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CLIMATE MIGRANTS AS THE GLOBAL CONDITIONS WORSEN: CHALLENGES AND PROSPECTS FOR THEIR PROTECTION

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INDEX

Introduction	8
 Chapter I – THE CLIMATE MIGRATION PHENOMENON	
1.1 Framing climate migration	11
1.2 The relationship between climate change and climate migration	15
1.3 Forced or voluntary migration?	20
1.4 Populations most at risk of climate migration	27
1.5 The gap in international protection	31
 Chapter II – THE INTERNATIONAL LEGAL FRAMEWORK	
2.1 Multiple definitions for people migrating because of the climate	36
2.2 Environmental migrant, climate migrant, environmental refugee, climate refugee, displaced person	37
2.3 Criteria for distinguishing climate migrants	44
2.3.1 According to the type of phenomenon	44
2.3.2 According to the type of migration	47
2.4 International regulatory framework	50
2.4.1 The Charter of the United Nations	51
2.4.2 The Universal Declaration of Human Rights	53
2.4.3 The UN Pacts	54
2.4.4 The right to a healthy environment	60
2.4.5 The Geneva Convention and its 1967 Protocol	64
2.4.6 Complementary protection	67
2.4.7 Regional Conventions	70

2.4.8 The New York Declaration and Global Compacts	75
2.5 The risks of no legal protection	78

**Chapter III - LEGAL PROTECTIONS FOR
MIGRANTS IN THE EU AND ITALY: POSSIBLE
INTERSECTIONS WITH CLIMATE MIGRANTS**

3.1 The European Union and Italian legal systems combined	83
3.2 The European Union framework	84
3.2.1 EU Qualification Directive (Directive 2011/95/EU)	87
3.2.2 EU Temporary Protection Directive (Directive 2001/55/EC)	90
3.3 Possible approaches for climate migrants within the Italian framework	92
3.3.1 Special protection	93
3.3.2 Temporary protection	98
Conclusion	100
Bibliography	104

Abstract

I migranti climatici sono una categoria di persone che emigrano a causa del cambiamento climatico. Sul pianeta si registrano temperature sempre più elevate, l'istinto di sopravvivenza dell'uomo lo spinge a adattarsi e a cercare un luogo in cui le condizioni di vita siano stabili, emigrando. Il fenomeno della migrazione climatica è in aumento, per questo è significativo affrontare questa tematica. È necessario affrontarla prima che possa assumere una portata globale, da renderne difficile il controllo.

Nella prima parte del lavoro viene esplorato il concetto della migrazione climatica, facendo emergere lo stretto legame che vi è tra il cambiamento climatico e la migrazione. Una volta esposte le caratteristiche del fenomeno migratorio, è fondamentale comprendere quali sono le popolazioni maggiormente colpite, ovvero coloro che potrebbero trovarsi o già si trovano esposti ad un'emergenza climatica. Chi emigra e si sposta in un altro stato necessita di tutele per una buona integrazione nei tessuti sociale ed economico del luogo di destinazione. Attraverso un approfondimento delle diverse categorie di migranti legati ai cambiamenti climatici, risalta la complessità di definire e riconoscere coloro che necessitano di protezione giuridica.

Nella seconda parte, viene analizzato il quadro giuridico internazionale per comprendere quali sono le basi giuridiche esistenti per la tutela degli esseri umani, focalizzandosi successivamente sui migranti. Questo passaggio è importante per fornire un panorama dei principali strumenti giuridici internazionali: la Carta delle Nazioni Unite, la Dichiarazione Universale dei Diritti Umani e i due Patti delle Nazioni Unite. In seguito, l'attenzione si volge verso strumenti più specifici per il caso di studio, tra cui il diritto ad un ambiente sano e la Convenzione dei Rifugiati, fino a esplorare gli strumenti giuridici di alcune realtà regionali.

Nella terza parte, la dimensione dell'Unione Europea e italiana mostrano come la giurisprudenza affronta questa emergenza. Si analizza la possibilità di adattare le categorie di protezione esistenti, come l'asilo e la protezione umanitaria, per includere le sfide specifiche dei migranti legati ai cambiamenti climatici.

L'Unione Europea è un'organizzazione che si fonda sul rispetto dei diritti fondamentali e sostiene l'importanza della lotta al cambiamento climatico. L'impegno europeo per il clima è riconosciuto a livello internazionale, tuttavia, i migranti climatici non sono una categoria riconosciuta nel diritto unioniale.

Dal quadro giuridico italiano emergono, invece, alcuni strumenti di protezione attraverso i quali i migranti climatici potrebbero essere tutelati. Il Testo Unico sull'Immigrazione, però, non presenta nessuna menzione ai migranti climatici come categoria protetta. Occorre tenere in considerazione che il diritto migratorio italiano è in costante aggiornamento, non si esclude pertanto che il TUI possa essere ampliato.

In conclusione, questa tesi sottolinea l'importanza della migrazione climatica come fenomeno attuale e dimostra che la creazione di strumenti giuridici efficaci e coordinati è essenziale per affrontare il crescente impatto dei cambiamenti climatici sulle migrazioni forzate. La tutela giuridica dei migranti climatici rappresenta una sfida cruciale per la comunità internazionale, in quanto incarna l'intersezione tra diritti umani, politiche ambientali e solidarietà globale.

INTRODUCTION

In an era defined by the unprecedented challenges posed by climate change, one critical issue emerges at the intersection of environmental transformation and human mobility: the predicament of climate migrants. This thesis aims at shedding light on the category of climate migrants, who are widely recognisable socially, but invisible legally. Migration is an expanding phenomenon and with it the subcategory of climate migration. An obvious sign of this is the increasingly extreme weather events that influence it. However, it is difficult to define with certainty who migrates solely for the climate, isolating the migration drive from other factors, such as the economic one: often one factor affects the others. Precisely because of the nebulous nature of climate migration, it is necessary to provide clarity in order to ensure legal protection for climate migrants.

To do so, the work will be divided into three chapters.

First of all, it is necessary to study the phenomenon of climate migration to understand its characteristics, vulnerabilities and climate migrants' needs. In the second chapter, the international legal landscape will be addressed in order to analyse which existing legal instruments are relevant for the protection of migrants' human rights, that are certainly a basis for the still non-existent climate migrants' law. The third and last part, focuses on the European Union regional landscape and the Italian one, to grasp through which ways an attempt is made to protect rights for a phenomenon that touches us so closely.

The sources that have been used for this work are primary and secondary ones, consulted prevalently online. Fundamental were legal instruments such as Charters, Conventions, Declarations and legal acts of international institutions, of the European Union and of Italy, but also reports on migration and climate phenomena in recent years. In addition, many essays written by experts on international law, migration, and climate change were enlightening to enhance the knowledge required for the writing of the thesis, e.g., Professors Jane McAdam, Walter Kälin and Koko Warner. Lastly, some newspaper and magazine articles were used to frame events.

The climate crisis is a humanitarian crisis, according to international development cooperation expert Maria Marano, as written in her

essay, which is included in the 2022 Italian Statistical Dossier on Immigration. The expert ventures an estimate of the number of people who leave their homes because of the worsening climate. She states that in a world where 1 in 78 people leave their home, about 3 out of 4 people emigrate due to the effects of climate change.¹ Migration is an adaptation strategy, to escape from areas that risk becoming uninhabitable, in this case due to climate change.²

Climate change is a phenomenon that has been ongoing since the Industrial Revolution, which mainly manifests itself in rising temperatures, melting glaciers, rising sea levels, desertification, resource scarcity and extreme weather events that occur with increased frequency. This leads to a loss of both natural and animal biodiversity and affects the international mobility of people. As a matter of fact, these environmental shifts, often exacerbated by human activities, compel individuals and communities to seek safer and more sustainable living conditions.

In order to limit the climate crisis, sustainability and the attempt to reduce environmentally harmful emissions are the paths promoted by the international community so far.

Unfortunately, however, finding agreement at the international level is complex, given the different realities. In any case, what has been done so far is not enough to halt climate change and thus not even climate migration.

For this reason, as climate change continues to reshape the very fabric of our planet, the plight of climate migrants emerges as a compelling and urgent challenge that demands attention and action. By unravelling the complexities of legal recognition and protection, this thesis seeks to contribute to the ongoing discourse surrounding climate migrants, advocating for innovative legal solutions that reflect the interconnectedness of human rights, environmental preservation, and global cooperation.

¹ MARANO, *La crisi climatica è una crisi umanitaria: milioni di persone sono già in fuga*, in CENTRO STUDI E RICERCHE IMMIGRAZIONE DOSSIER STATISTICO, *Dossier Statistico Immigrazione*, Rome, October 2022, p. 42.

² MCADAM, LEGAL AND PROTECTION POLICY RESEARCH SERIES, *Climate Change Displacement and International Law: Complementary Protection Standards*, Geneva, May 2011, p. 4. UN doc PPLA/2011/03. Available on the website: www.unhcr.org

Through a comprehensive exploration of international, regional, and national legal landscapes, this thesis uncovers the intricate legal considerations that underscore the urgency of addressing the rights and protections of climate migrants.

CHAPTER I

THE CLIMATE MIGRATION PHENOMENON

1.1 Framing climate migration

Climate migration, or climate-induced migration, refers to “the movement of a person or groups of persons who, predominantly for reasons of sudden or progressive change in the environment due to climate change, are obliged to leave their habitual place of residence, or choose to do so, either temporarily or permanently, within a State or across an international border”.³ It is a subcategory of environmental migration because the change in the environment is caused by climate change.⁴

There is no accepted legal definition of the phenomenon, and the IOM glossary has no legal value. Instead, the Cancun Agreements is a legally binding document adopted during the United Nations Climate Change Conference (COP16) in Cancun, Mexico, in 2010. It recognized three forms of “climate change induced”⁵ movement. These forms are planned relocation, disaster displacement and human mobility.

First of all, planned relocation refers to the deliberate and organized movement of individuals or communities away from areas that are highly vulnerable to climate change impacts. It involves the identification of alternative safe and sustainable locations and the provision of necessary support and resources to facilitate the relocation process. It is usually used to define movements within national borders, since its aim is to protect people from the risk of environmental degradation.⁶

³ IOM UN MIGRATION, *Glossary on Migration, International Migration Law No. 34*, Geneva, 2019. Available online on the website: www.environmentalmigration.iom.int.

⁴ *Ibidem*.

⁵ UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010*, UN doc, FCCC/CP/2010/7/Add.1. Available on the website: www.environmentalmigration.iom.int.

⁶ THE BROOKINGS INSTITUTION, GEORGETOWN UNIVERSITY AND UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *Guidance on Protecting People From*

Secondly, disaster displacement refers to the situation where individuals or communities are forced to leave their homes or habitual places of residence as a result of the effects of climate change.⁷ Climate change can result in the displacement of people, particularly those living in vulnerable and low-lying coastal areas, due to the adverse impacts of sea-level rise, coastal erosion, and other climate-related factors.

Thirdly, human mobility is a “generic term covering all the different forms of movements of persons.”⁸ Climate change can also lead to voluntary or involuntary migration. Migration, in this context, refers to the movement of individuals or groups of people who decide to relocate, either permanently or temporarily, due to the impacts of climate change.

These three forms of movement—disaster displacement, human mobility, and planned relocation—were acknowledged in the Cancun Agreements to address the challenges posed by climate change and to emphasize the importance of supporting and protecting the rights and well-being of those affected by climate-induced movements.

The history of climate migration is intertwined with human history itself. Throughout history, humans have migrated in search of more favourable climates, better access to resources, and to escape harsh environmental conditions. Examples include the migration of early humans in response to changing climatic conditions during the Palaeolithic era and subsequent population movements due to shifts in weather patterns, land degradation, or the decline of civilizations. In the following millennia, the Little Ice Age in Europe, which lasted approximately from the 14th to the 19th century, resulted in agricultural challenges, famines,⁹ and population displacements. The Dust Bowl in the 1930s, caused by severe drought and soil erosion in the Great Plains of the United States, led to mass migration to escape

Disasters and Environmental Change Through Planned Relocation, 2015, p. 5.
Available on the website: www.brookings.edu.

⁷ THE NANSEN INITIATIVE, *Disaster-induced cross-border displacement*, 2015, p. 16.
Available on the website: www.disasterdisplacement.org.

⁸ IOM UN MIGRATION, *Glossary on Migration, International Migration Law No. 34*, cit.

⁹ THE EDITORS OF ENCYCLOPAEDIA BRITANNICA, *Little Ice Age*. Available on the website: www.britannica.com

the environmental devastation.¹⁰

However, the recognition of climate change as a global challenge and its potential to drive population displacement gained prominence in the late 20th century. The Intergovernmental Panel on Climate Change (IPCC) was established in 1988 to assess the scientific understanding of climate change, its impacts, and potential responses.¹¹ The IPCC's reports have highlighted the increase in risks of climate-induced displacement and the need to address its consequences.

The international community has increasingly recognized the importance of climate migration and displacement. In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted, which acknowledged the potential impacts of climate change on vulnerable populations.¹² Subsequent climate change conferences, such as the 2010 Cancun Agreements and the 2015 Paris Agreement, recognized the need to address the specific challenges faced by climate migrants.

Over the past few decades, research and advocacy efforts have expanded our understanding of climate migration. Studies have examined the links between climate change, environmental degradation, and human mobility. Organizations and researchers have highlighted the need for appropriate policies, legal frameworks, and assistance mechanisms to address the impacts of climate migration.¹³

As the understanding of climate change and its impacts continues to evolve, so does the understanding of climate migration. The history of climate migration serves as a reminder of the long-standing relationship between human populations and the environment and highlights the need for effective policies and responses to address the challenges posed by climate-induced displacement.

Estimating the present exact scale and magnitude of climate migration is challenging due to various factors, including the complex

¹⁰ KIGER, *How the Dust Bowl Made Americans Refugees in Their Own Country*, January 2019. Available on the website: www.history.com

¹¹ IPCC, *History of the IPCC*. Available on the website: www.ipcc.ch.

¹² UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, *Consolidated versions of the Convention text, including amendments to Annex I and II*, 1992, FCC/INFORMAL/84/Rev.1. Available on the website: www.unfccc.int.

¹³ INTERNATIONAL ORGANIZATION FOR MIGRATION, *Migration, Environment and Climate Change*. Available on the website: www.iom.int.

interactions between climate change, socioeconomic dynamics, and regional variations, as stated in an interview by UN Secretary General Guterres.¹⁴

Furthermore, the Intergovernmental Panel on Climate Change has stated that by the year 2050, the number of people at risk of being displaced by climate change could range from tens of millions to several hundred million, depending on various factors such as the effectiveness of adaptation measures and mitigation efforts.¹⁵

It is important to remember that these estimates provide some insights into the potential scale and significance of climate migration as a phenomenon, but the exact categorization of migration as solely ‘climate-induced’ can be complex due to the interplay of various drivers and motivations for migration. As a matter of fact, climate migration is often influenced by a combination of factors, including climate change, socioeconomic conditions, political instability, conflict, and other environmental or social stressors.¹⁶ These factors interact with each other, making it challenging to isolate the specific role of climate change as the sole cause of migration. Climate change acts as a threat multiplier, exacerbating existing vulnerabilities and amplifying the impacts of other drivers.¹⁷

Firstly, climate change impacts are diverse and manifest differently across regions, making it difficult to establish direct causal links between specific climate events and migration. Climate change can affect livelihoods, agriculture, water availability, and ecosystems, leading to cascading effects on local economies, social structures, and migration patterns.¹⁸ Understanding the intricate causal pathways and interactions between these factors requires comprehensive analysis and data.

