the standard it would employ to assess the scope of relevant state obligations. In order for a duty of *non-refoulement* to kick in, there need to be «substantial grounds for believing that a real risk exists» that an individual's right to life would be violated[41]. According to the GC, the risk must be «*personal in nature* and cannot derive merely from the general conditions in the receiving State, except in the *most extreme cases*»[42]. Based on this test, Mr Teitiota should have proven that a)

[35] *AF (Kiribati)* [2013] NZIPT 800413 (N.Z.).
[36] *Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2013] NZHC3125. The High Court found that the impacts of climate change on Kiribati did not qualify the appellant for refugee status because he was not subjected to persecution as required for the 1951 Refugee Convention.
[37] *Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 173.
[38] *Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2015] NZSC 107.
[39] HRC, *Teitiota*, cit., para 3.
[40] HRC, *General comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life* (30 October 2018), UN Doc CCPR/C/GC/36.
[41] *Ibid.*, para 30.
[42] *Ibid.* (emphasis added). Indeed, already in its 2004 *General Comment on General Legal Obligations Imposed on States Parties to the Covenant*, the HRC considered that States

he would be personally affected by a serious individualized risk; or b) that the situation he would be facing would amount to an 'extreme case'. In exemplifying the typology of "extreme cases", the HRC stated that no personal risk would have to be proved if the individual at stake were to be deported «to an extremely violent country in which he has never lived, has no social or family contacts and cannot speak the local language»[43]. In light of the difficulty of establishing that he faced a personal risk to his right to life, Mr Teitiota was therefore required to demonstrate that the situation in Kiribati corresponded to this description. Hence, even assuming that Kiribati could be considered as "an extremely violent country", additional elements which would exacerbate the vulnerability of Mr Teitiota and his family would have to be present.

Yet the key passage in the Committee's reasoning revolved around the risk of harm required to trigger an obligation of *non-refoulement*. In assessing the evidence submitted by Mr Teitiota, the HRC identified four potential sources of harm that could endanger his life in Kiribati: (1) a general situation of violence arising from overcrowding and land disputes[44]; (2) a diminished supply of potable water, given that freshwater lenses had been depleted through saltwater intrusion caused by sea-level rise[45]; (3) a lack of means of subsistence, as the applicant's crops had been contaminated by salt deposits[46]; and (4) risks associated with sudden-onset disasters linked to climate change, including severe flooding and breaches of sea walls[47].

Addressing the first three elements, the Committee found that Mr Teitiota had not shown a real, personal, and reasonably foreseeable threat to his life stemming from sporadic land-related violence or from water scarcity, as he had not demonstrated that access to fresh water was dangerously inadequate. Likewise, it concluded that subsistence was still possible in Kiribati, either through cultivating crops, alternative employment, or State assistance, so this factor did not amount to a life-threatening risk[48]. New Zealand had therefore not erred in concluding that there was no «real and reasonably foreseeable risk that he would be exposed to a situation of indigence, deprivation of food, and extreme precarity that could threaten his right to life, including his right to a life with dignity».[49] Lastly, regarding the threats posed by disaster-related events, the Committee recognised that, absent robust national and international action, the effects of climate change in certain States may expose individuals to violations of their rights under the Covenant, thereby engaging the *non-refoulement* obligations of the States where those individuals seek protection[50]. It is further accepted that living

parties have an obligation not to return to a «real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant», HRC, *General comment No 31 (2004)* (29 March 2004), UN Doc CCPR/C/21/Rev.1/Add. 1326, para 12.

[43] HRC, *General comment No 36*, cit., para 30.

[44] HRC, *Teitiota*, cit., para 9.7.

[45] *Ibid.*, para 9.8.

[46] *Ibid.*, para 9.9.

[47] *Ibid.*, para 9.10.

[48] For a more detailed analysis of the Committee's arguments, see E. Sommario, *When climate change and human rights meet*, cit., 58–60.

[49] HRC, *Teitiota*, cit., para 9.9.

[50] *Ibid.*, para 9.11.

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conditions in a State likely to be submerged by the sea may become incompatible with the right to life with dignity even before the threat fully materialises. However, since such an outcome was not expected for at least 10 to 15 years, this timeframe «could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population»[51]

What emerges from the decision's analysis is that a State's non-refoulement obligations under the ICCPR are triggered only where the harm faced by the person in the destination country meets a rather high level of severity. Commentators have argued that by assessing each risk factor independently, the HRC has ignored the fact that their combined likelihood might indeed give origin to the 'real risk of irreparable harm' that would have triggered a non-refoulement obligation by New Zealand[52]. The severity test should instead be conducted on the basis of a "cumulative" assessment of the combined impact of all the pertinent harms faced by the person due to the conditions on return, and a decision-maker must not «artificially separate out these elements and assess each individually against the severity threshold»[53].

In general terms, the decision was somehow disappointing, as the Committee was not ready to find in favour of the applicant, even in the rather unique situation that was affecting his State of origin. The small size and conformation of the territory of Kiribati, the very significant rise in the number of inhabitants, the adverse consequences of climate change on the livelihoods of its population, and the negligible impact of government measures in addressing them should probably have prompted a different outcome. One is left with the impression that only circumstances approaching starvation or situations marked by extreme and indiscriminate violence would be sufficient to trigger a State party's *non-refoulement* obligations. However, as noted by one of the two dissenting Committee members, it would 'be counterintuitive to the protection of life, to wait for deaths to be very frequent and considerable in order to consider the threshold of risk as met'[54]. Indeed, the majority opinion makes clear that conditions 'may become incompatible with the right to life with dignity before the risk is realized'[55], which suggests that it should not be necessary for conditions to deteriorate to the point of elevated mortality rates or widespread violence before the *non-refoulement* obligation is triggered.

2.2 The advisory opinions delivered by the Inter-American Court of Human Rights and by the International Court of Justice

[51] Ivi.
[52] J. McAdam, *Protecting People Displaced by the Impacts of Climate Change*, cit., 714.
[53] D. Cantor, B. Burson, B. Aycock, N. Feith Tan, T. Anastasiou, E. Arnold-Fernandez, C. Field, C. Hansen-Lohrey, W. Kälin, G. Kane, S. Miron, M. Rao, B. Sánchez Mojica, C. Scissa, S. Weerasinghe, and T. Wood, *International Protection, Disasters and Climate Change*, in 36 *Int'l J. Refugee L.* 194 (2024).
[54] HRC, *Teitota*, cit., Annex 2, Individual opinion of Committee member Duncan Laki Muhumuza (dissenting), para 5.
[55] *Ibid.*, para. 9.11.