¹⁴ BORGER, *Conflicts fuelled by climate change causing new refugee crisis, warns UN*, June 2008. Available on the website: www.theguardian.com.

¹⁵ MCALLISTER, *There could be 1.2 billion climate refugees by 2050. Here's what you need to know*, 2023. Available on the website: www.zurich.com.

¹⁶ NABONG, HOCKING, OPDYKE, WALTERS, *Decision-making factor interactions influencing climate migration: A system-based systematic review*, Sydney, January 2023, p. 11. Available on the website: www.wiresonlinelibrary.wiley.com.

¹⁷ MCADAM, *Climate Change, Forced Migration, and International Law*, Oxford, February 2012, p. 24. Available on the website: www.academic.oup.com.

¹⁸ BROWN FOR INTERNATIONAL ORGANIZATION FOR MIGRATION, *Migration and Climate Change*, Geneva, 2008, p. 20. Available on the website: www.ipcc.ch.

Secondly, climate migration is influenced by context-specific factors that vary across regions and communities. Socioeconomic conditions, governance structures, cultural norms, and individual circumstances play significant roles in shaping migration decisions.¹⁹ These context-specific factors make it challenging to generalize the causes of climate migration and require localized and nuanced assessments.

Thirdly, data gaps and limitations hinder the accurate measurement and attribution of climate migration. Migration is a complex and multifaceted phenomenon that is not always systematically tracked or recorded. The lack of comprehensive data, especially in vulnerable and marginalized communities,²⁰ makes it challenging to quantify the extent of climate migration and establish clear cause-effect relationships.

Finally, climate migration can be a long-term process that unfolds over years or even decades. It can involve different forms of mobility, from short-term displacement to permanent relocation.²¹ Determining the causes of climate migration requires considering these temporal dynamics and understanding the cumulative effects of climate change and other drivers over an extended period. Additionally, climate migration can occur at various scales, from individual households to entire communities or regions, further complicating the analysis.

Given these complexities, studying and attributing climate migration requires interdisciplinary research, combining climate science, social sciences, and data-driven analyses. It necessitates considering a range of factors and interactions, acknowledging the diversity of migration experiences, and accounting for the local context and individual agency in migration decisions.

1.2 The relationship between climate change and climate migration

Climate migration happens when catastrophic climatic factors have a substantial impact on a region's livability, prompting people to seek safer or more sustainable living conditions elsewhere. The problem

¹⁹ BROWN FOR INTERNATIONAL ORGANIZATION FOR MIGRATION, *op. cit.*, p. 18.

²⁰ *Ibidem*, p. 19.

²¹ *Ibidem*, p. 19.

today is that the chance of being relocated by a natural disaster is higher than in the past, so the issue is growing more pressing.

Climate change manifests itself through slow-onset events and sudden-onset disasters. The first ones include rising temperatures and sea levels, desertification, and loss of biodiversity: they are phenomena that occur little by little and therefore there is a risk of underestimating them. The latter ones, as their name suggests, are abrupt and violent outbursts that immediately lead to serious damage. They can be of three types: meteorological (e.g., hurricanes, cyclones), hydrological (e.g., coastal floods) or geophysical (e.g., earthquakes and tsunamis).²²

With regard to rising temperatures, the 2015 Paris Agreement stipulates that the rise in temperatures should not exceed 2°C, but rather must stay as close to 1.5°C as possible. Since the Paris Agreement, 2°C is defined as the ‘point of no return’, beyond which too much of the planet’s biodiversity would be lost to the point where climate change as a phenomenon would be irreversible. Unfortunately, today the increase is 1.1°C,²³ and every year, at the beginning of autumn, the news and newspapers systematically announce that the summer that has just ended has been the hottest of the last century. Clear evidence that the situation is degenerating year after year is proved by the fact that in August 2021, the news quickly spread that the new European temperature record was reached in Sicily, with the thermometer reaching almost 50°C, 48.8°C to be precise.²⁴

As global temperatures rise, ice sheets and glaciers melt, leading to rising sea levels. Coastal regions and low-lying island nations are particularly vulnerable, as their communities face the risk of inundation and loss of habitable land. This can trigger migration as people search for more safe living conditions. Between 1961 and

²² SAEED, *Key Concepts on Climate Change and Disaster Displacement*, September 2017. Available on the website: www.unhcr.org.

²³ IPCC INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Urgent climate action can secure a liveable future for all*, IPCC Press Release doc 2023/06/PR, March 2023. Available on the website: www.ipcc.ch.

²⁴ COPERNICUS CLIMATE CHANGE SERVICE, *CS3 data supports research and policy-making throughout 2021*, Feb 2022. Available on the website: www.climatecopernicurs.eu.

2016, 9.6 billion tonnes of ice melted.²⁵ Hence the rise in sea level and the risk of the disappearance of certain land areas. However, the negative consequences of melting glaciers are not few, they also include landslides, floods, freshwater shortages and even diseases. In this regard, it has been estimated that permafrost contains around 1,500 billion tonnes of carbon, twice as much as the atmosphere. Regrettably, this would not be the only substance to be released by melting glaciers. “The 2018 Arctic report card speculates that diseases such as Spanish flu, smallpox or plague that have been wiped out could be frozen in the permafrost”.²⁶

Furthermore, prolonged droughts and desertification can result in the degradation of agricultural land, and affects water availability, leading to food and water insecurity. In response, people may be forced to abandon rural areas and migrate to urban centres or other regions with better access to resources. In this regard, the Global Forest Assessment 2020 examined the status and trends of the world’s forests in the period 1990-2020 and determined that forests cover nearly 1/3 of land globally, around 4.06 billion hectares.²⁷ This area “has decreased by 81 million hectares since 1990, but the rate of loss more than halved in 2010–2020 compared with the previous decade”.²⁸ As a matter of fact, 178 million hectares of forests were lost from 1990 to 2020, which is an area almost as big as Libya. One of the worst years in recent times for the plant kingdom was 2015 when about 98 million hectares of forest were burnt and nearly 40 million hectares were damaged by diseases and weather events.²⁹

On the other hand, as regards to sudden-onset disasters such as hurricanes, floods, wildfires, and storms, can render certain areas uninhabitable or severely disrupt livelihoods, compelling people to relocate. On this subject, in the 2000s, a new “field of climate science research emerged that began to explore the human footprint on

²⁵ AGI, *Quanto si stanno sciogliendo i ghiacciai?*, July 2019. Available on the website: www.agi.it.

²⁶ *Ibidem*.

²⁷ GLOBAL FOREST RESOURCES ASSESSMENT 2020, *A fresh perspective*, Food and Agriculture Organization of the United Nations, November 2020. Available on the website www.fao.org.

²⁸ *Ibidem*.

²⁹ *Ibidem*.

extreme weather phenomena”.³⁰ The results of these studies claim that humans are now accountable for 80% of the extreme events considered and that in about 70% of these, they contribute to exacerbating the manifestations of these events.³¹

A first example of a sudden-onset event that generated displacement is Hurricane Katrina, which struck the United States in 2005. While hurricanes are not directly caused by climate change, there is evidence to suggest that climate change can influence the intensity and frequency of hurricanes. As a matter of fact, in 2013, a study was conducted to analyse the effects of Hurricane Katrina if it had erupted in 1900 when the sea level was 0.75m lower.³² It was found that “flood elevations during Hurricane Katrina in 2005 were estimated to be 15 to 60 % higher in coastal areas because of SLR [...]. Consequently, we infer that the amount and extent of damage would have been less severe had Hurricane Katrina taken place under c. 1900 climate and sea level conditions”.³³

The storm resulted in severe flooding and widespread destruction, particularly due to the failure of the city’s levee system. The impacts of Hurricane Katrina led to significant displacement and migration of affected populations. In the aftermath of the hurricane, many residents of New Orleans were forced to evacuate their homes due to the extensive damage, lack of basic services, and the prolonged period of time required for recovery. The displacement of residents from the affected areas resulted in a large-scale migration, both within the United States and to other parts of the country. Since these people had lost their homes and could no longer return to them, they were called ‘climate refugees’ by some environmental experts, but to others, they are mere harbingers of the mass phenomenon.³⁴

Even if these people are not really included in climate migration,

³⁰ PIDCOCK, MCSWEENEY, *Mapped: How climate change affects extreme weather around the world*, August 2022. Available on the website: www.carbonbrief.org.

³¹ *Ibidem*.

³² IRISH, SLEATH, CIALONE, KNUTSON, JENSEN, *Simulations of Hurricane Katrina (2005) under sea level and climate conditions for 1900*, in *Climatic Change* 122, 635–649, 2014. Available on the website: www.link.springer.com.

³³ *Ibidem*.

³⁴ NBC NEWS WORLD, *Katrina evacuees called ‘climate refugees’*, August 2006. Available on the website: www.nbcnews.com.

Hurricane Katrina serves as an example of how sudden-onset events, exacerbated by climate factors, can result in forced displacement and population movements.

A second and more significant example of a sudden-onset event that can contribute to climate migration concerns a large-scale flood caused by heavy rainfall or rapid snowmelt. While floods can occur naturally, climate change can exacerbate their frequency and intensity in certain regions. This is the case of the 2010 floods in Pakistan.³⁵ Heavy monsoon rains led to widespread and devastating flooding across the country. The floods affected millions of people, causing displacement, loss of homes, and destruction of infrastructure. As a result, many individuals and communities were forced to leave their homes and seek temporary shelter in safer areas or relocate to more secure regions.

The combination of extreme rainfall and inadequate infrastructure made the floods particularly severe, highlighting the vulnerability of communities to the impacts of climate change.³⁶ In the face of repeated flooding events and the increased risk they pose, some individuals and families may choose to permanently migrate to areas less prone to flooding as an adaptive response to protect their lives, livelihoods, and well-being.

On the one hand, sudden-onset events like floods can contribute to displacement and short-term migration, while on the other hand, the broader context of climate change including long-term environmental changes and vulnerabilities, is often a key factor in determining whether these events lead to more permanent climate-induced migration.

However, it is paramount to note that climate migration is a complex phenomenon influenced by a range of interconnected factors, and its causes and consequences can vary in different regions of the world. These climatic events do not cover all the causes of climate migration; as previously mentioned, the phenomenon can also be influenced by underlying socioeconomic factors such as poverty, inequality,

³⁵ NATIONAL DISASTER MANAGEMENT AUTHORITY GOVERNMENT OF PAKISTAN, *Annual Report 2011*, Islamabad, p. 5. Available on the website: www.reliefweb.int.

³⁶ *Ibidem*, p. 5.

conflicts, and limited adaptive capacity. Vulnerable communities with limited resources and few alternative livelihood options may be more likely to migrate. Unfortunately, it is all interlinked.

Addressing climate migration requires comprehensive strategies that encompass climate change mitigation, adaptation measures, support for affected communities, and international cooperation to ensure the protection and well-being of those forced to move due to environmental factors.

1.3 Forced or voluntary migration?

To understand whether climate migration can be ascribed as a forced or voluntary phenomenon, it is first necessary to define these two different characteristics.

On the one hand, forced migration occurs when a migration movement involves force, constraint, or coercion. It is not an international legal notion, but it

“has been used to describe the movements of refugees, displaced persons [...], and, in some instances, victims of trafficking. At the international level the use of this term is debated because of the widespread recognition that a continuum of agency exists rather than a voluntary/forced dichotomy and that it might undermine the existing legal international protection regime”.³⁷

Some realities representing the case study of forced migration in the field of climate migration are Pacific small island nations, such as Tuvalu, Nauru, and Kiribati, which are experiencing the impacts of rising sea levels. These nations face the risk of being completely submerged, making their entire populations potential climate migrants. As a result, some individuals from these nations have sought resettlement in countries like New Zealand or Australia, where they can find more secure living conditions.³⁸

³⁷ IOM UN MIGRATION, *Glossary on Migration, International Migration Law No. 34*, cit.

³⁸ UNITED NATIONS UNIVERSITY – INSTITUTE FOR ENVIRONMENT AND HUMAN SECURITY, *Climate Change and migration in the Pacific: Links attitude, and future scenarios in Nauru, Tuvalu, and Kiribati*, 2015. Available on the website: www.i.unu.edu.

Another example concerns climatic migration of subsistence farmers in Sub-Saharan Africa. Climate change-induced droughts and erratic rainfall patterns in regions like the Sahel and Horn of Africa have severely affected the livelihoods of subsistence farmers.³⁹ When these farmers face crop failures and lack of access to water and food, they may be forced to migrate to urban areas or neighbouring countries in search of better opportunities and survival.

On the other hand, voluntary migration happens when individuals or communities make a proactive decision to relocate in order to find better economic conditions, to access more services or purely as a personal choice. The factor of willingness, as well as the intensity of the climatic events that occur, enables the distinction to be made between voluntary and forced migration.

In the context of climate migration, an example of voluntary migration is from Bangladesh. It is a country vulnerable to both sea-level rise and increased riverine flooding. In response, some individuals and communities living in low-lying coastal areas have chosen to move voluntarily to safer inland locations. They may seek livelihood opportunities or better living conditions away from the immediate risks posed by coastal flooding.⁴⁰

Voluntary climate migration also occurs in areas adjacent to Bangladesh, e.g., in India. Changing weather patterns, water scarcity, and reduced agricultural productivity have affected rural communities in India. Some individuals and families have made voluntary decisions to migrate from rural areas to urban centres in search of employment, education, and improved living standards. While climate change may be a contributing factor, other socioeconomic factors also influence their decision to migrate.⁴¹

³⁹ INTERNATIONAL MONETARY FUND – AFRICAN AND RESEARCH DEPARTMENTS, *Climate Change and Chronic Food Insecurity in Sub-Saharan Africa*, September 2022, p. 2. Departmental Paper DP/2022/016. Available on the website: www.imf.org.

⁴⁰ MINISTRY ON ENVIRONMENT, FOREST AND CLIMATE CHANGE, GOVERNMENT OF PEOPLE'S REPUBLIC OF BANGLADESH, *National Adaptation Plan of Bangladesh (2023-2050)*, October 2022, p. 38. Available on the website: www4.unfccc.int.

⁴¹ MIGRATION POLICY INSTITUTE, PANDA, *Climate Change, Displacement, and Managed Retreat in Coastal India*, May 2020. Available on the website: www.migrationpolicy.org.

These examples are just a glimpse of the complex realities of climate migration. In fact, as previously stated, climate migration is often driven by a combination of climate change impacts, socioeconomic factors, political contexts, and individual circumstances. Experts recognize the limitation of categorizing climate migration solely as forced or voluntary.⁴² As a matter of fact, some of them argue that climate migration is predominantly a form of forced migration.⁴³ They emphasize that the adverse impacts of climate change, such as sea-level rise, extreme weather events, and environmental degradation, can render certain areas uninhabitable or lead to severe socio-economic disruptions.⁴⁴ In such cases, people may be compelled to move as they lack viable alternatives for their safety, well-being, and livelihoods. This perspective emphasizes the coercive nature of climate-induced displacement. In support of this thesis, there is Alex de Sherbinin. He is a geographer and highlights that climate change can act as a threat multiplier, exacerbating existing vulnerabilities and forcing people to move. He emphasizes the involuntary nature of climate-induced displacement.⁴⁵

Other experts highlight the importance of recognizing the agency and choice of individuals in climate migration.⁴⁶ They argue that people may make proactive decisions to migrate in response to changing climatic conditions as a form of adaptation. Economic opportunities, improved living conditions, or social networks in destination areas can also influence migration decisions. This perspective emphasizes the voluntary aspect of migration where, accordingly to the intensity of climatic events, individuals exercise some level of choice in pursuing better prospects.