While inter-state applications to human rights treaty monitoring bodies or other international tribunals concerning State obligations with respect to environmental migrants have not yet been filed, a number of courts have been seized with requests to render advisory opinions[56] on questions that were entirely relevant for the matter at hand. In January 2023, the Republic of Chile and the Republic of Colombia submitted a request for an advisory opinion to the Inter-American Court of Human Rights, concerning State obligations in response to the climate emergency within the framework of international human rights law. After lengthy deliberations, the IACtHR delivered its decision in May 2025[57]. Having devoted a substantial part of its reasoning to the factual background of climate change and its effects on individuals and the environment they inhabit, the Court then turned to the interpretation of the legal provisions[58] that were the purpose of the request, determining the scope of general obligations in relation to the most relevant substantive and procedural rights. In doing so, part of its analysis focused on the right to freedom of movement and residence, which also includes the right not to be expelled to a State where the enjoyment of basic rights is at risk.

In this context, the Court first found that member States must «refrain from any conduct that could expose people in the process of displacement to considerable risks that endanger their lives, physical integrity or dignity»[59]. To that end, the Court suggests concrete measures that should be implemented by national authorities, such as designing and carrying out strategies to prevent possible risks in the transit routes; establish temporary shelters and safe resettlement zones; train the personnel responsible for providing assistance and protection to displaced persons to prevent abuse of authority and other human rights violations[60]. In this context, States must also ensure that displaced persons receive, without discrimination, adequate humanitarian assistance and access to essential services, such as food, water, basic sanitation, medical and health care, and education[61].

[56] While advisory opinions in international law are not legally binding, they carry significant legal and moral weight, clarifying and developing international law. They serve as authoritative interpretations of a State's obligations under international law and are often mentioned by States, organizations and courts as a source of guidance in interpreting the precise scope of legal obligations. See H. Thirlway, *Advisory Opinions*, in R. Wolfrum (Ed.), *Max Planck Encyclopedia of Public International Law*, 2006. Some contend that advisory opinions delivered by the IACtHR are in fact of a binding nature, see J.C. Hitters, *Are the pronouncements of the Commission and the Inter-American Court of Human Rights binding? (control of constitutionality and conventionality*), in 10 *Ibero-American J.L. Const.* 131 (2008).

[57] IACtHR, *Advisory Opinion AO-32/25, Requested by the Republic of Chile and the Republic of Colombia: Climate Emergency and Human Rights*, 29 May 2025.

[58] The legal instruments on which the IACtHR had to base its decision where the *American Convention on Human Rights*, adopted on 22 November 1969, and entered into force on 18 July 1978; the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* ("Protocol of San Salvador"), adopted on 17 November 1988, and entered into force on 16 November 1999; and the *American Declaration of the Rights and Duties of Man*, adopted on 2 May 1948.

[59] IACtHR, *Advisory Opinion AO-32/25*, para. 428.

[60] Ivi.

[61] Indeed, the provision of humanitarian assistance to disaster-affected individuals is a tool through which States implement their human rights obligations vis-à-vis affected

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Looking more specifically at individuals displaced internationally, the IACtHR developed an innovative legal framework of significant importance. According to the Court:

States must establish an appropriate regulatory framework that provides effective legal and/or administrative mechanisms at the domestic level to guarantee the legal and humanitarian protection of persons displaced across international borders due to the impacts of climate change.[62]

By means of this statement, the IACtHR has become the first human rights treaty body to expressly require member States to establish effective legal and administrative mechanisms for the protection of environmental migrants displaced across international borders. The Court adopts an approach that also takes into account the temporal dimensions inherent in climate-related displacement. Short-term measures applicable in the immediate aftermath of a disaster should include "humanitarian visas" and "temporary residence permits", that should be effective in ensuring humanitarian protection to the victims. Longer-term arrangements should instead envisage long-lasting protection, akin to that granted by "refugee status", which must be effective in providing protection against *refoulement*[63].

A few months later, the International Court of Justice (ICJ) rendered its advisory opinion on the Obligations of States in respect of Climate Change[64]. The opinion was requested by the UN General Assembly, after years of intense campaigning[65]. The request formulated two specific questions, inquiring about the content and scope of states' legal obligations to protect the climate system and the environment; and the legal consequences associated with said obligations, considering the significant harm to the climate system and the environment[66]. Quoting the HRC's Teitiota decision, the World Court observed that «environmental degradation can compromise effective enjoyment of the right to life», and, if severe, it can lead to a violation of the same right[67]. With respect to displacement caused by climate change, the ICJ acknowledged that it is among the 'severe and far-reaching' consequences of climate change[68]. It also noted that 'sea level rise is likely to have adverse consequences for States, particularly small island States and low-lying coastal States, potentially leading to the forced displacement of populations within their territory or

communities. See E. Sommario, *Diritti e obblighi internazionali degli stati in materia di risposta ai disastri*, Naples, 2005, 99.

[62] IACtHR, *Advisory Opinion AO-32/25*, para. 433.

[63] Ivi.

[64] ICJ, *Obligations of States in respect of climate change*, Advisory Opinion, 23 July 2025.

[65] UNGA, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, UN Doc. A/RES/77/276, 4 April 2023. The campaign was spearheaded by the Republic of Vanuatu, supported by a coalition of states and civil-society actors, see S. Webb, G. Bajaj, C. Donse, C. Martin, M. Thomas, C. Robertson, R. Arthur, B. Crowley, P. Adeniyi and E. Sthoeger, *Countdown to the ICJ's landmark Climate Change Advisory Opinion: A recap of key arguments*, 17 July 2025, www.dlapiper.com/en-us/insights/publications/2025/07/countdown-to-the-icjs-landmark-climate-change-advisory-opinion.

[66] *Ibid.*, para. 1.

[67] *Ibid.*, para. 377.