An expert who discussed climate migration in this context is Richard

⁴² GEMENNE, ZICKGRAF, HUT, BETANCOURT, *Forced displacement related to the impacts of climate change and disasters*, June 2021, p. 8. Available on the website: www.unhcr.org

⁴³ BARNETT, MCMICHAEL, *The effects of climate change on the geography and timing human mobility*, in *Population and Environment* 39, April 2018, p. 340. Available on the website: www.link.springer.com.

⁴⁴ DE SHERBININ, WARNER, ENHART, *Casualties of Climate Change in Scientific American*, January 2011, p. 66. Available on the website: www.jstor.org.

⁴⁵ *Ibidem*.

⁴⁶ BLACK, BENNETT, THOMAS, BEDDINGTON, *Migration as adaptation*, October 2011, *Journal Nature* 478, p. 448. Available on the website: www.nature.com.

Black. He is a professor of geography and environmental science, and claims that framing climate migration as a purely forced phenomenon may oversimplify the complex motivations behind migration decisions.⁴⁷ He suggests that migration can be driven by a combination of factors, including the desire for better opportunities, improved living conditions, and social networks, alongside environmental factors.⁴⁸ It is important to note that according to these experts, the existence of forced migration due to climate change is not denied, but rather they emphasize the role of voluntary adaptation strategies in certain contexts.

However, many experts acknowledge that the forced/voluntary categorization is often inadequate to capture the nuanced realities of climate migration.⁴⁹ They argue that climate-induced displacement is a complex process: migration decisions may be influenced by both push factors (environmental stresses) and pull factors (economic opportunities), making it challenging to categorize migrations solely as forced or voluntary.⁵⁰ Furthermore, in this connection, it is remarkable that climate change often manifests as a gradual and cumulative process, making it difficult to pinpoint specific triggering events or a clear distinction between forced and voluntary migration. Slow-onset changes, such as prolonged droughts or incremental sea-level rise, can create a cumulative effect over time, leading to migratory movements that are influenced by both environmental factors and personal choices. Some exponents of this thought are François Gemenne and Susan Martin.

Gemenne, a political scientist specializing in environmental migration, acknowledges that climate migration involves both forced and voluntary elements. He argues that migration decisions are influenced by a combination of push factors and individual agency, highlighting the complex nature of climate-induced displacement.⁵¹

⁴⁷ *Ibidem.*

⁴⁸ *Ibidem.*

⁴⁹ MARTIN, WEERASINGHE, TAYLOR, *What is crisis migration?* in *Forced Migration Review issue 45*, February 2014, pp. 5-6. Available on the website: www.fmreview.org.

⁵⁰ GEMENNE, ZICKGRAF, HUT, BETANCOURT, *op. cit.*, p. 8.

⁵¹ *Ibidem.*

Martin, an expert on refugee and migration studies, suggests that climate migration is a mix of forced and voluntary movements. She emphasizes the importance of recognizing the role of personal choice and agency in migration decisions.⁵²

In general, all experts stress the importance of considering the intersectionality and context of climate migration. Climate change impacts can disproportionately affect certain groups, such as marginalized communities, indigenous peoples, and women, who may face greater vulnerabilities and limited choices.⁵³ The social, economic, and political conditions in origin and destination areas, as well as the availability of resources and support systems, can shape migration outcomes and the perception of force or voluntariness.

In a nutshell, the distinction between forced and voluntary migration can sometimes be blurred, as individuals may face both immediate threats and proactive choices when considering relocation due to climate change impacts.

Migration, however, is not the only possibility; it also depends on the adaptive response of the population. Adaptive capacity “is the ability of a system to adjust to climate change (including climate variability and extremes) to moderate potential damages, to take advantage of opportunities, or to cope with the consequences”.⁵⁴

Several factors influence the adaptive capacity of communities and individuals in the face of climate change, such as access to resources, livelihood opportunities, education, healthcare, social networks, and infrastructure play a significant role in determining adaptive capacity. Higher socio-economic status and access to resources generally enhance adaptive capacity.⁵⁵

⁵² MARTIN, WEERASINGHE, TAYLOR, *op. cit.*, pp. 5-6.

⁵³ UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, *Considerations regarding vulnerable groups, communities and ecosystems in the context of the national adaptation plans*, Bonn, December 2018, p. 15. Available on the website: www.unfccc.int.

⁵⁴ PARRY, CANZIANI, PALUTIKOF, VAN DER LINDEN, HANSON, *Climate Change 2007: Impacts, Adaptation and Vulnerability*, New York, 2007, p. 21. Available on the website: www.ipcc.ch.

⁵⁵ BROOKS, ADGER, *Assessing and Enhancing Adaptive Capacity*, in *Adaptation Policy Frameworks for Climate Change: Developing Strategies, Policies and Measures*, New York, November 2004, p. 168. Available on the website: www4.unfccc.int.

Secondly, the effectiveness of governance structures, policies, and institutions in supporting adaptation efforts is crucial. Strong governance, inclusive decision-making processes, supportive legal frameworks, and access to information and resources can enhance adaptive capacity.⁵⁶

Thirdly, strong social networks, community cohesion, and social capital contribute to adaptive capacity. Collaboration, collective action, and knowledge-sharing within communities facilitate effective adaptation and resilience-building.⁵⁷

Fourthly, access to appropriate technologies, infrastructure, and services, such as clean energy, water management systems, early warning systems, and healthcare facilities, enhances adaptive capacity.⁵⁸

Moreover, the availability and sustainable management of natural resources and ecosystem services, such as forests, water resources, and biodiversity, can support adaptive capacity by providing critical livelihood opportunities and ecological buffers against climate impacts.⁵⁹

In considering adaptive capacity, it is crucial to address equity and social justice. Vulnerable populations, such as marginalized communities, indigenous peoples, and low-income groups, often have lower adaptive capacity due to systemic inequalities. By strengthening adaptive capacity, individuals and communities can better cope with climate change impacts, reduce their vulnerability, and potentially avoid the need for forced migration or displacement. Enhancing adaptive capacity is a multifaceted process that requires a holistic approach, involving socio-economic development, good governance, investment in infrastructure and technology, preservation of natural resources, and the empowerment of communities to effectively adapt to climate change.

The topic of vulnerable populations, who have a lower adaptive capacity, opens the scenario of a category of people who faces significant barriers or constraints that prevent them from moving or

⁵⁶ *Ibidem.*

⁵⁷ *Ibidem.*

⁵⁸ *Ibidem.*

⁵⁹ *Ibidem.*

accessing safe and sustainable alternatives in the face of climate change impacts. These populations are often highly vulnerable and may find themselves in situations of heightened risk and limited options for adaptation. For this reason, they are called the trapped population. The proper definition is “populations who do not migrate, yet are situated in areas under threat, [...] at risk of becoming ‘trapped’ or having to stay behind, where they will be more vulnerable to environmental shocks and impoverishment.”⁶⁰

Trapped populations are typically characterized by socioeconomic factors that limit their mobility and adaptive capacity. These factors may include poverty, lack of resources, limited access to education and healthcare, and dependence on climate-sensitive livelihoods such as agriculture or fishing.⁶¹

These are not the only factors influencing it since geographical factors can contribute within areas exposed to climate change impacts. This may include residing in low-lying coastal regions prone to sea-level rise, living in remote or isolated areas with limited infrastructure, or inhabiting regions affected by recurring natural disasters.⁶²

Furthermore, legal and policy constraints can influence the movement of populations affected by climate change. This may involve inadequate recognition and protection of climate migrants under international or domestic laws, restrictive migration policies, lack of legal pathways for migration or displacement, and limited access to social and economic rights in potential destination areas.⁶³

Trapped populations may also face social and cultural factors that impede their mobility.⁶⁴ These factors may relate to strong cultural ties to ancestral lands, lack of social networks or support systems in potential destination areas, or displacement from areas with deep cultural significance or communal ties.

Finally, trapped populations may experience overlapping challenges

⁶⁰ IOM UN MIGRATION, *Glossary on Migration, International Migration Law No. 34*, cit.

⁶¹ RICK, *Trapped Populations: Held Hostage by Climate Change, Overture*. Available on the website: www.overtureglobal.io.

⁶² *Ibidem*.

⁶³ *Ibidem*.

⁶⁴ MALLICK, SCHANZE, *Trapped or Voluntary? Non-Migration Despite Climate Risks*, June 2020. Available on the website: www.mdpi.com.

related to conflict and displacement. Climate change impacts can exacerbate existing conflicts or create new ones, leading to further displacement and trapping populations in situations of protracted displacement.⁶⁵

International cooperation, support, and funding are crucial to assist trapped populations in finding durable solutions and reducing their vulnerability to climate change.

1.4 Populations most at risk of climate migration

People at risk of migrating because of the climate are constantly increasing. The categories that come to mind in the first instance are those related to nature, by choice or necessity of life.

First of all, coastal communities are among them due to the impacts of rising sea levels, storm surges, coastal erosion, and increased frequency and intensity of storms.⁶⁶ These communities often face the loss of habitable land, increased flood risks, and saltwater intrusion into freshwater sources. Small island nations and densely populated coastal regions, such as those in Southeast Asia, Latin America, and parts of Africa, are particularly vulnerable.⁶⁷ Displacement and migration become necessary as these areas become increasingly uninhabitable or face repeated climate-related disasters.

In this respect, some small islands are even at risk of disappearing. This is the case of the Tuvalu Islands, which was heard about at COP26 in Glasgow.

It is a state of about 26 square kilometres which managed to attract the attention of the whole world. Tuvalu is a country composed of nine small islands in the west-central Pacific Ocean, located between Australia and Hawaii. Its Minister of Justice Simon Kofe did not appear at the conference in Glasgow but delivered his speech in a video from Tuvalu. What is most surprising about his video is that he

⁶⁵ RICK, *op. cit.*, Overture.

⁶⁶ INTERNATIONAL ORGANIZATION FOR MIGRATION AND OCEAN AND CLIMATE PLATFORM, CAUSSE, MOKHNACHEVA, CAMUS, *Ocean, Environment, Climate Change and Human Mobility*, 2016, p. 5. Available on the website: www.environmentalmigration.iom.int.

⁶⁷ WORLD BANK GROUP, *Groundswell. Preparing for internal climate migration*, Washington, 2018, p. 109. Available on the website: www.worldbank.org.

was knee-deep in water, reciting his speech with a lectern and official flags also submerged in water. The government decided to have this video broadcast in Glasgow to convey the state of emergency the country is in. The minister explained that until a few years before there was no water there, but the sea level has risen considerably.



68

As a matter of fact, the global average sea level rise was estimated between 0.44 m and 0.74 m by the end of the 21st century by the IPCC's Fifth Assessment Report²⁹, but some studies suggested that the western Pacific has recorded higher-than-average rates of sea-level rise.⁶⁹ It is common knowledge that strong winds blow in the Pacific and floods are not only frequent but also violent and destructive, sweeping away everything they find. These phenomena, coupled with rising sea levels, can make a territory uninhabitable in the blink of an eye. Kofe's message is strong, sent out in this way to show that climate change exists in an obvious way and that we need to find a concrete solution without putting it off to the future.

Another category of people at risk of climate migration is rural communities, especially those dependent on agriculture for their livelihoods, face multiple climate-related challenges. Even in this case, it is evident that changes in temperature and precipitation patterns, droughts, floods, and the spread of pests and diseases can lead to reduced crop yields, livestock losses, and overall agricultural

⁶⁸ GUARDIAN STAFF AND AGENCY, *Tuvalu minister to address Cop26 knee deep in water*, November 2021. Available on the website: www.theguardian.com.

⁶⁹ STAFF WORLD BANK GROUP, *Climate Risk Country Profile: Tuvalu*, Washington, 2021, p 11. Available online on the website: www.climateknowledgeportal.worldbank.org.

instability. These impacts threaten food security and income stability, prompting rural populations to seek alternative livelihoods in urban areas or more resilient regions.

Thirdly, indigenous often reside in areas of high ecological importance, such as forests, mountains, and fragile ecosystems.⁷⁰ Due to factors like marginalization, limited access to resources, and reduced adaptive capacity, they are disproportionately affected by climate change impacts. Loss of traditional food sources, disruption of cultural practices, and environmental degradation can push indigenous communities to migrate in search of more favourable living conditions.

Fourthly, developing countries, particularly those with limited resources, face challenges in adapting to climate change impacts. Within these countries, low-income populations, including urban slum dwellers and marginalized communities, often lack access to basic services, infrastructure, and social safety nets.⁷¹ They are more vulnerable to climate-related events, such as floods and heatwaves, and may experience the loss of housing, livelihoods, and essential resources. These factors can contribute to the necessity of migration as an adaptive response to seek better opportunities and living conditions. An example of a low-income state that faces more challenges in adapting to climate change is Bangladesh. Its situation can be compared with the one of a high-income country: the Netherlands.

On the one hand, there is Bangladesh, a low-income country located in a region vulnerable to multiple climate change challenges such as sea-level rise, increased frequency and intensity of cyclones and storm surges, and changes in rainfall patterns. As a matter of fact, Bangladesh is prone to both riverine and coastal flooding.⁷² Climate

⁷⁰ INTERNATIONAL LABOUR OFFICE, *Indigenous people and climate change. From victims to change agents through decent work*, 2017. Available on the website: www.ilo.org.

⁷¹ INTERNATIONAL MONETARY FUND BLOG, GEORGIEVA, GASPAR, PAZARBASIOGLU, *Poor and Vulnerable Countries Need Support to Adapt to Climate Change*, March 2022. Available on the website: www.imf.org.

⁷² WORLD BANK GROUP, *Country Climate and Development Report: Bangladesh*, Washington, October 2022, p. 12. Available on the website: www.openknowledge.worldbank.org.

change exacerbates the risk of flooding, leading to damage to infrastructure, loss of lives, and displacement of populations. The country's low-lying geography and inadequate infrastructure pose significant challenges to managing and adapting to frequent floods. Moreover, Bangladesh is in a cyclone-prone region of the Bay of Bengal.⁷³ Rising sea levels and warmer sea surface temperatures due to climate change increase the intensity of cyclones. The impacts include storm surges, coastal erosion, and destruction of homes and infrastructure, leading to population displacement and loss of livelihoods. A key aspect is also the fact that Bangladesh has a high population density and is home to a large number of people living in poverty. This exacerbates the challenges faced in adapting to climate change, as the capacity to invest in resilient infrastructure, implement adaptation strategies, and support vulnerable communities is limited.⁷⁴ On the other hand, there is the Netherlands, a high-income country known for its expertise in water management and adaptation strategies. While it faces its own climate change challenges, such as sea-level rise and increased riverine flooding, it has more resources and advanced infrastructure to adapt to these impacts. Netherlands' better adaptive capacity is determined by an advanced flood protection system: the Netherlands has a long history of managing water and has implemented extensive flood protection measures, such as dikes, dams, and innovative engineering solutions.⁷⁵ These systems help reduce the risk of flooding and protect critical infrastructure and populated areas. In addition, the country has invested in advanced technologies for water management, such as storm surge barriers and efficient drainage systems. These technological advancements enhance their ability to cope with and adapt to climate change impacts.⁷⁶ Furthermore, as a high-income country, the Netherlands has more financial resources to invest in adaptation measures, conduct

⁷³ WORLD BANK GROUP, *op. cit.*, p. 12.