[68] *Ibid.*, para. 73.

across borders, as well as affecting the territorial integrity of States and their permanent sovereignty over their natural resources'[69]. However, its most important contribution for our purposes is summed up in a small paragraph, which reads:

The Court considers that conditions resulting from climate change which are likely to endanger the lives of individuals may lead them to seek safety in another country or prevent them from returning to their own. In the view of the Court, States have obligations under the principle of non-refoulement where there are substantial grounds for believing that there is a real risk of irreparable harm to the right to life in breach of Article 6 of the ICCPR if individuals are returned to their country of origin[70].

As Professor Scheinin wrote, «[w]e can expect this paragraph to be quoted before domestic courts and tribunals, regional human rights courts and UN human rights treaty bodies, other international judicial or quasi-judicial institutions, and of course in academic and political discourse».[71] What is significant is that the Court has unequivocally affirmed the applicability of established legal principles to the conduct of States, including the principle of *non-refoulement*, in the context of climate-related harm. A particularly significant implication of the Advisory Opinion lies in its potential to strengthen a dignity-based understanding of the principle of *non-refoulement*. In particular, the Court expressly referred to the "right to life with dignity", echoing language already developed in *Teitiota*[72]. The ICJ's stance might be reinforcing the view that *non-refoulement* obligations are engaged not only where return would expose an individual to imminent death or severe physical harm, but also where environmental degradation or climate-induced conditions render a dignified life unattainable. Such an approach would broaden the range of climate-related circumstances capable of triggering protection, and counter the narrow, survival-based thresholds that have often limited recognition of climate-related harm in domestic asylum procedures.

3. States' obligations to prevent and address climate-related internal displacement

While climate-related cross-border mobility and consequent claims for international protection are expected to increase in the coming decades, the vast majority of individuals affected by climate change will endeavour to remain in their homes wherever possible, or will experience internal displacement, whether temporary or permanent, to areas less exposed to climate-related hazards[73]. This is particularly likely for local communities

[69] *Ibid.*, para. 357.
[70] *Ibid.*, para. 378.
[71] M. Scheinin, *Right to Life in the ICJ Advisory Opinion on Climate Change*, in *EJIL:Talk!*, 12 September 2025, www.ejiltalk.org/right-to-life-in-the-icj-advisory-opinion-on-climate-change/.
[72] ICJ, *Obligations of States in respect of climate change*, cit., para. 377.
[73] Global data on internal displacement are available from the Internal Displacement Monitoring Centre: www.internal-displacement.org/database/displacement-data/. See also UNHCR, *Global Trends. Forced displacement in 2024*, 2025, www.unhcr.org/global-trends-report-2024.

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residing in highly exposed areas, such as coastal regions facing sea-level rise, the Arctic, or drylands, and increasingly, also in parts of the Global North[74]. A growing body of authoritative international documents and statements affirms that States bear positive obligations to protect individuals and communities in such circumstances[75]. International judicial and quasi-judicial bodies have begun to engage with these issues through individual complaints and in the exercise of their advisory functions.

At the opposite end of the spectrum, the measures adopted by States for both mitigation and adaptation[76] purposes are themselves increasingly likely to generate situations of displacement. Energy transition projects, such as wind farms or large-scale afforestation initiatives, may compel local communities to relocate. Similarly, adaptation and disaster risk reduction measures may involve the relocation of individuals and communities facing acute exposure to climate-related hazards, for instance in the context of riverine flood protection[77]. Such a scenario engages primarily States' negative obligations under international human rights law to refrain from unjustified interference with the rights of individuals and communities under their jurisdiction, alongside the positive obligations outlined above. These situations are also emerging before judicial and quasi-judicial bodies and are likely to feature with increasing frequency in future proceedings.

3.1 Internal displacement caused by climate change impacts

3.1.1 Individual complaints

In a number of individual complaints submitted to international human rights bodies concerning insufficient climate mitigation or adaptation action, applicants have invoked their actual or imminent risk of displacement to substantiate alleged violations of States' positive obligations under human rights treaties.

Displacement, and the threat thereof, was addressed in the very first climate-related complaint brought before an international body, filed with the Inter-American Commission on Human Rights (IACommHR) on behalf

[74] See J. Birkmann et al., *Poverty, Livelihoods and Sustainable Development*, in H.-O. Pörtner, et al. (Eds.), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2022, Cambridge and New York, 1171.

[75] See HRC, *General Comment No. 36*, cit.; CRC, *General Comment No. 26*, cit.; *Report of the Special Rapporteur on the human rights of internally displaced persons, P. Gaviria Betancur*, UN Doc A/80/212, 21 July 2025.

[76] The IPCC defines mitigation as «the human intervention to reduce emissions or enhance the sinks of greenhouse gases». Adaptation is instead defined as «the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities». See IPCC, *Annex I: Glossary*, in A. Reisinger et al. (Eds.) *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Geneva, 2023, 126.

[77] See G. Gini et al., *Navigating tensions in climate change-related planned relocation*, in 53 *Ambio* 1262–1266 (2024). See also J. McAdam and J. Ferris, *Planned Relocations in the Context of Climate Change*, in 4 *Cambridge J. Int'l Comp. L.* 137 (2015).

of the Inuit People in 2005[78]. In their submission, the applicants highlighted a series of climate change impacts on their lives and traditional way of living in the Arctic, including the fact that they were facing, or threatened with, forced relocation[79]. They contended that such circumstances interfered with a range of rights protected under the American Convention on Human Rights (ACHR) and the American Declaration of the Rights and Duties of Man, including the rights to life, residence and movement, culture, property, health, physical integrity, and personal security. Accordingly, they argued that the United States was internationally responsible for these human rights violations as the largest emitter of greenhouse gases. Among other remedies, the Inuit requested that the State implement a plan to protect them from climate change impacts, in coordination with the affected communities[80]. As is well known, the complaint was dismissed, with the IACommHR providing no detailed reasoning for its decision[81]. Nevertheless, the *Inuit petition* had both direct and indirect positive effects, within the Inter-American system as well as at the international level, serving as a source of inspiration for subsequent climate-related complaints.

Since the dismissal of the *Inuit petition*, more than fifteen years passed before an international human rights body, for the first time, found human rights violations linked to insufficient climate action based on an individual complaint. This occurred with the Views adopted by HRC in 2022 in the case of *Daniel Billy et al v Australia*[82]. The complaint concerned the impacts of climate change on the human rights of a group of Indigenous inhabitants of the Torres Strait Islands. The applicants argued that sea-level rise had already caused significant harm to their low-lying islands, including flooding, coastal erosion and soil salinisation, which had materially affected their traditional way of life. They further contended that, absent urgent action, some islands would become uninhabitable within 10–15 years.