⁷⁴ *Ibidem*, p. 14.

⁷⁵ GOVERNMENT OF THE NETHERLANDS, *Water management*. Available on the website: www.government.nl.

⁷⁶ VAN DOORN-HOEKVELD, GILISSEN, GROOTHUIJSE, VAN RIKSWICK, UNIVERSITY OF UTRECHT, *Adaptation to Climate Change in Dutch Flood Risk Management: Innovative Approaches and Related Challenges*, November 2022. Available on the website: www.utrechtlawreview.org.

research, and develop comprehensive strategies to address climate change challenges. The availability of resources contributes to their ability to implement adaptation plans effectively.

These examples demonstrate how the differential socioeconomic status between low-income and high-income countries can result in disparities in their capacity to adapt to climate change impacts. Low-income states like Bangladesh often face significant challenges due to limited resources, high population density, and other development priorities, making it more difficult to implement robust adaptation measures compared to wealthier nations like the Netherlands.

Understanding the specific vulnerabilities and challenges faced by these populations should be crucial for formulating effective policies, implementing adaptive measures, and providing support and resources to enhance their resilience and reduce the need for forced climate migration. It is important to approach climate migration with a focus on human rights, equity, and the participation of affected communities in decision-making processes.

1.5 The gap in international legal protection

The main issue is that currently there is no specific international legal framework or treaty that provides comprehensive and binding legal protection specifically tailored to climate migrants. The existing international legal instruments, such as human rights law and refugee law, do not explicitly address the unique needs and vulnerabilities of individuals displaced or forced to migrate due to the impacts of climate change.

The regulatory gap for international legal protection of climate migrants is characterized by several specific challenges and limitations. One key challenge is the absence of universally accepted legal definitions for climate migrants. While terms like ‘environmental migrants’, ‘climate migrants’, ‘environmental refugees’, ‘climate refugees’, or ‘environmentally displaced persons’ are commonly used, there is no agreed-upon definition in international law. This hampers the development of targeted legal frameworks and hinders consistent identification and protection of climate migrants.

Secondly, the existing international legal frameworks primarily focus

on refugees fleeing persecution or conflict, such as the 1951 Refugee Convention. These frameworks do not explicitly include climate change as a basis for refugee status, as climate change-induced migration is often characterized by slow-onset processes rather than immediate persecution.⁷⁷ As a result, climate migrants may not fall within the scope of existing refugee protection mechanisms.

Thirdly, the legal provisions relevant to climate migrants are scattered across multiple international instruments, including human rights law, humanitarian law, environmental law, and regional agreements.⁷⁸ This fragmented approach makes it challenging to ensure comprehensive and cohesive protection for climate migrants. There is a need for a consolidated legal framework that specifically addresses the unique circumstances of climate-induced displacement.

Fourthly, there are no dedicated institutional mechanisms to address climate migration. This absence further contributes to the regulatory gap. Existing institutions primarily focus on specific aspects of migration or climate change,⁷⁹ but there is a lack of specialized bodies with a mandate to protect the rights and interests of climate migrants.

Finally, the lack of binding legal obligations and enforcement mechanisms is a significant challenge. International legal instruments related to climate change, such as the United Nations Framework Convention on Climate Change (UNFCCC), primarily focus on mitigation and adaptation rather than directly addressing the protection needs of climate migrants.⁸⁰ Without binding obligations, implementation and accountability mechanisms, the protection of climate migrants remains weak.

Addressing the regulatory gap requires concerted efforts at the

⁷⁷ UNITED NATIONS CONFERENCE OF PLENIPOTENTIARIES ON THE STATUS OF REFUGEES AND STATELESS PERSONS, *Final Act and Convention relating to the Status of Refugees*, Geneva, July 1951, p. 14, UN doc, A/CONF.2/108. Available on the website: www.treaties.un.org.

⁷⁸ AMMER, NOWAK, STADLMAYR, HAFNER, ENVIRONMENTAL RESEARCH OF THE FEDERAL MINISTRY OF THE ENVIRONMENT, NATURE CONSERVATION AND NUCLEAR SAFETY, *Legal Status and Legal Treatment of Environmental Refugees*, Dessau-Roßlau, November 2010, pp. 3, 8. Available on the website: www.ipcc.ch.

⁷⁹ E.g. IOM.

⁸⁰ UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, *What is the United Nations Framework Convention on Climate Change*. Available on the website: www.unfccc.int.

international level to develop a comprehensive legal framework. This framework should encompass a definition of climate migrants, clearly outline their rights and protections, establish responsibilities and mechanisms for sharing the burden, and ensure accountability and enforcement. It would ideally involve collaboration between states, international organizations, civil society, and affected communities to develop a holistic and inclusive approach to protect the rights and well-being of climate migrants.

However, it is important to note that climate migration is increasingly being recognized as a significant challenge and topic of concern within the international community. Efforts are underway to explore and address the legal gaps in protecting climate migrants and there are some relevant developments in this field.

As evidence of this, various non-binding agreements and declarations have acknowledged the importance of addressing climate-induced displacement and migration. For example, the Nansen Initiative, launched in 2012, aimed to build consensus and develop a protection agenda for people displaced across borders by natural disasters, including those related to climate change.⁸¹ The document ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change’ highlights guiding principles for addressing such displacement.

Furthermore, the Global Compact for Migration, which was adopted in 2018, recognizes the need to address the drivers and impacts of migration, including those related to climate change.⁸² While it provides a framework for international cooperation on migration, it is not legally binding⁸³ and does not establish specific provisions for climate migrants.

In addition to these two developments, some regional organizations have taken steps to address climate migration within their jurisdictions. For instance, the Pacific Islands Forum has been actively advocating for greater attention to the specific challenges faced by

⁸¹ THE NANSEN INITIATIVE, *op. cit.*, p. 15.

⁸² GENERAL ASSEMBLY, *Global Compact for Safe, Orderly, and Regular Migration*, resolution adopted on 19th December 2018, UN doc, Objective 2 (b), p. 9. A/RES/73/195. Available on the website: www.ohchr.org.

⁸³ *Ibidem*, p. 3.

Pacific Island countries due to climate change, including migration and displacement.⁸⁴

Moreover, in some states, national courts have considered the impacts of climate change and recognized the rights of individuals facing displacement. For example, courts in New Zealand recently debated⁸⁵ the issue of asylum claims of individuals from Pacific Island nations on the grounds of climate change-related risks to their lives and human rights.⁸⁶

While these developments demonstrate growing recognition of the challenges faced by climate migrants, there is still a significant gap in binding international legal protection. Efforts are ongoing to explore the establishment of a comprehensive legal framework to address the specific needs of climate migrants, but as of now, no such framework exists.

⁸⁴ PACIFIC ISLANDS FORUM SECRETARIAT (PIFS), *Pacific Climate Change Finance Assessment Framework*, Suva, May 2013, p. 26. Available on the website: www.unfccc.int.

⁸⁵ *AF (Kiribati)*, June 2013, NZ Immigration and Protection Tribunal 800413; *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, November 2013, NZ High Court 3125; *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, May 2014, Judgment Court of Appeal 50/2014; *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*, July 2015, Judgment Supreme Court 7/2015.

⁸⁶ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *Historic UN Human Rights case opens door to climate change asylum claims*, January 2020. Available on the website: www.ohchr.org.

CHAPTER II

THE INTERNATIONAL LEGAL FRAMEWORK

2.1 Multiple definitions for people migrating because of the climate

Since there is not a legal and universal definition accepted for climate migrants, it is necessary to delve into the different terms used to describe this category of migrants and explore the reasons for their differences.

The international community's view on the various definitions of climate migrants is characterized by ongoing discussions, debates, and evolving perspectives. While there is no universally agreed-upon definition, the issue of climate migrants has gained recognition and attention at the international level.

As a matter of fact, there is growing recognition among international organizations, governments, and experts that climate change is a driver of human displacement and migration.⁸⁷

There is a consensus that addressing the challenges of climate migration requires comprehensive approaches that go beyond traditional frameworks.⁸⁸ The complexity of climate-related displacement calls for integrated strategies that combine climate adaptation, disaster risk reduction, human rights protection, development assistance, and migration policies.⁸⁹

The international community highlights the importance of protecting the rights of climate migrants.⁹⁰ This includes ensuring access to basic necessities, such as shelter, food, water, and healthcare, as well as safeguarding human rights, dignity, and non-discrimination. There is an increasing call for the development of legal frameworks and mechanisms to address the specific vulnerabilities and needs of

⁸⁷ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES THE UN REFUGEE AGENCY, *Strategic Framework for Climate Action*, January 2021, p. 13. Available on the website: www.unhcr.org.

⁸⁸ *Ibidem*, p. VI.

⁸⁹ *Ibidem*, p. 26.

⁹⁰ *Ibidem*, p. III.

climate migrants.⁹¹

In this framework, the International Organization for Migration observes that climate migration is a global issue that requires international cooperation and solidarity.⁹² There are efforts to enhance collaboration among countries, international organizations, civil society, and other stakeholders to develop coordinated responses, share best practices, and provide support to countries and communities affected by climate-induced displacement.⁹³

The International Organization for Migration also emphasizes the relevance of research, data collection, and knowledge-sharing to better understand the dynamics and impacts of climate migration.⁹⁴ There are calls for further research on the causes, patterns, and consequences of climate-induced displacement to inform evidence-based policies and interventions.

There is an ongoing discussion within the international community on the need for policy and legal development to address the specific challenges of climate migration. This includes exploring the potential creation of new legal frameworks, protocols, or agreements that provide adequate protection and support for climate migrants.

Overall, climate migration is a global concern and discussions, initiatives, and actions are necessary to address the various definitions and challenges associated with this phenomenon. The evolving nature of climate change and its impacts necessitate ongoing dialogue and collaboration to develop comprehensive, rights-based, and sustainable approaches to protect and support climate migrants.

2.2 Environmental migrant, climate migrant, environmental refugee, climate refugee, displaced person

The terms to be analysed, which are usually used by different sources, are environmental migrant, climate migrant, environmental refugee, climate refugee, and displaced person.

⁹¹ *Ibidem*, p. 31.

⁹² Information available on the website: www.iom.int.

⁹³ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES THE UN REFUGEE AGENCY, *Strategic Framework for Climate Action*, p. 34, cit.

⁹⁴ Information available on the website: www.iom.int.

First of all, an environmental migrant refers to an individual or a group of people who are compelled to migrate due to environmental factors that negatively impact their livelihoods, well-being, or ability to sustain themselves in their current location.⁹⁵ These environmental factors can include natural disasters, land degradation, deforestation, water scarcity, and other non-climate-related environmental challenges.

Secondly, a climate migrant is an individual or a group of people who are forced to migrate primarily due to the adverse effects of climate change, including rising temperatures, changing precipitation patterns, sea-level rise, increased frequency and intensity of extreme weather events, or other climate-related phenomena. Climate migrants may move within their country or cross international borders seeking safer and more sustainable living conditions.⁹⁶

Thirdly, the term ‘environmental refugee’ is not widely recognized or legally defined under international law. It is an expression coined by Essam El-Hinnawi in 1985, they are those people “who had to leave their habitat, temporarily or permanently, because of a potential environmental hazard or disruption in their life-supporting ecosystems”.⁹⁷ Their movement is forced.

Since refugees are defined as “people who have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country”,⁹⁸ one might wonder if they are real refugees since they are not persecuted in their country. This is the reason why opinions may be divided on this issue, because on the one hand, a country may still be stable, but on the other hand, it can be argued that if it is threatened by environmental events, it is not safe. Similar to environmental migrants, environmental refugees may face challenges related to natural disasters, deforestation, land degradation, or water scarcity.

⁹⁵ IOM UN MIGRATION, *Glossary on Migration, International Migration Law No. 34*, cit.

⁹⁶ *Ibidem*.

⁹⁷ UNITED NATIONS ENVIRONMENT PROGRAMME ESSAM EL-HINNAWI, *Environmental Refugees*, Nairobi, 1985. UN doc UNEP(02)/E52, p. 4. Available on the website: www.digitallibrary.un.org.

⁹⁸ Information available on the website: www.unhcr.org.

Fourthly, climate refugee is not “a term of art in international law”.⁹⁹ It is often used to describe individuals or groups who are forced to leave their country as a direct result of the adverse impacts of climate change.¹⁰⁰ The word ‘refugee’ draws parallels with the legal definition of refugees under the 1951 Refugee Convention, which pertains to individuals fleeing persecution or conflict. However, climate-induced migrants do not currently have a recognized legal status as refugees. Finally, an environmentally displaced person refers to an individual who is forced to leave their country or habitual residence,

“and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one. This term is used as a less controversial alternative to environmental refugee or climate refugee [...] that have no legal basis or *raison d’être* in international law, to refer to a category of environmental migrants whose movement is of a clearly forced nature”.¹⁰¹

The differences between these terms lie in the specific causes and factors that drive migration and the extent to which climate change is the primary driver.

As a matter of fact, on the one hand, environmental migrants migrate due to a range of environmental factors, including both climate-related and non-climate-related challenges. On the other hand, climate migrants migrate due to the adverse impacts of climate change, with a specific focus on climate-related factors such as rising temperatures, extreme weather events, and sea-level rise.

There is a growing acceptance that the usage of the terms ‘climate change refugees’ or ‘environmental refugees’ should be avoided, accordingly for example to IOM and UNHCR. As a matter of fact, the use of such terms could undermine the international legal framework for the protection of refugees because they are deceptive and fail to

⁹⁹ IOM UN MIGRATION, *Glossary on Migration, International Migration Law No. 34*, cit.

¹⁰⁰ *Ibidem*.

¹⁰¹ INTERNATIONAL ORGANIZATION FOR MIGRATION, *Migration, Environment and Climate Change: Evidence for Policy (MECLEP). Glossary*, Geneva, July 2014. Available on the website: www.publications.iom.int.

recognize several important aspects that define population movements in the context of climate change and environmental degradation, such as the fact that environmental migration is not always forced.¹⁰² Additionally, many states, notably those most involved in the phenomena of climate migration, are likewise opposed to the use of the term ‘refugee’. States such as Tuvalu, Kiribati, and the Maldives have expressly announced their rejection to designate their inhabitants relocating due to climate change as refugees, citing concerns that it would diminish individual dignity and make governments appear weak and incapable of protecting their citizens.¹⁰³ One utterance of the president of Kiribati’s in this regard is significant: “I reject the terminology, the classification of our people as climate refugees. Because the last thing we wish to lose, after our land, is our dignity. (...) We must be proactive rather than victims”.¹⁰⁴

Migration is a politically sensitive topic, and different terms may reflect the framing of migration issues within specific political contexts. The choice of terminology can influence public perception, policy approaches, and the allocation of resources.

Furthermore, the lack of a universally recognized legal framework specifically addressing climate migrants or climate refugees has led to a lack of consistent terminology.¹⁰⁵ The legal status of migrants affects their entitlements, access to protection mechanisms, and the responsibilities of states.

Climate-induced migration is a complex phenomenon influenced by a range of interconnected factors. Different terms aim to capture specific dimensions, causes, or consequences of migration. This reflects the need for nuanced approaches to understanding and addressing the diverse drivers and implications of climate-related displacement. Additionally, this is the reason why different denominations may emerge from specific advocacy efforts or policy

¹⁰² Information available on the website: www.environmentalmigration.iom.int.

¹⁰³ PERRONE, *Anote Tong. It’s not just the climate that’s at stake, it’s the future of a generation*, December 2017. Available on the website: www.lifegate.com.

¹⁰⁴ *Ibidem*.

¹⁰⁵ HIRAIDE, *The Difficult Business of Defining Climate Refugees*, Green European Journal, January 2022. Available on the website: www.greeneuropeanjournal.eu.

agendas.¹⁰⁶ Some terms, such as ‘climate refugees’, highlight the need for legal recognition and protection specifically for those displaced by climate change.¹⁰⁷ Other terms, like ‘climate migrants’ or ‘environmental migrants’, offer broader and inclusive descriptions to encompass a wider range of environmental factors driving migration. These terms and categories help describe specific aspects of migration influenced by environmental and climate factors, recognizing the different drivers and circumstances that lead to displacement. It is worth noting that their usage may vary across different contexts, organizations, and regions, and that efforts are ongoing to develop a more unified and comprehensive approach to terminology and legal frameworks related to climate-induced migration and displacement. Among the various organizations, researchers, and experts who have contributed to defining and categorizing different groups of people affected by environmental and climate-related challenges, the International Organization for Migration is the leading intergovernmental organization in the field of migration.¹⁰⁸ It has been actively involved in research and policy development related to environmental migration and displacement. It has contributed to defining and refining terminology and has developed frameworks to address the specific needs of migrants affected by environmental and climate factors.¹⁰⁹

In addition, the United Nations High Commissioner for Refugees is responsible for protecting and supporting refugees worldwide. While the legal definition of refugees under the 1951 Refugee Convention does not explicitly cover climate-related displacement, the UNHCR has engaged in discussions and provided input on the challenges faced by people displaced due to climate change.¹¹⁰

Furthermore, as previously mentioned, the United Nations Framework

¹⁰⁶ LINEKAR, FROUWS, MIXED MIGRATION CENTRE, *Climate change, environmental stressors, and mixed mitigation*, December 2022. Available on the website: www.environmentalmigration.iom.int.

¹⁰⁷ APAP, EUROPEAN PARLIAMENTARY RESEARCH SERVICE, *The concept of “climate refugee”*. *Towards a possible definition*, February 2019, p.7. Available on the website: www.europarl.europa.eu.

¹⁰⁸ Information available on the website: www.iom.int.

¹⁰⁹ *Ibidem*.

¹¹⁰ Information available on the website: www.unhcr.org.

Convention on Climate Change is an international treaty that aims to combat climate change and its impacts. While it primarily focuses on mitigation and adaptation, the UNFCCC acknowledges the importance of addressing the impacts of climate change on human mobility.¹¹¹ It has facilitated discussions on loss and damage associated with climate-related displacement.

Not only organisations and institutions are engaged in the search for a term to be shared in the international framework, but also numerous scholars and researchers have made significant contributions to the study and categorization of people affected by environmental and climate-related challenges. They have conducted research, developed frameworks, and proposed terminology to enhance understanding and policy responses.

Besides the aforementioned Essam El-Hinnawi, there is an environmentalist and scholar widely recognized for his pioneering work on environmental refugees: Norman Myers. In 1993, he defined environmental refugees as people

“who can no longer gain a secure livelihood in their erstwhile homelands because of drought, soil erosion, desertification, and other environmental problems. In their desperation, they feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt”.¹¹²

More recently, according to Frank Biermann and Ingrid Boas, climate refugees are people

“who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity”¹¹³

By the same token, Jon Barnett, an Australian geographer, has

¹¹¹ ADVISORY GROUP ON CLIMATE CHANGE AND HUMAN MOBILITY RECOMMENDATIONS, *ADP Workstream 1*, August 2015, p. 1. Available on the website: www.unfccc.int.

¹¹² MYERS, *Environmental Refugees in a Globally Warmed World*, December 1993, p. 752. Available on the website: www.jstor.org.

¹¹³ BIERMANN, BOAS, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 2010, p. 67. Available on the website: www.academia.edu.

conducted extensive research on climate change, adaptation, and migration. His work focuses on understanding the complex interactions between climate change and human mobility, particularly in the Pacific region.¹¹⁴ This is relevant since the Pacific region is vulnerable to climate change.

In parallel, Jane McAdam, an international refugee law scholar, has made significant contributions to the study of climate-induced migration and the legal frameworks that apply to displaced persons. She has explored the legal and policy implications of climate change-related displacement and advocated for a more comprehensive protection framework.¹¹⁵

Finally, Koko Warner, a social scientist, has conducted research on climate change, migration, and adaptation. She has contributed to the understanding of climate-induced migration patterns, the differential impacts on vulnerable populations, and the need for policy responses that address the specific challenges faced by climate migrants.¹¹⁶

These scholars, among others, have played crucial roles in advancing the understanding of the complex relationship between environmental and climate change factors and human migration. They have contributed to the development of terminology, frameworks, and policy recommendations to address the challenges faced by individuals and communities affected by environmental and climate-related displacement. It is worth noting that the field of study is interdisciplinary, involving researchers from various disciplines such as geography, environmental studies, social sciences, and law.

There is still a long way to go when it comes to naming people who emigrate for the climate, although all of the above terms are used in common usage. Unfortunately, this is not the only area where the international community needs to get involved. In fact, it is crucial to identify an international line for the protection of these people. Before

¹¹⁴ BARNETT, MCMICHAEL, *op. cit.*, p. 340.

¹¹⁵ MCADAM FOR THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *Climate Change Displacement and International Law: Complementary Protection Standards*, Geneva, May 2011, p. 36. UN doc PPLA/2011/03. Available on the website: www.unhcr.org.

¹¹⁶ WARNER, OAKES, BANERJEE, *Human Mobility and Adaptation to Environmental Change*, in *World Migration Report 2020*, p. 298. Available on the website: www.publications.iom.int.

addressing the possible hypotheses to be resorted to, further exploration of climate migrants is necessary.

2.3 Criteria for distinguishing climate migrants

Precisely because climate migration is an interweaving of different factors, it is crucial to simplify the phenomenon and categorise the people involved. This distinction is a preliminary step that must be made in order to more easily identify the categories to be safeguarded when developing legal protection for these individuals.

Climate migrants can be classified according to the type of phenomenon that causes them to leave home, or to the type of migration.¹¹⁷ It is understood that there are always other factors that play a role in this type of human mobility.

2.3.1 According to the type of phenomenon

A relevant classification for climate migrants is based on the nature of the climate-related events that trigger their displacement. On the one hand, sudden-onset climate migrants are individuals or groups who are displaced as a result of abrupt and extreme weather events that are intensified by climate change. These events can include hurricanes, cyclones, floods, landslides, wildfires, or severe storms.¹¹⁸ Sudden-onset events often lead to immediate displacement, as they can cause significant destruction, loss of life, and damage to infrastructure and homes. Individuals may be forced to flee their homes quickly and seek safety in alternative locations.¹¹⁹ Sudden-onset climate migrants face acute risks to their safety, as well as challenges related to the loss of shelter, possessions, and livelihoods. They may require immediate humanitarian assistance, including emergency shelter, food, water,

¹¹⁷ APA, DU PERRON DE REVEL, *The concept of «climate refugee. Towards a possible definition*, October 2021, p. 4. Available on the website: www.europarl.europa.eu.

¹¹⁸ PLATFORM ON DISASTER DISPLACEMENT AND UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *The slow onset effects of Climate Change and Human Rights Protection for cross-border migrants*, Geneva, 2017, p. 2. Available on the website: www.ohchr.org.

¹¹⁹ NORWEGIAN REFUGEE COUNCIL AND INTERNAL DISPLACEMENT MONITORING CENTRE, *Global Estimates 2015. People displaced by disasters*, Geneva, July 2015, p. 14. Available on the website: www.internal-displacement.org.

healthcare, and protection from exploitation or discrimination.¹²⁰ Examples of sudden-onset climate migrants include people displaced by devastating hurricanes like Hurricane Katrina in the United States or Cyclone Idai in Mozambique.

On the other hand, slow-onset climate migrants, also referred to as gradual environmental change migrants, are individuals or groups who are displaced due to the long-term and gradual impacts of climate change.¹²¹ These impacts may include sea-level rise, desertification, land degradation, changing precipitation patterns, or the loss of agricultural productivity over time. Unlike sudden-onset events, slow-onset climate change occurs gradually, often unfolding over years or decades. It can erode livelihoods, make land unsuitable for agriculture, or compromise access to essential resources like water. As a result, affected individuals or communities may choose or be forced to relocate to more secure or viable locations. Slow-onset climate migrants face challenges related to adaptation and long-term planning.¹²² They may require support in building resilience, including access to land, employment opportunities, infrastructure, and social services in their new locations.¹²³ Examples of slow-onset climate migrants include people displaced by rising sea levels in low-lying island nations like Tuvalu or those forced to migrate due to prolonged droughts in regions like the Sahel in Africa.¹²⁴

In addition to this framework, Walter Kälin, a prominent scholar in the field of human rights and migration, has identified five environmental scenarios that have the potential to cause migration. These scenarios reflect different environmental challenges that can lead to population displacement. The five scenarios are:

“sudden-onset disasters; slow-onset environmental degradation; the destruction of small island states by rising sea levels; areas designated as prohibited for human habitation because of mitigation and adaptation measures

¹²⁰ *Ibidem*, p. 16.

¹²¹ PLATFORM ON DISASTER DISPLACEMENT AND UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *op. cit.*, p. 4.

¹²² *Ibidem*.

¹²³ *Ibidem*, p. 12-13.

¹²⁴ *Ibidem*, p. 34, 38.

or because of a high risk of disasters occurring there; and unrest, violence and conflict over resources diminishing as a consequence of climate change".¹²⁵

Sudden-onset disasters and slow-onset environmental degradation has been exhaustively explained.

As far as the destruction of small island states by rising sea levels is concerned, it poses severe risks to human life, cultural identity, and self-determination. Entire communities may face displacement, loss of homes, of infrastructure, and of livelihoods. The loss of habitable land and exposure to saltwater intrusion can lead to health issues, increased vulnerability to natural hazards, and loss of cultural heritage.¹²⁶ Legal protection for climate migrants from small island states requires acknowledging their unique situation and specific vulnerabilities. Adequate international legal frameworks are needed to recognize and address the rights of climate refugees. This includes the provision of safe and dignified relocation, the right to cultural identity, access to adequate housing, and the right to participate in decisions affecting their lives.

Moreover, areas that are prohibited from human habitation due to environmental risks or hazards can expose individuals to direct physical harm and health risks. These areas may be contaminated by toxic substances, subject to frequent natural disasters, or affected by other hazardous conditions. Continuing to reside in such areas can pose long-term health and safety risks.¹²⁷ This scenario requests government intervention to ensure the safe relocation of affected populations and the provision of adequate alternative housing and livelihood opportunities. It involves the enforcement of regulations that prevent human settlement in hazardous areas and the provision of compensation or support for those who are displaced.

At the same time, unrest, violence, and conflicts arising from climate change-induced resource scarcity can pose significant risks to human

¹²⁵ KÄLIN AND SCHREPFER, LEGAL AND PROTECTION POLICY RESEARCH SERIES, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*, Geneva, February 2012, p. 2. UN doc PPLA/2012/01. Available on the website: www.unhcr.org

¹²⁶ *Ibidem*, p. 15.

¹²⁷ *Ibidem*, p. 16.

life, safety, and security. Displacement in these situations often involves additional risks associated with conflict, including threats to personal security, forced recruitment, sexual violence, and discrimination.¹²⁸ Legal protection in this scenario involves addressing both the environmental and conflict-related dimensions. Humanitarian and human rights laws play crucial roles in ensuring the protection of displaced individuals, including their physical safety, access to basic needs, non-discrimination, and freedom from violence. Peacebuilding efforts, conflict resolution, and post-conflict reconstruction efforts are essential for creating stable conditions that enable the safe return, resettlement, or integration of affected populations.

Overall, the legal protection needed in each scenario asks for a combination of international human rights law, refugee law, humanitarian law, and climate change-specific frameworks.¹²⁹ These legal instruments provide a foundation for addressing the risks and ensuring the rights, dignity, and well-being of individuals who are environmentally displaced. It is important for governments, international organizations, and civil society to work together to develop comprehensive policies and responses that prioritize the protection and support of climate migrants in all these scenarios.

2.3.2 According to the type of migration

The classification of climate migrants by type of migration is based on the intentionality factor, the temporal factor, and the geographical factor.

Regarding intentionality, ample space in this thesis has been devoted to the distinction between forced and voluntary migration. What is worth adding is the broad and comprehensive distinction Renaud has made on environmental migrants. He distinguished between environmentally emergency migrants, environmentally forced migrants, and environmentally motivated migrants.

This first category refers to individuals or communities who are compelled to migrate due to sudden-onset environmental emergencies

¹²⁸ *Ibidem*, p. 16.

¹²⁹ *Ibidem*, pp. 25-27.

or disasters. These emergencies can include events like hurricanes, earthquakes, floods, or wildfires that pose an immediate threat to life and require urgent evacuation. Environmentally emergency migrants are forced to leave their homes temporarily or permanently to seek safety and protect their lives.¹³⁰

The second category encompasses people who are displaced or compelled to migrate due to long-term or slow-onset environmental changes. These changes may include land degradation, desertification, sea-level rise, deforestation, or water scarcity. Environmentally forced migrants experience a gradual deterioration of their living conditions and are often no longer able to sustain their livelihoods or maintain their well-being in their original place of residence.¹³¹

The third one includes individuals or communities who choose to migrate due to environmental factors but are not necessarily displaced or forced to do so. Environmentally motivated migrants make a voluntary decision to relocate in search of better living conditions, improved opportunities, or a more sustainable environment.¹³² They may be driven by factors such as access to resources, employment prospects, or a desire for a higher quality of life in areas less affected by environmental challenges.

The second factor of climate migrants classification by the type of migration is the temporal one, which refers to the timeframe over which individuals or communities are displaced or compelled to migrate due to climate change or environmental factors. It encompasses both the duration of displacement and the temporal aspects of the processes leading to migration. The temporal dimension of climate migration can vary greatly depending on the specific circumstances and the nature of the environmental changes involved. First of all, there is the case of temporary displacement. In some cases, climate migrants may experience temporary displacement, where they are forced to leave their homes or communities for a limited period. This could occur in situations of sudden-onset disasters, such as

¹³⁰ RENAUD, DUN, WARNER, BOGARDI, INTERNATIONAL ORGANIZATION FOR MIGRATION, *A Decision Framework for Environmentally Induced Migration*, May 2011, p. 14. Available on the website: www.online.library.wiley.com.

¹³¹ *Ibidem*, p. 15.

¹³² *Ibidem*.

hurricanes or floods, where people are temporarily relocated to safer areas until the immediate threat subsides. Once the situation stabilizes, they may return to their original location. Temporary climate migrants often face challenges related to immediate shelter, access to clean water, sanitation, and healthcare.

Secondly, climate migrants can also face long-term or permanent displacement when their original habitats become uninhabitable or unsustainable due to environmental changes. This can happen in cases of sea-level rise, desertification, or persistent extreme weather events that render areas unsuitable for human habitation. In such instances, individuals or communities may be permanently uprooted and need to find new places to settle. For these reasons, they often require comprehensive resettlement and integration measures, including the provision of durable housing, livelihood opportunities, social support systems, and access to education and healthcare.

Thirdly, some climate migrants may experience a gradual or phased migration process. Rather than a sudden displacement, they may relocate incrementally over time as environmental conditions worsen. For instance, as water scarcity increases or agricultural productivity declines, individuals or families may migrate from rural areas to urban centres in search of better opportunities or resources.¹³³ This gradual migration can occur over months, years, or even decades.