The threat of forced displacement – in this case, internal displacement to mainland Australia – featured prominently in the applicants' submissions. The prospect of having to relocate outside the islands constituted a primary concern, as supported both by scientific projections of escalating climate impacts and by evidence submitted by the applicants, who linked the possibility of relocation to a series of current and future human rights infringements. Their fears related in particular to the loss of culture,

[78] *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States* ("*Inuit Petition*"), December 2005, available at http://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/. For a comment, see: S. Jodoin, S. Snow, A. Corobow, *Realizing the right to be cold? Framing processes and outcomes associated with the Inuit Petition on human rights and global warming*, in 54 *Law Soc. Rev.* 168 (2020).

[79] *Ibid.*, 3-4.

[80] *Inuit Petition*, cit., *Request for relief*, para 118.

[81] *Inuit Petition*, cit., *Letter from the IACommHR* (A.E. Dulitzky), November 2006.

[82] HRC, *Daniel Billy et al. v. Australia*, Communication n 3624/2019, Views of 22 September 2022, UN Doc. CCPR/C/135/ D/3624/2019. For a comment see: R. Luporini, *Climate change litigation before international human rights bodies: insights from Daniel Billy et al. v. Australia (Torres Strait Islanders Case)*, in 3 *Ital. Rev. Int. Comp. Law* 238 (2023).

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tradition, and way of life that displacement would entail, given the fundamental connection between their land and their ability to practise and transmit their cultural heritage[83].

The HRC held that Australia's failure to adopt "timely adequate" adaptation measures violated the rights to private, family and home life and to culture, protected under Articles 17 and 27 of the ICCPR, respectively. In its Views, the Committee identified the risk of forced relocation to the mainland, and the consequent loss of cultural attachment and traditional ways of living, as a central basis for the finding of human rights violations[84].

The Committee recalled Australia's obligation to provide an effective remedy, including full reparation to the victims, and to take steps to prevent similar violations in the future. This entails providing adequate compensation for the harm suffered, conducting consultations with affected communities, continuing to implement effective protection measures, and monitoring and reviewing the effectiveness of such measures[85].

Conversely, the HRC did not find a violation of Article 6 on the right to life. Referring to its reasoning in *Teitiota v New Zealand*, it held that a 10–15-year time frame, as suggested by the authors, could allow for intervening action by the State party to take affirmative measures to protect, and if necessary to relocate, the alleged victims. Accordingly, the Committee concluded that the applicants had not demonstrated a "real and reasonably foreseeable risk" of physical endangerment or extreme precarity threatening their right to life[86]. It therefore appears that the risk of forced relocation may already be sufficient to constitute a violation of the rights to private life, home, and culture, whereas the right to life is subject to a more stringent threshold. This conclusion attracted, however, some disagreement within the Committee, as evidenced by several dissenting opinions[87].

As is well known, the European Court of Human Rights (ECtHR) has also received a growing number of climate change-related applications[88]. However, at present, neither the experience of climate-related displacement nor the imminent risk thereof features as a central element in any of these cases. This may reflect the fact that, for the moment, climate-related displacement is occurring most acutely in regions of the world that are more highly exposed to climate impacts or have comparatively lower capacity to cope. At the same time, situations of unavoidable mobility are increasingly

[83] *Daniel Billy et al. v. Australia*, Communication under the optional protocol to the international covenant on civil and political rights, 13 May 2019, Part VI, Facts of the claim, available at www.climatecasechart.com/document/daniel-billy-and-others-v-australia-torres-strait-islanders-petition_191e. See also *ibid.*, paras 2.2–2.6. Australia, for its part, argued that any allegation of relocation was speculative.
[84] *Ibid.*, para 8.14
[85] *Ibid.*, para 11.
[86] *Ibid.*, para 8.6.
[87] *Ibid.*, Annex i, Individual opinion by Committee Member Duncan Laki Muhumuza; Annex iii, Joint opinion by Committee Members Arif Bulkan, Marcia V.J. Kran and Vasilka Sancin (partially dissenting); Annex iv, Opinión individual del miembro del Comité Carlos Gómez Martínez; Annex V, Opinión individual del miembro del Comité Hernán Quezada (parcialmente disidente).
[88] ECtHR Press Unit, *Factsheet - Climate Change*, April 2024. See also, among others: C. Heri, *Climate Change before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability*, in 33 *Eur. J. Int'l L.* 925 (2022).

expected to arise within the territories of States that are Parties to the European Convention on Human Rights. These risks are not confined to remote areas such as the extreme North, where climate change is already threatening the Sami people's traditional way of life[89], but extend across Europe. Local communities affected by drought, water scarcity, coastal erosion, or other accelerating climate impacts may soon find themselves facing a heightened, and in some instances potentially imminent, risk of displacement[90].

When such claims eventually reach Strasbourg, the ECtHR is likely to rely on the standards it has already elaborated in its jurisprudence. First, the Court has already developed case law on the applicability of Article 1 of Protocol No. 1 (the right to property) and Article 8 (the right to respect for private and family life) to internally displaced persons in different contexts[91]. Second, it has built a robust body of environmental jurisprudence establishing States' positive obligations to protect individuals from environmental risks by adopting all appropriate measures[92]. This reasoning was also applied, for instance in *Budayeva et al. v. Russia*, to a situation of disaster triggered by a natural hazard[93]. Third, the Court's recent climate rulings, especially *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland*, further reinforce the principle that States must adopt adequate measures to safeguard Convention rights against the foreseeable impacts of climate change[94]. This necessarily implies duties to prevent, minimise, or address climate displacement where possible. At the admissibility stage, the ECtHR has articulated a tailored and more stringent threshold for individual applicants in climate cases, requiring them to demonstrate a "high intensity of exposure" and a "pressing need" for "individual protection"[95]. At the same

[89] E. Benke, *How climate change is altering Sami language*, 29 February 2024, www.bbc.com/future/article/20240228-climate-change-is-altering-this-arctic-language.

[90] See for instance: M. Zachariah et al., *Climate Change Key Driver of Extreme Drought in Water Scarce Sicily and Sardinia*, in *World Weather Attribution*, 4 September 2024, www.worldweatherattribution.org/climate-change-key-driver-of-extreme-drought-in-water-scarce-sicily-and-sardinia/#:~:text=Agricultural%20expansion%2C%20especially%20in%20Sicily,severe%20droughts%20since%20records%20began; L. Tondo, *"The Land is Becoming Desert": Drought Pushes Sicily's Farming Heritage to the Brink*, in *The Guardian*, 19 August 2024, www.theguardian.com/environment/article/2024/aug/19/the-land-is-becoming-desert-drought-pushes-sicilys-farming-heritage-to-the-brink.

[91] See, among others, ECtHR, no. 15318/89, *Loizidou v. Turkey* (Merits), 18-12-1996; no. 13216/05 [GC], *Chiragov and Others v. Armenia*, 16-06-2015; no. 40167/06 [GC], *Sargsyan v. Azerbaijan*, 16-06-2015.

[92] See among others: ECtHR, no. 16798/90, *Lopez Ostra v. Spain*, 9-12-1994; no. 14967/89, *Guerra and others v. Italy*, 19-2-1998; no. 46117/99, *Taskin and others v. Turkey*, 10-11-2004; no. 48939/99, *Öneryildiz v. Turkey*, 30-11-2004.

[93] ECtHR, no. 15339/02, 21166/02, 20058/02, 11673/02 e 15343/02, *Budayeva v. Russia*, 20-03-2008. See also no.17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, *Kolyadenko v. Russia*, 9-07-2012.

[94] ECtHR, [GC] 53600/20, *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland*, 9-04-2024. In *KlimaSeniorinnen*, the Court found that Switzerland had violated Article 8 of the Convention, holding that "critical lacunae" in the State's overall mitigation policy amounted to a breach of the applicants' right to respect for their private and family life.

[95] *Ibid.*, para 487.

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time, it has lowered the threshold for standing of NGOs[96], which will likely play an increasingly prominent role as applicants in future climate-related complaints, including those concerning climate-induced displacement.

3.1.2 Advisory opinions

In recent years, alongside a surge in individual complaints, several international courts and tribunals have been asked to clarify States' obligations on climate change through advisory proceedings[97]. The International Tribunal for the Law of the Sea (ITLOS)[98], the IACtHR[99] and, most recently, the ICJ[100] have all issued advisory opinions on the matter. The African Court on Human and Peoples' Rights (ACHPR) is also expected to deliver its opinion in the near future, following a request lodged in 2025[101]. Across these proceedings, questions relating to climate-induced mobility and displacement have been raised with a certain prominence.

As highlighted above, the IACtHR addressed questions related to displacement in considerable detail in its *Advisory Opinion on Climate Emergency and Human Rights*, examining which obligations and principles should guide States in addressing involuntary human mobility exacerbated by climate change. In doing so, the Court was able to build on its previous pronouncements. While the IACommHR dismissed the 2005 Inuit petition at an early procedural stage, the IACtHR has developed a robust body of jurisprudence, also based on the rights of Indigenous peoples and local communities, recognising that the freedom of movement and residence under Article 22 of the ACHR protects individuals against forced internal displacement and against being compelled to abandon their lawful place of residence[102]. The IACtHR's earlier *Advisory Opinion on human rights and the environment*, delivered in 2017, had likewise recognised the heightened vulnerability of people displaced by environmental degradation and climate impacts, while underscoring the close interdependence between

[96] *Ibid.*, para 499.
[97] See, among others, M.A. Tigre, A. Rocha (Eds.), *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis*, Leiden, 2025.
[98] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024. For a comment, see B.E. Klerk, *The ITLOS Advisory Opinion on Climate Change: Revisiting the Relationship between the United Nations Convention on the Law of the Sea and the Paris Agreement*, in 34 *RECIEL* 181 (2025).
[99] IACtHR, *Advisory Opinion AO-32/25*, cit.
[100] ICJ, *Obligations of States in respect of climate change*, cit.
[101] *A Request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Obligatons of States with Respect to the Climate Change Crisis*, 2 May 2025, available at www.climatecasechart.com/documents/request-for-an-advisory-opinion-on-the-human-rights-obligations-of-african-states-in-addressing-the-climate-crisis-petition_68af.
[102] See among others IACtHR, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, 6 February 2020; *Case of the Moiwana Community v. Suriname*, 15 June 2005, paras 119-120; *Case of the "Mapiripán Massacre" v. Colombia*, 15 September 2005, para 188; *Case of Alvarado Espinoza et al. v. Mexico*, 28 November 2018, para 274.

environmental protection, human rights, climate-induced mobility and human security[103].

In its new Advisory Opinion, the Court first outlined the different pathways through which climate change can give rise to forced mobility and then articulated the corresponding State obligations under both the right to private and family life and the freedom of movement and residence. Under the right to private and family life, the IACtHR stressed that States must take proactive measures to prevent the fragmentation of family units and mitigate the human consequences of climate-related displacement. This includes, inter alia: ensuring that mobility-related policies incorporate mechanisms to preserve family unity; maintaining databases to facilitate reunification where separation occurs; establishing protocols for identifying, registering, and protecting unaccompanied children; and guaranteeing access to health, psychosocial, legal and social support services in resettlement areas. States must also protect personal and biometric data collected during displacement processes[104].

Regarding freedom of movement and residence, the IACtHR held that States must adopt enhanced due diligence measures to prevent displacement linked to disasters and climate impacts. Where displacement cannot be avoided, States are required to establish regulatory, institutional and budgetary frameworks capable of addressing the needs of affected populations, taking into account intersecting vulnerabilities before, during and after displacement. Assistance mechanisms must respect procedural rights, including access to information, participation, prior notice, and, crucially, the need to obtain the free, informed agreement of affected communities before relocation or return, except in cases of unavoidable and imminent danger. The IACtHR further recalled that resettlement must comply with international standards, including the requirement that alternative land or housing be of equal or better quality, culturally appropriate, secure, and adequately serviced. For Indigenous peoples, relocated land must match the quality and legal status of the territory previously occupied and allow for the continuity of cultural, spiritual, and subsistence practices. Relocation, in any case, must remain a measure of last resort, permitted only in exceptional circumstances, and governed by clear and adequate legal frameworks[105].