Furthermore, in certain cases, climate-related factors can lead to seasonal migration patterns.¹³⁴ This is observed in regions where changing climate patterns affect agricultural activities. For example, farmers may temporarily migrate to other regions or countries during periods of drought or extreme weather events, seeking employment or alternative livelihood options. Seasonal migration allows them to adapt to climate variability and mitigate the impacts on their livelihoods.

Finally, the temporal factor of climate migration also includes proactive or pre-emptive migration. In this case, individuals or communities may choose to migrate before environmental conditions

¹³³ Information available on the website: www.iom.int.

¹³⁴ THE WHITE HOUSE, *Report on the Impact of Climate Change on Migration*, October 2021, p. 5. Available on the website: www.reliefweb.int.

become unviable. They anticipate future challenges, such as projected sea-level rise or persistent droughts, and opt to relocate in advance to avoid potential risks and secure better living conditions.¹³⁵

It is important to recognize that the temporal aspect of climate migration is not always straightforward, and different individuals or communities may experience varying durations and trajectories of displacement.

Geographically speaking, cross-border climate migration regards the movement of people across international borders due to climate change impacts. This can include individuals or communities fleeing from regions severely affected by environmental changes, seeking safety, security, and better living conditions in other countries. Legal protection for cross-border climate migrants involves a complex interplay of national laws, international human rights laws, and migration frameworks. It includes considerations such as access to asylum or refugee status, non-refoulement (protection against forced return to a place of danger), and respect for the rights of migrants, including the right to life, dignity, and protection from discrimination.¹³⁶

To address the challenges of cross-border climate migration, regional and bilateral agreements play a crucial role. These agreements facilitate cooperation and coordination among countries in terms of addressing the needs of climate migrants, ensuring their protection, and sharing responsibilities. Regional frameworks and bilateral agreements between countries can help establish protocols for the movement and protection of climate migrants, including provisions for temporary or permanent resettlement.

2.4 International regulatory framework

As previously stated, there is no specific international regulatory framework that exclusively focuses on climate migrants, there is

¹³⁵ ZICKGRAF, *Climate Change and Migration: Myths and Realities*, January 2020. Available on the website: www.greeneuropeanjournal.eu.

¹³⁶ MCADAM, LIMON, *Human Rights, Climate Change and Cross-Border Displacement: the role of the international human rights community in contributing to effective and just solutions*, August 2015, p. 14. Available on the website: www.unfccc.int.

therefore a legal gap, but the basis of law to protect climate migrants should germinate on some pre-existing legal elements. In this part of the work, these elements will be presented.

2.4.1 The Charter of the United Nations

The Charter of the United Nations is a legally binding document for all member states of the United Nations. As a foundational treaty, it sets out the principles and purposes of the United Nations and establishes the obligations and responsibilities of member states. The Charter provides the legal framework for the functioning of the United Nations and its various organs and agencies.¹³⁷

While the Charter of the United Nations does not explicitly address climate migrants or provide specific legal provisions for their protection, it provides a broader framework for advocating human rights, sustainable development, and international cooperation in addressing the challenges posed by climate change. It establishes the principles and responsibilities that can be invoked to guide discussions and actions towards the creation of rights to protect climate migrants at the international level.

The Charter of the United Nations reaffirms the faith in fundamental human rights, dignity, and worth of every individual.¹³⁸ It recognizes the equal rights of men and women and promotes respect for human rights and fundamental freedoms without distinction of any kind.¹³⁹ The principles enshrined in the Charter provide a basis for advocating for the rights and protection of climate migrants.

Furthermore, the Charter establishes the responsibilities of member states to maintain international peace and security, promote social progress and better standards of life, and cooperate in solving international problems of an economic, social, cultural, or humanitarian character.¹⁴⁰ These responsibilities can be invoked to

¹³⁷ UNITED NATIONS, *Charter of the United Nations and Statute of the International Court of Justice*, San Francisco, June 1945, p. 2. Available on the website: www.treaties.un.org.

¹³⁸ *Ibidem*.

¹³⁹ *Ibidem*.

¹⁴⁰ *Ibidem*, art. 73, p. 14.

encourage states to address the challenges faced by climate migrants and uphold their rights.

Moreover, the Charter of the United Nations serves as the foundational framework for the United Nations. In this case, the United Nations Framework Convention on Climate Change (UNFCCC) is relevant. The UNFCCC recalls

“that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.¹⁴¹

It seeks to stabilize greenhouse gas concentrations in the atmosphere and take actions to address climate change.¹⁴² The link between climate change and the protection of human rights can be recognized within the UNFCCC, in the section where some definitions are given to make clearer the purposes of the Convention. In particular, adverse effect of climate change “means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare”.¹⁴³

It is important to note that the Charter of the United Nations does not create specific legally binding obligations with regard to climate change or the protection of climate migrants. However, other international legal instruments and agreements, such as the United Nations Framework Convention on Climate Change and its related protocols, such as the Paris Agreement, may contain specific binding obligations and commitments that member states have agreed to in relation to climate change mitigation, adaptation, and support.¹⁴⁴

¹⁴¹ UNITED NATIONS, *United Nations Framework Convention on Climate Change*, 1992, p. 1. Available on the website: www.unfccc.int.

¹⁴² *Ibidem*, p. 9.

¹⁴³ *Ibidem*, p. 3.

¹⁴⁴ Information available on the website: www.unfccc.it.

Therefore, while the Charter of the United Nations itself is binding, there are no specific legal obligations and commitments related to climate change and the protection of climate migrants.

2.4.2 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) provides a universal framework and moral foundation for the protection of human rights. Despite its non-binding character, the UDHR serves as a foundational document in the field of human rights and is closely linked to the debate on rights to protect climate migrants. It does not explicitly mention climate change or climate migrants, but it establishes fundamental principles and rights that can be taken as a starting point to address the challenges faced by climate migrants.

First of all, Article 3 of the UDHR recognizes “the right to life, liberty, and security of the person”.¹⁴⁵ Climate change can pose significant risks to the lives and security of individuals, leading to displacement, loss of homes, and exposure to extreme weather events. The protection of climate migrants’ right to life and security is essential in addressing their vulnerabilities.

Secondly, Article 25 of the UDHR states that “everyone has the right to a standard of living adequate for their health well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services”.¹⁴⁶ Climate migrants often face challenges in accessing these basic necessities due to the loss of their homes and livelihoods. The right to an adequate standard of living can be invoked to advocate for the provision of necessary assistance, support, and access to resources for climate migrants. More precisely, this Article recognizes the right to housing. Climate migrants may be displaced from their homes due to environmental factors such as sea-level rise, natural disasters, or land degradation. The right to housing can be relevant in ensuring that climate migrants have access to adequate and secure housing options in their new locations. Article 25

¹⁴⁵ UNITED NATIONS GENERAL ASSEMBLY, *Universal Declaration of Human Rights*, Paris, December 1948, p.72, UN doc A/RES/217(III). Available on the website: www.undocs.org.

¹⁴⁶ *Ibidem*, p. 76.

of also includes the right to health. Climate change can have significant health impacts, including an increased prevalence of infectious diseases, mental health issues, and physical ailments. The right to health, as recognized by the UDHR, implies that climate migrants should have access to healthcare services, clean water, sanitation facilities, and adequate nutrition. Protecting this right involves considering the health impacts of climate change and implementing measures to mitigate and adapt to these impacts for the well-being of climate migrants.

Thirdly, Article 2 of the UDHR establishes the principle of non-discrimination.¹⁴⁷ Climate change disproportionately affects vulnerable communities, including marginalized groups, indigenous peoples, and those living in poverty. The right to non-discrimination is crucial in ensuring that climate migrants are not subjected to discriminatory treatment and have equal access to assistance, protection, and opportunities.

UDHR principles and rights can be invoked to provide specific rights and legal protections for climate migrants. The application of the UDHR in the context of climate migration involves interpreting its provisions in light of the unique challenges and vulnerabilities faced by climate migrants and ensuring their rights are upheld and respected.

2.4.3 The UN Pacts

The UN Pacts, consisting of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), are key international human rights treaties adopted by the United Nations General Assembly in 1966. These pacts entered into force in 1976 and are considered foundational instruments in the international human rights framework.

The ICCPR focuses on civil and political rights, guaranteeing individuals the right to life, liberty, security of the person, freedom of

¹⁴⁷ *Ibidem*, p. 2.

thought, expression, assembly, and movement, among others.¹⁴⁸ The ICESCR, on the other hand, recognizes economic, social, and cultural rights, including the right to work, the right to an adequate standard of living, the right to health, education, and social security.¹⁴⁹

While the 1966 UN Pacts do not explicitly mention climate migrants, they establish a comprehensive framework of human rights that can be applied to their protection. Climate migrants, who are displaced as a result of climate change impacts, often face challenges in the enjoyment of their civil, political, economic, social, and cultural rights. These rights are interconnected and indivisible, meaning that the full realization of one right often depends on the realization of other rights.

Climate-induced displacement can lead to violations or infringements of various human rights, such as the right to life, the right to adequate housing, the right to food, water, and sanitation, the right to health, and even the right to self-determination.

For example, the rights to life and security of the person under the ICCPR could be invoked to emphasize the duty of states to protect individuals from the harmful effects of climate change.¹⁵⁰ The ICESCR's recognition of the right to an adequate standard of living, including adequate housing found in article 11,¹⁵¹ could be relevant to addressing the housing needs of climate migrants. The right to health and access to essential services, as recognized in both pacts, can inform the provision of healthcare and social services to displaced populations affected by climate change.

¹⁴⁸ GENERAL ASSEMBLY OF UNITED NATIONS, *International Covenant on Civil and Political Rights*, New York, December 1966. Available on the website: www.treaties.un.org.

¹⁴⁹ GENERAL ASSEMBLY OF UNITED NATIONS, *International Covenants on Economic, Social and Cultural Rights*, New York, December 1966. Available on the website: www.treaties.un.org.

¹⁵⁰ UNITED NATIONS GENERAL ASSEMBLY, *Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps*, April 2018, UN doc. A/HRC/38/21. Available on the website: www.undocs.org.

¹⁵¹ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Key Messages on Human Rights, Climate Change and Migration*, New York, November 2017. Available on the website: www.ohchr.org.

Furthermore, the principle of non-discrimination enshrined in the 1966 UN Pacts could be invoked to ensure that climate migrants are not subjected to discriminatory treatment and are provided with equal access to rights and services.¹⁵²

In summary, the 1966 UN Pacts establish a comprehensive framework of human rights that could be applied to the protection of climate migrants. The interconnectedness and indivisibility of human rights recognized in these pacts highlight the need to address the multidimensional impacts of climate change on the enjoyment of rights and can inform discussions, legal interpretations, and policy developments related to the rights of climate migrants within the broader human rights framework.

In particular, the ICCPR is relevant to the broader context of climate migration and human rights. As a matter of fact, although the *Teitiota* case primarily revolved around asylum and refugee law, it raised important human rights considerations that intersect with the principles enshrined in the ICCPR.

The *Teitiota* case revolves around Ioane Teitiota, a man from the Pacific island nation of Kiribati. Kiribati is a low-lying island nation that is particularly vulnerable to the impacts of climate change, including rising sea levels and increased frequency of extreme weather events. In 2007, Mr Teitiota and his wife moved to New Zealand with work permits for three years. After his visa expired, he wanted its extension, and his lawyer considered several options.¹⁵³ He claimed asylum in New Zealand in 2012, arguing that he should be granted refugee status or “protected person”¹⁵⁴ due to the effects of climate change in Kiribati and the potential loss of his homeland. His request was rejected in the same year.

Mr Teitiota legal argument was based on the assertion that the environmental changes caused by climate change in Kiribati had made his life and the lives of his family members untenable, and therefore

¹⁵² GENERAL ASSEMBLY OF UNITED NATIONS, *International Covenant on Civil and Political Rights*, cit.

¹⁵³ MCADAM, *Current Developments – Protecting People Displaced by the Impacts Of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement*, February 2021, p. 710. Available on the website: www.paper.ssrn.com.

¹⁵⁴ *Ibidem*.

he should be considered a refugee under international law.

The case went through several stages of legal proceedings in New Zealand. Initially, the Immigration and Protection Tribunal rejected Teitiota appeal in 2013,¹⁵⁵ stating that he did not meet the criteria of a refugee under the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol.¹⁵⁶ The Tribunal reasoned that Mr Teitiota did not face persecution as defined by the Convention, as the environmental changes in Kiribati were not intentional acts targeted against him.

Mr Teitiota then appealed the decision to the High Court of New Zealand, which upheld the original ruling in 2013.¹⁵⁷

His case subsequently went to the New Zealand Court of Appeal, which delivered its judgment in 2014.¹⁵⁸ The Court of Appeal upheld the previous rulings, concluding that Mr Teitiota did not meet the requirements for refugee status.

His request was denied also by the New Zealand Supreme Court in 2015. The court emphasized that while climate change presented significant challenges for Kiribati and its people, the legal definition of a refugee under the Refugee Convention did not encompass the consequences of climate change.¹⁵⁹ The Court further noted that there were other avenues available to address the issue of climate change and its impacts, such as humanitarian aid and adaptation measures.¹⁶⁰

In September 2015, Mr Teitiota was arrested and served with a deportation order.¹⁶¹

The *Teitiota* case has also been internationally examined, by the

¹⁵⁵ *Ibidem*.

¹⁵⁶ UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS HUMAN RIGHTS COMMITTEE, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016*, September 2020, UN doc CCPR/C/127/D/2728/2016. Available on the website: www.docstore.ohchr.org.

¹⁵⁷ MCADAM, *op. cit.*, p. 710.

¹⁵⁸ *Ibidem*.

¹⁵⁹ SUPREME COURT OF NEW ZEALAND, *Ioane Teitiota vs The Chief Executive of the Ministry of Business, Innovation and Employment*, July 2015, Judgment SC 7/2015. Available on the website: www.refworld.org.

¹⁶⁰ *Ibidem*.

¹⁶¹ UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS HUMAN RIGHTS COMMITTEE, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016*, cit.

United Nations Human Rights Committee (HRC). After the New Zealand courts rejected Ioane Teitiota claim for refugee status based on climate change-related grounds, the case was brought to the attention of the HRC, a body responsible for promoting and protecting human rights worldwide.

In September 2015, a communication was submitted to the UNHRC on behalf of Teitiota, alleging that New Zealand's denial of his refugee status violated his rights under the International Covenant on Civil and Political Rights (ICCPR). The communication argued that the effects of climate change in Kiribati, such as rising sea levels and related socio-economic challenges, posed a threat to Teitiota right to life and other protected rights.¹⁶²

The HRC carefully considered the communication and allegations made in the *Teitiota* case. After a thorough analysis, the Council issued a decision in January 2020. The decision concluded that Teitiota circumstances did not meet the required threshold of persecution or severe harm under the ICCPR, which is necessary to establish a violation of his rights.¹⁶³ It emphasized that while climate change is a global challenge, the adverse effects in this specific case did not reach the level of persecution or severe harm that would trigger protection under the ICCPR.¹⁶⁴

It is important to note that the *Teitiota* case did not result in the recognition of climate change refugees under existing international law. The courts' decisions were based on the interpretation and application of the Refugee Convention, which was not designed to address the specific circumstances of climate-induced displacement.

However, what the Committee acknowledged is relevant. First of all, "the obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant may be broader than the scope of the principle of nonrefoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status",¹⁶⁵ meaning that the principle of non-refoulement is also

¹⁶² *Ibidem*.