Whether these detailed findings will be implemented remains to be seen. Advisory opinions are not formally binding, but past practice shows that they can carry considerable persuasive authority. Several States within the Inter-American system have previously relied on advisory opinions before domestic courts, leading to concrete changes in national

[103] See IACtHR, *Advisory opinion requested by the Republic of Colombia, The environment and human rights*, cit. For a comment, see: G. Vega-Barbosa and L. Aboagye, *A Commentary on the Advisory Opinion of the Inter-American Court of Human Rights on the Environment and Human Rights*, in *DPCE Online*, 2018, 34, 291.

[104] IACtHR, *Advisory Opinion AO-32/25*, cit., para 404.

[105] *Ibid.*, paras 414–434. See also: M. Namanya, *The Inter-American Court's Advisory Opinion on the Climate Emergency and Human Rights: A Win for Climate-Displaced Persons?*, in *EJIL:Talk!*, 29 July 2025, www.ejiltalk.org/the-inter-american-courts-advisory-opinion-on-the-climate-emergency-and-human-rights-a-win-for-climate-displaced-persons/.

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jurisprudence and policy. This suggests that the climate emergency advisory opinion may similarly influence domestic practice[106]. It will also be important to observe whether, and in what manner, the ACHPR will engage with these standards in the advisory opinion it is expected to deliver in the coming years[107].

The ICJ did not accord comparable prominence to issues of displacement, also because it had not been expressly asked to advise on States' obligations in this area[108]. Nonetheless, the ICJ acknowledged that forced mobility, both internal and cross-border, is among the severe and far-reaching consequences of climate change, which together constitute an "urgent and existential threat"[109]. The Court recognised in particular that sea-level rise is likely to generate significant adverse effects for States, especially small island and low-lying coastal States, potentially leading to the forced displacement of populations within their territory or across borders, and affecting their territorial integrity as well as their permanent sovereignty over natural resources[110]. As explained above, the Court then devoted a paragraph to the cross-border dimension of displacement, referring to the *non-refoulement* principle and citing the *Teitiota* case[111]. Several States nevertheless addressed climate-related displacement extensively in their written submissions. This was particularly true for Small Island Developing States (SIDS), as well as for other States that are especially affected, such as Bangladesh[112]. Tuvalu, in particular, stressed that displacement would entail a profound loss of place, property, identity, culture, and way of life, due to the deep interdependence between Tuvaluan traditions and their ancestral land[113]. Of further note, Tuvalu and other SIDS argued that reparations owed by States which have significantly contributed to climate change should include redress for displacement and other forms of climate-induced human mobility. Although inter-State

[106] A. Ramírez, W. Rousset Siri, *Compliance with Advisory Opinions in the Inter-American Human Rights System*, in 117 *AJIL Unbound* 298 (2023). See also *supra*, note 56.
[107] Previous practice shows that the ACHPR has on several occasions engaged in "judicial borrowing", drawing on case law from both the IACtHR and the ECtHR, see: M.L. Christensen, *In someone else's words: Judicial borrowing and the semantic authority of the African Court of Human and Peoples' Rights*, in 36 *Leiden J. Int'l L.* 1049 (2023).
[108] M. Rao, *Climate Displacement in the ICJ's Advisory Opinion: Recognised but not Resolved*, in *Völkerrechtsblog*, 11 August 2025, voelkerrechtsblog.org/climate-displacement-in-the-icjs-advisory-opinion/.
[109] ICJ, *Obligations of States in respect of climate change*, cit., para. 73.
[110] *Ibid.*, para. 357.
[111] *Ibid.*, para. 378.
[112] ICJ, *Obligations of States in respect of climate change*, cit., *Written Statement of Bangladesh*, 25 March 2024.
[113] ICJ, *Obligations of States in respect of climate change*, cit., *Written Statement of Tuvalu*, 25 March 2024. It also stressed that, despite the much-publicised human mobility pathway included in the *2023 Falepili Union Treaty* with Australia, the Treaty's principal objective remains to support the Tuvaluan population in remaining in their homes with safety and dignity. See also: J. McAdam, *How the ICJ's Advisory Opinion on Climate Change Addresses Displacement, International Protection and Ongoing Statehood*, in *Researching Internal Displacement*, 24 July 2025, researchinginternaldisplacement.org/short_pieces/how-the-icjs-advisory-opinion-on-climate-change-addresses-displacement-international-protection-and-ongoing-statehood/.

climate litigation has not yet reached international courts or tribunals – despite much academic speculation[114] – the argument advanced by SIDS signals that climate-related displacement may well form part of potential future claims concerning the international responsibility of major emitting States.

3.2 Internal displacement associated with climate mitigation and adaptation measures

While climate change impacts are expected to increasingly affect the rights of individuals and communities, measures adopted by States to mitigate or adapt to climate change may likewise interfere with those rights. In some instances, such measures may even lead to the displacement or forced relocation of affected persons. Well-documented examples include situations in which conservation or afforestation projects undertaken for carbon sequestration purposes disrupt the lives of Indigenous Peoples and local communities inhabiting the targeted areas[115]. As the impacts of climate change intensify, adaptation and disaster risk reduction measures are also expected to become more widespread. Inevitably, such initiatives may affect individual property and livelihoods, and may require people to move, whether through planned relocation processes or through de facto displacement arising from the specific context[116].

Cases of this kind are appearing with growing frequency before courts and tribunals around the world and have increasingly been conceptualised as part of the emerging trend of "just transition litigation", that is, «lawsuits raising questions over the justice and fairness of laws, projects or policies adopted to deliver climate change adaptation and/or mitigation»[117]. A prominent illustration of this trend is the dispute concerning the construction of two wind farms on the Fosen Peninsula in Norway. Licences for the project were issued in 2010 as part of one of Europe's largest renewable energy developments. However, the project significantly interfered with the ability of Sámi Indigenous reindeer herders to exercise their traditional livelihood. In *Statnett SF et al. v. Sør-Fosen sijte et al.*, the Norwegian Supreme Court unanimously found that the licences violated the

[114] See M. Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law*, London, 2019; A. Savaresi, *Inter-state climate change litigation: 'Neither a Chimera nor a Panacea*, in I. Alogna, C. Bakker, J.P. Gauci (Eds.) *Climate Change Litigation: Global Perspectives*, Leiden, 2021.
[115] See A. Savaresi, *The Human Rights Dimension of REDD*, in 21 *RECIEL* 102 (2012).
[116] UNHCR, *Planned Relocation, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future*, Report, Sanremo, 2014.
[117] See A. Savaresi, J. Setzer, *Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers*, in 13 *J. Hum. Rts. & Env't* 7 (2022); M.A. Tigre et al., *Just transition litigation in Latin America: an initial categorization of climate change litigation cases amid the energy transition*, in *Sabin Center for Climate Change Law, Columbia Law School*, January 2023, scholarship.law.columbia.edu/sabin_climate_change/197/; A. Savaresi et al., *Conceptualizing just transition litigation*, in 7 *Nat. Sustain.* (2024).