¹⁶³ *Ibidem*.

¹⁶⁴ *Ibidem*.

¹⁶⁵ UN HUMAN RIGHTS COMMITTEE, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016*, UN doc.

extended to those who are not refugees.

Secondly, the Committee recalls the right to life, specifying that “environmental 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”.¹⁶⁶

Moreover, the *Teitiota* case brought global attention to the issue of climate-induced displacement and triggered important discussions on the need for legal frameworks to protect those affected. His case was seen as a test of whether individuals displaced by the impacts of climate change could be recognized as refugees and entitled to protection under existing legal frameworks. It highlighted the limitations of existing refugee law in addressing the complex challenges posed by climate change and underscored the need for proactive measures and international cooperation to address the plight of climate migrants. It was described as a “landmark”, “a groundbreaking asylum case”¹⁶⁷ and a decision that “opens [the] door to climate change asylum cases”.¹⁶⁸

It can be said that the case contributed to the broader dialogue on the intersection of climate change, human rights, and migration, emphasizing the urgency of finding adequate solutions to address the challenges faced by vulnerable populations impacted by climate change.

Going deeper into the details, the *Teitiota* case brought forward important legal and conceptual innovations in the context of climate-induced migration. While the case did not result in a favourable outcome for Teitiota, its significance lies in the issues it raised and the debates it sparked.¹⁶⁹

CCPR/C/127/D/2728/2016, January 2020. Available on the website: www.refworld.org.

¹⁶⁶ *Ibidem*.

¹⁶⁷ AMNESTY INTERNATIONAL, *UN landmark case for people displaced by climate change*, January 2020. Available on the website: www.amnesty.org.

¹⁶⁸ OHCHR, *Historic UN Human Rights case opens door to climate change asylum claims*, January 2020. Available on the website: www.ohchr.org.

¹⁶⁹ BERHMAN AND KENT, *Human Rights Committee’s Decision on the Case Ioane Teitiota v New Zealand: Landmark or Will-O’-The-wisp for Climate Refugees? The*

It recognized that the adverse consequences of climate change, such as loss of habitable land, freshwater scarcity, and food insecurity, can force individuals to flee their home countries and seek international protection.

This case contributed to develop conceptual innovations too. As a matter of fact, the ruling of the UN Human Rights Committee in the case *Teitiota v. New Zealand* highlighted the role of climate change as a significant driver of forced displacement.¹⁷⁰ It emphasized the long-term and gradual nature of climate impacts, such as sea-level rise and land degradation, which can make a person's home country uninhabitable over time.¹⁷¹ This conceptual shift recognized that climate change-related factors can be compelling reasons for individuals to seek refuge in other countries. Moreover, the case underscored the intersectionality between climate change and human rights.¹⁷² It argued that the impacts of climate change, such as the right to life, health, and an adequate standard of living, are integral to the protection of human rights. This recognition emphasizes the need for legal frameworks and international cooperation to address the rights and well-being of climate migrants.

The case raised public awareness about the human impacts of climate change and may stimulate State to act.¹⁷³ Cases such as this can exert pressure to develop the jurisprudence.¹⁷⁴

2.4.4 The right to a healthy environment

The right to a healthy environment and climate migration are closely interconnected, and this relationship is highly relevant to the legal issue of climate migrants. As a matter of fact, last 26th of July and 1st of August 2022, the UN General Assembly recognized that everyone

Teitiota Case and the limitations of the human rights framework, November 2020, p. 26. QIL, Zoom-in 75 (2020) 25-39. Available on the website: www.qil-qdi.org.

¹⁷⁰ Information available on the website: www.unhcr.org.

¹⁷¹ *Ibidem*, p. 4, par. 10.

¹⁷² BERHMAN AND KENT, *op. cit.*, p. 26.

¹⁷³ MCADAM, *Current developments. Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-refoulement*, April 2020, p. 724. Available on the website: www.cambridge.org.

¹⁷⁴ *Ibidem*.

has a right to a clean, healthy, and sustainable environment.¹⁷⁵ The resolution is not binding on all 193 member states, but advocates hope for a trickle-down effect.¹⁷⁶

Climate change and other environmental factors can lead to the degradation of ecosystems, depletion of natural resources, and the loss of habitable environments. This degradation often forces individuals and communities to migrate from their homes in search of safer and more sustainable living conditions. The right to a healthy environment takes into account the importance of protecting and preserving the natural environment for the well-being of present and future generations.¹⁷⁷ When climate migrants are compelled to leave their homes due to environmental degradation, the violation of their right to a healthy environment becomes evident. By recognizing this right internationally, it can be provided a basis for addressing the environmental causes of climate migration and ensuring the protection of affected individuals.

In addition, climate migrants often experience adverse health consequences as a result of environmental degradation and climate change. These impacts can include increased exposure to extreme weather events, water scarcity, food insecurity, and the spread of diseases. The right to a healthy environment encompasses the right to health and well-being, emphasizing the importance of ensuring access to clean air, water, sanitation, healthcare, and a safe and healthy living environment.¹⁷⁸ Acknowledging this right in the context of climate migrants is crucial for addressing their health needs and ensuring that they are not further exposed to environmental risks in their new locations. Human rights and environmental protection can form a virtuous circle: the exercise of human rights helps to protect the environment, which in turn enables the full enjoyment of human rights.

¹⁷⁵ UN GENERAL ASSEMBLY, *Resolution adopted by the General Assembly on 28th July 2022: The human right to a clean, healthy and sustainable environment*, August 2022. UN official doc A/RES/76/300. Available on the website: www.digitallibrary.un.org.

¹⁷⁶ UN ENVIRONMENT PROGRAMME STAFF, *In historic move, UN declares healthy environment a human right*, July 2022. Available on the website: www.unep.org.

¹⁷⁷ *Ibidem*.

¹⁷⁸ *Ibidem*.

It is important to note that the right to a healthy environment places obligations on states and other actors to protect and preserve the environment and prevent harm to individuals and communities. In the context of climate migration, it calls for accountability and responsibility in addressing the root causes of environmental degradation and climate change.¹⁷⁹ The recognition of the right to a healthy environment at the international level can help hold governments and other stakeholders accountable for their actions or omissions that contribute to climate change and environmental harm, and the subsequent displacement of people. This can involve measures such as environmental impact assessments, mitigation strategies, and the promotion of sustainable development practices.¹⁸⁰

The right to a healthy environment includes substantive (clean air, sufficient water) and procedural rights. Among the procedural rights, there is the right to access justice and seek remedies for violations.¹⁸¹ Climate migrants, who may have been displaced due to environmental harm, should have avenues to seek redress, compensation, and remedies for the loss of their homes, livelihoods, and well-being.¹⁸² The acknowledgement of the right to a healthy environment can provide a basis for climate migrants to assert their rights and seek legal remedies for the harm they have suffered.

In addition, the right to sustainable development acknowledges the need to balance economic development with environmental protection and social equity.¹⁸³ It emphasizes the importance of meeting the needs of the present generation without compromising the ability of future generations to meet their own needs. Climate migrants, who are often forced to migrate due to the degradation of their natural resources and loss of livelihood, can advocate for policies and measures that prioritize sustainable development to prevent future displacements.

¹⁷⁹ THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, THE UNITED NATIONS ENVIRONMENT PROGRAMME, THE UNITED NATIONS DEVELOPMENT PROGRAMME, *What is the Right to a Healthy Environment? Information Note*, January 2023, p. 17. Available on the website: www.undp.org.

¹⁸⁰ *Ibidem*.

¹⁸¹ *Ibidem*, p. 9.

¹⁸² *Ibidem*, p. 18.

¹⁸³ Information available on the website: www.ohchr.org.

The Inter-American Court of Human Rights (IACHR) has played a significant role in recognizing and protecting the right to a healthy environment within the framework of human rights in the Americas. The right to a healthy environment is protected according to Article 11 of the Additional Protocol to the American Convention On Human Rights in the Area Of Economic, Social and Cultural Rights, or Protocol of San Salvador. Furthermore, the IACHR has interpreted it as an implicit right derived from other rights protected under the Convention, by stating

“the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind”.¹⁸⁴

The IACHR has handed down several landmark judgments that have addressed environmental issues and the right to a healthy environment. Some notable cases include, firstly, the case of *Kawas-Fernández v. Honduras*. The Court claimed that “there is an undeniable link between the protection of the environment and the enjoyment of other human rights.”¹⁸⁵

Secondly, the *Yakye Axa Indigenous Community v. Paraguay* case. In this case, the Court addressed the rights of the indigenous Yakye Axa community in Paraguay, whose members were forcibly evicted from their ancestral lands. The Court held that the State violated the community’s right to a life under the terms defined in several paragraphs of the Judgment. Among these, there is paragraph 163: “the Court must establish whether the State generated conditions that worsened the difficulties of access to a decent life for the members of

¹⁸⁴ INTER-AMERICAN COURT OF HUMAN RIGHTS, *The Environment and Human Rights*, Advisory Opinion OC-23/17, November 2017, p. 26. Available on the website: www.corteidh.or.cr.

¹⁸⁵ INTER-AMERICAN COURT OF HUMAN RIGHTS, *Case of Kawas-Fernández v. Honduras*, Santo Domingo, April 2009. Available on the website: www.corteidh.or.cr.

the Yakye Axa Community [...] in view of the provisions set forth in Article 4 of the Convention,¹⁸⁶ in combination [...] with Articles 10 (Right to Health); 11 (Right to a Healthy Environment); 12 (Right to Food); 13 (Right to Education) and 14 (Right to the Benefits of Culture) of the Additional Protocol to the American Convention, regarding economic, social, and cultural rights”.¹⁸⁷

The IACHR’s jurisprudence has emphasized that a clean and healthy environment is fundamental for the enjoyment of other human rights protected under the Convention.

Overall, recognizing upholding the right to a healthy environment within the legal context of climate migration is crucial for addressing the underlying environmental causes, protecting the rights and well-being of climate migrants, and ensuring accountability and responsibility in environmental governance. It provides a framework for understanding the environmental dimensions of displacement and promoting sustainable and just responses to climate change-induced migration.

2.4.5 The Geneva Convention and its 1967 Protocol

The Geneva Convention of 1951 and its 1967 Protocol are international legal instruments that primarily address the protection of refugees and their rights. While these instruments were not specifically designed to address the situation of climate migrants, their principles and provisions have been invoked and debated in relation to the creation of rights to protect climate migrants.

The Geneva Convention defines a refugee as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion”.¹⁸⁸

¹⁸⁶ Right to life, American Convention on Human Rights. Available on the website: www.cidh.oas.org.

¹⁸⁷ INTER-AMERICAN COURT OF HUMAN RIGHTS, *Case of the Yakya Axa Indigenous Community v. Paraguay*, San José, June 2005. Available on the website: www.corteidh.or.cr.

¹⁸⁸ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *Convention and Protocol relating to the Status of Refugees*, p. 3. Available on the website: www.unhcr.org.

The definition does not explicitly cover individuals displaced solely due to climate change or environmental factors. However, discussions on expanding the definition of refugees to include climate migrants have taken place, since the impacts of climate change can create conditions that lead to forced displacement and may constitute a form of persecution.¹⁸⁹ As a matter of fact, climate change can result in environmental degradation, in increased competition for resources that can bring to violence and conflicts, in loss of habitability, and in social and political instability. Recognizing climate migrants as refugees under the Geneva Convention could provide them with legal protection and access to rights.¹⁹⁰

However, there are three main issues that make it difficult to apply the Geneva Convention to environmental migrants. First of all, the Geneva Convention's definition of a refugee is centred on persecution-based criteria: religion, nationality, political opinion, or membership in a particular social group.¹⁹¹ This definition does not explicitly include individuals displaced solely due to environmental factors, such as climate change or natural disasters. As a result, those who are forced to leave their homes primarily because of environmental circumstances may not fit within the legal definition of a refugee under the Convention.¹⁹² The limited scope of the definition poses a challenge when attempting to provide legal protection and support for individuals displaced by environmental factors.

Secondly, environmental displacement often arises from a combination of factors, making it difficult to establish a clear causal link between specific environmental events or changes and individual cases of displacement.¹⁹³ Climate change, for instance, is a complex and long-term process influenced by various global factors, including

¹⁸⁹ CONISBEE, SIMMS, *Environmental Refugees. The Case for Recognition*, London, 2003, p. 26. Available on the website: www.neweconomics.org.

¹⁹⁰ PARLIAMENTARY ASSEMBLY COUNCIL OF EUROPE, *A legal status for "climate refugees"*, August 2019, Doc. 14955 Report, p. 9. Available on the website: www.assembly.coe.int.

¹⁹¹ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *Convention and Protocol relating to the Status of Refugees*, p. 3, cit.

¹⁹² THORNTON, *Climate change refugees*, in TRIANDAFYLLIDOU, *Handbook of Migration and Globalization*, Cheltenham (UK), 2018, p. 402.

¹⁹³ CONISBEE, SIMMS, *op. cit.*, p. 23.

greenhouse gas emissions, deforestation, and industrial practices. Assigning responsibility to a single state or entity becomes challenging when multiple actors contribute to the environmental conditions that lead to displacement. The causality and attribution challenges associated with environmental migration make it more difficult to fit such cases within the framework of the Geneva Convention, which focuses on persecution-based causes of displacement.¹⁹⁴

Thirdly, environmental displacement can involve both slow-onset changes and sudden-onset disasters. Slow-onset changes include phenomena like sea-level rise, desertification, or gradual environmental degradation, while sudden-onset disasters encompass events like hurricanes, floods, or earthquakes. Unlike traditional refugee situations where persecution is often more immediate and localized, the temporal and spatial dimensions of environmental displacement create uncertainty. In general, determining when individuals become refugees under the Convention and which states bear the responsibility for their protection can be challenging.¹⁹⁵ The temporal dimension raises questions about at what point the above-mentioned forms of persecution, due to certain conditions of environmental degradation and conflicts for available resources, become severe enough to discuss about the refugee status, while the spatial dimension raises issues regarding the responsibility of the states involved, especially in the case of cross-border displacement.¹⁹⁶ These challenges underscore the limitations of the current legal framework in adequately addressing the unique circumstances of environmental migrants. The complexities of causality, attribution, and temporal and spatial uncertainties associated with environmental migration have sparked discussions about the need for a more comprehensive legal framework or complementary protections to ensure the rights and well-being of individuals displaced by environmental factors.

Nevertheless, the principle of non-refoulement is enshrined in the

¹⁹⁴ THORNTON, *op. cit.*, p. 402.

¹⁹⁵ CONISBEE, SIMMS, *op. cit.*, p. 30.

¹⁹⁶ *Ibidem.*

Geneva Convention and its 1967 Protocol. It is a “cornerstone of refugee protection”¹⁹⁷ which prohibits the return of a refugee to a country where they may face persecution. In the context of climate migrants, the principle of non-refoulement has been invoked to argue for the protection of individuals who are forced to flee their homes due to the impacts of climate change or environmental degradation.¹⁹⁸ If returning climate migrants to their places of origin would expose them to life-threatening conditions or violate their human rights, the principle of non-refoulement should be applied to prevent their return. The debate surrounding the application of the Geneva Convention and the 1967 Protocol to climate migrants is not settled and involves interpretative discussions. Some legal scholars and experts argue for a broad interpretation of the Convention’s definition of refugees, contending that the reasons for persecution could be expanded to include harm caused by climate change or environmental factors.¹⁹⁹ Among these, there is Jane McAdam, argues that the existing framework of international refugee law, particularly the 1951 Refugee Convention, could be interpreted flexibly to accommodate individuals who are forced to flee their homes due to climate change-related factors.²⁰⁰ Others maintain that climate migrants do not fit within the legal framework of the Convention and advocate for the development of a separate legal regime to address their specific needs and challenges.²⁰¹

2.4.6 Complementary protection

While climate migrants may not be covered by the specific provisions of the Geneva Convention, discussions have emerged around the potential for complementary protection measures. Complementary

¹⁹⁷ Information available on the website: www.unhcr.org.