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Sámi herders' right to enjoy their own culture under Article 27 ICCPR and were therefore invalid[118].

This type of case may increasingly also raise questions of displacement or relocation[119]. Although, to the authors' knowledge, no individual complaint specifically addressing such situations has yet been adjudicated by international judicial or quasi-judicial bodies, indications of what may lie ahead can be found in some communications issued by the UN Special Procedures of the Human Rights Council[120]. Special Rapporteurs, acting in their capacity as independent experts, may address alleged human rights violations by sending communications to governments. While non-judicial, these letters outline the facts of the alleged violations, set out the applicable human rights standards, express the mandate-holder's concerns, and often request follow-up action. An illustrative example is the *Communication to Pakistan concerning Karachi's Waterways (Nullah)*[121]. The communication addressed forced evictions and home demolitions along Karachi's waterways, which had been heavily affected by the monsoon floods of 2020 and 2022. These evictions were reportedly carried out as part of Pakistan's climate change adaptation strategy, following a Supreme Court order instructing authorities to remove informal settlements due to heightened flood risks. However, the demolitions were allegedly undertaken without consultation with affected residents, without any resettlement plan, and with inadequate or inconsistent compensation. The UN Special Rapporteurs emphasised the serious impact of these actions on the affected communities' rights, including the right to an adequate standard of living, covering housing, food, water, sanitation, and access to healthcare. The communication recalled applicable human rights norms, stressing that evictions must be a measure of last resort, that affected communities must be meaningfully consulted, and that any relocation must be accompanied by adequate safeguards.

Communications of this kind are significant. They demonstrate that States must adopt a human rights-based approach and respect the principle of non-discrimination when pursuing climate mitigation and adaptation objectives, thereby limiting negative impacts on vulnerable groups and preventing the creation of new injustices. As these situations increasingly arise, international judicial and quasi-judicial bodies will need to address them, striking a careful balance between the collective interest in effective climate action and the protection of individual rights, particularly ensuring

[118] Supreme Court of Norway, *Statnett SF et al v Sør-Fosen sijte et al*, HR-2021-1975-S, Judgement of 11 October 2021.
[119] For a clear conceptual discussion of the two notions, see: D. J. Cantor, *Conceptualising "Relocation" Across Displacement Contexts*, in 15 *J. Int'l Human. Legal Stud.* 23 (2023).
[120] For an overview of these mandates see: UN OHCHR, *Special Procedures of the Human Rights Council*, www.ohchr.org/en/special-procedures-human-rights-council.
[121] Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on extreme poverty and the Working Group on dis-crimination against women and girls, *Ref: AL PAK 7/2022*, 22 December 2022, available at climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20221222_AL-PAK-72022_na-1.pdf.

that such measures do not disproportionately burden marginalised communities. Existing jurisprudence provides a solid basis for such scrutiny. The ECtHR, for example, has long developed case law on the protection of property under Article 1 of Protocol No. 1, which is frequently implicated when environmental or land-use restrictions impact private interests. The ECtHR has addressed cases concerning the withdrawal of licences, restrictions on development, and the demolition or confiscation of homes[122]. In these cases, the Court typically balances the individual's property rights against the community's interest in environmental protection, often recognising the primacy of the public interest, such as in the protection of forests or coastal areas, provided that the interference is lawful, pursues a legitimate aim, and is proportionate[123]. At the same time, evidence shows that poorer and marginalised individuals often live in areas more exposed to environmental risks and are therefore disproportionately affected by measures adopted in response. International judicial and quasi-judicial bodies will therefore be increasingly called upon to scrutinise how climate mitigation and adaptation measures are designed and implemented, ensuring that they minimise adverse impacts on those with fewer resources and do not give rise to unjust, disproportionate, or discriminatory forms of displacement or relocation.

4. Conclusions

Climate change is increasingly compelling individuals and communities to leave their homes, whether across borders or within their State of origin. This article has examined the extent to which international law – and international human rights law in particular – provides protection in such circumstances. It shows that States are already bound by a set of obligations: to take appropriate measures to prevent displacement; to ensure that any relocation is carried out safely and with dignity; to respect the principle of *non-refoulement*; and to facilitate reconstruction and, where possible, return. The preceding analysis also raises broader questions concerning the normative foundations of these obligations and the implications of their breach under international law.

From a normative perspective, the analysis shows that a form of protection for persons displaced by climate-related harm is progressively emerging through judicial and quasi-judicial interpretation. However, this development should not be understood as the creation of a new autonomous regime[124]. Rather, it reflects the convergent application of existing sources of international law whose interaction produces concrete duties of prevention and protection.

[122] See ECtHR, no. 46372/99, *Papastavrou v Greece*, 10-04-2003; no. 1411/03, *Turgut et al. v. Turkey*, 26-01-2009.
[123] ECtHR, no. 34044/02, *Depalle v France*, 29-03-2010.
[124] Indeed, important authors suggest that the adoption of a new treaty focussing on climate-change induced cross-border migration might not be the best solution to address the plight of displaced communities; J. McAdam, *Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer*, in 23 *Int' J. Refugee L.* 2 (2011).

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First, the primary legal basis of the obligations described remains treaty law, in particular international human rights treaties. The case law of human rights bodies does not establish new rights specifically tailored to climate displacement; instead, it interprets established guarantees in light of environmental degradation[125]. Climate change thus operates as a factual circumstance capable of triggering already existing legal commitments. The obligation of *non-refoulement* in this context is directly linked to the hosting State's duty to avoid exposing individuals to a real risk of irreparable harm, rather than from the recognition of a distinct category of "climate refugee".

Second, judicial practice suggests an interaction with customary international law. The widespread acceptance of *non-refoulement* as a fundamental safeguard, together with consistent interpretative practice, indicates that at least its core content (i.e. protection against removal where life or physical integrity would be seriously threatened) has crystallised beyond the treaty framework. Similarly, the obligation to adopt preventive measures against foreseeable harm can be connected to the customary duty of due diligence in the prevention of serious harm, traditionally developed in environmental law and now applied to the human rights consequences of environmental degradation[126].

In this light, judicial and quasi-judicial pronouncements do not act as autonomous sources of law. Rather, they perform an evidentiary and interpretative role, clarifying the content of treaty obligations and contributing to the identification of customary norms. The emerging protection framework is therefore the product of layered normativity, in which treaty rules provide the primary basis and customary law reinforces their universality.

From the perspective of the law of international responsibility, failures by States to prevent, mitigate or adequately respond to climate-related displacement may give rise to internationally wrongful acts where the relevant conduct or omission is attributable to the State and constitutes a breach of an applicable international obligation. In particular, the obligations identified in this article – including positive human rights duties to prevent foreseeable harm and to protect individuals, as well as the prohibition of refoulement – may engage State responsibility where States fail to adopt appropriate measures within their capacity[127].

The judicial and quasi-judicial practice reviewed in this article suggests that State conduct is increasingly assessed against evolving standards of prevention and protection. International human rights bodies, notwithstanding the limited binding force of their decisions, have shown a growing willingness to address the obligation of respondent States to provide effective remedies, including full reparation to individuals whose

[125] See for instance the analysis provided by A. Yildiz Noorda, *Climate Change, Disasters and People on the Move, Providing Protection under International Law*, Leiden, 2022, 70–76.

[126] L.-A. Duvic-Paoli, *The Prevention Principle in International Environmental Law*, Cambridge, 2018, 80–81.

[127] See M. Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law*, cit.

rights have been violated, and to adopt measures aimed at preventing similar violations in the future[128].

Moreover, as discussed above in the context of advisory proceedings, some particularly affected States have increasingly framed climate-related displacement not only as a humanitarian concern but also as a legally cognisable injury potentially giving rise to claims for reparation against major emitting States[129]. This development suggests that climate-related displacement may become a relevant element in future inter-State disputes concerning international responsibility for climate change.

From a substantive point of view, however, our review also shows that certain protection gaps remain. The HRC's 'jurisprudence' illustrates this mixed picture. In *Teitiota*, the HRC affirmed the applicability of *non-refoulement* obligations in climate-related contexts but set a high threshold for establishing risk of harm, leaving the applicant without protection. In *Daniel Billy*, by contrast, the HRC found, for the first time in an individual complaint procedure, that insufficient adaptation measures violated the rights to private life, home and culture, identifying the risk of forced internal relocation as one of the important factors. Yet the HRC declined to find a violation of the right to life, applying a more stringent standard.

The IACtHR has adopted a notably protective approach in its advisory jurisdiction. Building on its case law on Indigenous peoples and its previous 2017 Advisory Opinion, the IACtHR's recent *Advisory Opinion on the climate emergency and human rights* articulates detailed obligations under both the right to private and family life and the freedom of movement and residence. These include duties to prevent climate-related displacement through enhanced due diligence, and to guarantee the protection of persons displaced internally or across borders. However, to what extent these standards will be applied in future contentious proceedings remains to be seen. The pending *Juliana Youth v United States* petition before the IAComm – following protracted domestic litigation – may offer an early opportunity, particularly given the centrality of displacement and the risk thereof in the petitioners' submissions[130].

Likewise, the potential Advisory Opinion of the ACHPR will be key to understanding how these safeguards might be received and adapted within the specific context of the African continent. The request submitted by the PALU explicitly highlights climate displacement as one of the most severe climate impacts across Africa, citing examples ranging from floods in Mozambique[131] to drought in Ethiopia[132], El Niño-related disruptions in the Horn of Africa[133], and the shrinking of Lake Chad[134]. Although displaced persons are not explicitly listed among the groups singled out as

[128] See for instance HRC, *Daniel Billy et al v Australia*, cit., para 11.
[129] See *supra*, note 113.
[130] See *Juliana Youth v United States of America* - petition to the IAComm, available at www.climatecasechart.com/documents/former-juliana-youth-v-united-states-of-america-jovenes-ex-juliana-v-estados-unidos-de-america-petition_8398.
[131] *A Request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis*, cit., para 28.
[132] *Ibid.*, para 46.
[133] *Ibid.*, para 47.
[134] *Ibid.*, paras 53-54.

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disproportionately affected – a noteworthy omission – the general question posed to the Court clearly encompasses them: namely, what human and peoples' rights obligations States have to protect individuals and communities, including past, present and future generations, from the adverse effects of climate change. Given that PALU has expressly invoked the "Kampala Convention[135]" among the relevant instruments, the ACHPR will have a significant opportunity to clarify the human rights obligations owed to internally displaced persons in the context of climate change.

The ICJ, on its part, while recognising that climate change may lead to severe internal and cross-border displacement and poses an "urgent and existential threat", devoted only a single paragraph to the cross-border dimension of displacement, referring to the principle of *non-refoulement* and citing the *Teitiota* case. Commentators are reasonably divided between those welcoming the inclusion of this paragraph and those expressing disappointment at its limited and peripheral treatment of the issue.

The ECtHR has not yet fully addressed such developments. However, while human mobility is not currently at the centre of the growing body of climate-related cases, it is expected to become increasingly relevant. It remains to be seen how the Court will develop its approach, potentially integrating its existing jurisprudence on migration and climate change action to address this emerging challenge.

Finally, although climate displacement resulting directly from climate impacts received the most attention, displacement linked to mitigation and adaptation activities is also emerging as a significant issue. While international bodies have not yet examined individual complaints on this point, domestic litigation and recent UN Special Rapporteurs' communications suggest that this will soon become another important field of human rights scrutiny, requiring careful balancing between collective climate objectives and the rights of affected individuals, particularly those who are already socially or economically vulnerable.

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[135] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"), adopted on 23 October 2009, entered into force on 6 March 2020.