¹⁹⁸ KESHEN, LAZICKAS, *Non-Refoulement: A Human Rights Perspective on Environmental Migration from Small Island Developing States*, April 2022. Available on the website: www.jia.sipa.columbia.edu.

¹⁹⁹ DIRECTORATE GENERAL FOR INTERNAL POLICIES, “*Climate Refugees*”. *Legal and policy responses to environmentally induced migration*, PE 462.422, p. 40. Available on the website: www.europarl.europa.eu.

²⁰⁰ MCADAM, *Climate Change, Forced Migration, and International Law*, Oxford, June 2012, p. 187. Available on the website: www.ohchr.org.

²⁰¹ DIRECTORATE GENERAL FOR INTERNAL POLICIES, *op. cit.*, p. 41.

protection refers to the legal framework that provides protection to individuals who do not meet the criteria for refugee status under the 1951 Refugee Convention and its 1967 Protocol but still face significant harm or violations of their human rights if returned to their home countries.²⁰²

In the context of climate migrants, complementary protection becomes relevant because all individuals displaced by environmental factors may not fit within the narrow definition of a refugee as defined by the Convention. The latter focuses on persecution-based grounds.

Recognizing this gap in protection, discussions have emerged regarding the need for complementary protection mechanisms to address the specific challenges faced by climate migrants.²⁰³ These mechanisms could provide legal safeguards and rights to individuals who are forced to migrate due to environmental factors but do not meet the traditional refugee definition. It requires the development of legal frameworks, administrative procedures, and institutional mechanisms to identify, assess, and provide protection to individuals. This includes considerations of access to asylum procedures, the determination of asylum status, the provision of support services, and the integration or resettlement of those in need of protection.

The creation of rights through complementary protection would acknowledge that climate change and its associated impacts can lead to displacement, loss of livelihoods, and threats to human rights. It would recognize the need to provide legal frameworks that address the unique circumstances of climate migrants and ensure their protection and well-being.

Some proposals suggest the development of a separate legal instrument specifically dedicated to climate migrants, while others argue for the expansion of existing complementary protection frameworks to include individuals displaced by environmental factors.²⁰⁴ These are subsidiary²⁰⁵ and temporary²⁰⁶ protection. The

²⁰² MANDAL, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")*, Geneva, June 2005, UN doc PPLA/2005/02, p. 3. Available on the website: www.unhcr.org.

²⁰³ *Ibidem*, p. 4.

²⁰⁴ *Ibidem*, pp. 28, 41.

first one refers to a form of protection provided to individuals who are unable to return to their home country due to events that seriously disrupt public order. The second one is based on the principle of non-refoulement, it is a form of protection for individuals who do not meet the criteria for refugee status but are at risk of serious harm if returned to their home country. The last one encompasses various forms of protection granted on humanitarian grounds to individuals who do not qualify for refugee status or subsidiary protection but are in need of international protection due to serious humanitarian circumstances.

These approaches would provide a more comprehensive legal basis for addressing the rights and needs of climate migrants.

The debate surrounding the creation of rights through complementary protection for climate migrants involves discussions on the scope, criteria, and implementation of such protections.²⁰⁷ The debate on complementary protection for climate migrants also raises questions about the responsibilities of states. It calls for discussions on the obligations of states to provide protection and assistance to individuals displaced by environmental factors. This includes examining the role of both the countries of origin and potential countries of destination in ensuring the safety, well-being, and human rights of climate migrants.²⁰⁸ It also involves considering the responsibilities of states in addressing the root causes of climate change and taking preventive measures to minimize displacement. At the same time, addressing the challenges posed by climate-induced displacement requires international cooperation and burden-sharing.²⁰⁹ The debate on complementary protection for climate migrants highlights the need for collaborative approaches among states, international organizations, and civil society actors. This involves sharing responsibilities in providing support, resettlement, and integration options for climate migrants. It also calls for the mobilization of financial resources and the development of innovative mechanisms to address the needs of affected populations.

²⁰⁵ *Infra*, par. 3.2.1.

²⁰⁶ *Infra*, par. 3.2.3.

²⁰⁷ *Ibidem*, p. 56.

²⁰⁸ *Ibidem*, p. 69.

²⁰⁹ *Ibidem*, p. 67.

The considerations mentioned are essential for developing comprehensive and effective international treaties that ensure the protection and well-being of climate migrants. They would provide clarity, guidance, and accountability, ensuring that the specific challenges and risks faced by climate migrants are adequately addressed. By upholding human rights, promoting international cooperation, and facilitating the integration of climate migrants, these legal instruments could contribute to a more just and sustainable response to climate-induced displacement.

2.4.7 Regional Conventions

Several regional conventions also contribute to the debate for the attribution of rights to protect climate migrants. These conventions address various aspects of migration, including the protection of migrants' rights, cooperation among states, and the management of migration flows. While these conventions may not explicitly focus on climate-induced displacement, they form part of the broader legal framework that can be relevant in addressing the challenges faced by climate migrants.

First of all, the 1981 African Charter on Human and Peoples' Rights (ACHPR) is a regional human rights instrument adopted by African Union (AU) member states. While the ACHPR does not explicitly mention climate migrants or climate change-induced displacement, it contains provisions that could be relevant to the protection of individuals affected by climate change.

The ACHPR recognizes and protects a wide range of human rights, including the right to life, dignity, freedom of movement, health, and a healthy environment.²¹⁰ These rights could have direct implications for climate migrants who may face threats to their lives, well-being, and environment due to the adverse impacts of climate change. The Charter highlights the AU's commitment to addressing climate-related issues in Africa.

Secondly, the Cartagena Declaration is a regional instrument adopted

²¹⁰ ORGANIZATION OF AFRICAN UNITY, *African Charter on Human and Peoples' Rights*, Nairobi, June 1981. Available on the website: www.au.int.

in 1984 by several Latin American countries, known as the ‘Cartagena Group’. While the declaration predates the current focus on climate migrants, its principles and provisions can be relevant to the protection of individuals displaced by climate change impacts in the region.

It broadens the definition of a refugee beyond the criteria set forth in the 1951 UN Refugee Convention.²¹¹ It recognizes that individuals who flee their countries due to “circumstances which have seriously disturbed public order”²¹² may also be considered refugees. This expanded definition acknowledges that forced displacement can result from various forms of violence and conflict, including those indirectly linked to climate change. As such, the declaration opens the possibility of recognizing individuals displaced by climate-related events as refugees.²¹³ It also emphasizes the importance of regional cooperation and burden-sharing in addressing the needs of refugees.²¹⁴ This aspect is relevant to the debate on climate migrants, as climate change impacts are often transboundary and require collaboration among countries to address the challenges effectively. Regional cooperation can involve sharing responsibilities, resources, and best practices, as well as developing joint strategies for managing climate-induced displacement and protecting the rights of affected individuals. By drawing on the principles of the Cartagena Declaration, efforts can be made to adapt and expand the existing legal frameworks to address the unique challenges faced by climate migrants and ensure their rights and well-being are upheld.

Thirdly, there is the European Convention on Human Rights (ECHR). The ECHR, adopted in 1950, is a legally binding regional human rights instrument that protects the rights and freedoms of individuals within their jurisdiction. It is overseen by the European Court of Human Rights and applies to the member states of the Council of

²¹¹ COLLOQUIUM ON THE INTERNATIONAL PROTECTION OF REFUGEES IN CENTRAL AMERICA, MEXICO AND PANAMA, *Cartagena Declaration on Refugees*, Cartagena de Indias, November 1984, p. 36. Available on the website: www.unhcr.org.

²¹² *Ibidem*.

²¹³ CANEPA, ESCOBEDO, *Can Regional Refugee Definition Help Protect People Displaced by Climate Change in Latin America?*, February 2021. Available on the website: www.refugeesinternational.org.

²¹⁴ COLLOQUIUM ON THE INTERNATIONAL PROTECTION OF REFUGEES IN CENTRAL AMERICA, MEXICO AND PANAMA, *Cartagena Declaration on Refugees*, cit.

Europe. While the convention does not explicitly address climate-induced displacement, its provisions can be invoked to protect the rights of climate migrants. For example, Article 2, Right to Life,²¹⁵ could be relevant in cases where individuals are at risk of harm or loss of life due to climate change impacts. Article 3, Prohibition of Torture and Inhuman or Degrading Treatment,²¹⁶ safeguards individuals from inhuman or degrading treatment that may arise from climate-related events. Article 8, Right to Respect for Private and Family Life,²¹⁷ could be relevant in cases where individuals are forced to leave their homes and communities due to climate change impacts. Additionally, Article 13, Right to an Effective Remedy,²¹⁸ ensures access to legal remedies for individuals whose rights have been violated. Climate change poses significant challenges to the enjoyment of human rights, and the principles and standards established in the ECHR can be used to argue for the recognition of legal rights and the corresponding obligations of states to protect and assist climate migrants.

Fourthly, the American Convention on Human Rights, also known as ‘the Pact of San José’, was adopted in 1969. It is a regional human rights instrument that protects the rights and freedoms of individuals in the Americas. Its provisions can be invoked to safeguard the rights of individuals affected by climate change impacts in the region. For example, Article 4, Right to Life,²¹⁹ protects individuals from arbitrary deprivation of life, which may include situations where climate change impacts threaten lives. Article 8, Right to a Fair Trial,²²⁰ ensures due process and fair treatment for individuals affected by climate-induced displacement. Moreover, Article 22, Freedom of Movement and Residence,²²¹ can be relevant in cases where

²¹⁵ EUROPEAN COURT OF HUMAN RIGHTS, COUNCIL OF EUROPE, *European Convention on Human Rights*, Rome, November 1950, p. 6. Available on the website: www.echr.coe.int.

²¹⁶ *Ibidem*, p. 7.

²¹⁷ *Ibidem*, p. 11.

²¹⁸ *Ibidem*, p. 13.

²¹⁹ INTER-AMERICAN SPECIALIZED CONFERENCE ON HUMAN RIGHTS, *American Convention on Human Rights: “Pact of San José, Costa Rica”*, San José, November 1969, p. 145. Available on the website: www.treaties.un.org.

²²⁰ *Ibidem*, p. 147.

²²¹ *Ibidem*, p. 150.

individuals seek protection in another country due to the adverse effects of climate change.

Climate migrants, like any other individuals, are entitled to the protection of these rights. The convention establishes a legal framework that can be invoked to safeguard the rights of climate migrants in the Americas.

The Inter-American Court of Human Rights, the judicial body responsible for interpreting and applying the provisions of the convention, has progressively expanded its interpretation of human rights to encompass broader issues related to environmental protection and the rights of vulnerable populations. This includes recognizing the rights of indigenous peoples,²²² who are often disproportionately affected by climate change, and the duty of states to protect their territories and natural resources. Such interpretations can be relevant in the context of climate-induced migration, as they contribute to the recognition of specific rights and protections for climate migrants. As a matter of fact, climate migrants who have experienced human rights abuses, such as forced displacement, lack of access to basic services, or violations of their rights to life and security, can seek recourse through the mechanisms provided by the Convention and its Court.²²³

Through dialogues, consultations, and reports, the system can contribute to raising awareness, fostering cooperation, and advocating for the rights and protections of climate migrants in the Americas.

These regional conventions highlight the importance of international and regional cooperation in addressing the complex and multifaceted challenges posed by climate-induced displacement. With them, the awareness of the need for solidarity, burden-sharing, and the involvement of international organizations, states, and other stakeholders has grown, with the aim of developing comprehensive responses to protect climate migrants and ensure their well-being.

From these scenarios, Asia and Oceania seem to be excluded. As a matter of fact, there are currently no specific regional conventions in

²²² DE OLIVEIRA MAZZUOLI, RIBEIRO, *Indigenous Rights before the Inter-American Court of Human Rights: a Call for a Pro Individual Interpretation*, October 2016, p. 150. Available on the website: www.corteidh.or.cr.

²²³ INTER-AMERICAN SPECIALIZED CONFERENCE ON HUMAN RIGHTS, *American Convention on Human Rights: "Pact of San José, Costa Rica"*, cit, p. 151.

Asia or Oceania that are directly linked to the debate on creating rights to protect climate migrants. However, it is important to note that several regional organizations and initiatives in these regions are actively addressing climate change and its impacts on vulnerable populations, including migrants. These organizations and initiatives play a role in promoting dialogue, cooperation, and the development of policies to address the challenges faced by climate migrants. Among these, there is the Association of Southeast Asian Nations (ASEAN), which is a regional intergovernmental organization composed of ten member states in Southeast Asia. While ASEAN does not have a specific convention or legal framework for climate migrants, it has recognized the need to address climate change and its impacts.²²⁴ The ASEAN Agreement on Disaster Management and Emergency Response (AADMER) establishes a framework for regional cooperation in disaster risk reduction and management. This framework indirectly addresses climate-induced displacement by promoting resilience, preparedness, and response mechanisms for communities affected by disasters, including those triggered by climate change.²²⁵ Through its various working groups and initiatives, ASEAN engages in discussions and collaborations related to climate change adaptation and mitigation, which indirectly impact climate migrants.

Furthermore, there is the Pacific Islands Forum (PIF), which is a regional intergovernmental organization comprising 18 member countries in the Pacific region. The Pacific Island countries are particularly vulnerable to climate change and sea-level rise, which pose significant challenges to their populations, including potential displacement and migration. The PIF addresses climate change and its impacts through its various forums, dialogues, and regional initiatives, such as the Framework for Resilient Development in the Pacific and the Boe Declaration on Regional Security.²²⁶ While these initiatives primarily focus on climate adaptation and disaster resilience, they indirectly contribute to the discussions on protecting the rights and

²²⁴ THE ASEAN, *Climate Change. The Time to Act is Now*, Jakarta, September 2020, p. 11. Available on the website: www.asean.org.

²²⁵ *Ibidem*, p. 7.

²²⁶ Information available on the website: www.forumsec.org.

well-being of climate migrants in the Pacific region.

Finally, the Pacific Climate Change Migration and Human Security (PCCMHS) Programme led by the United Nations University Institute for Environment and Human Security, aims to enhance understanding of climate change-induced migration and displacement in the Pacific region.²²⁷ Through research, capacity-building, and policy support, the program examines the social, economic, and legal dimensions of climate migration. It engages with governments, regional organizations, and civil society to develop comprehensive approaches to address the challenges faced by climate migrants. The program contributes to the development of policy frameworks that safeguard the rights of individuals and communities affected by climate-induced displacement in the Pacific.²²⁸

It is worth noting that while there may not be specific regional conventions in Asia or Oceania dedicated to climate migrants, efforts are underway to address the intersecting issues of climate change, migration, and human rights through regional initiatives, collaborations, and policy dialogues. The focus is often on building resilience, enhancing adaptation measures, and addressing the specific challenges faced by vulnerable populations, including migrants affected by climate change.

2.4.8 The New York Declaration and Global Compacts

The New York Declaration for Refugees and Migrants is a significant political declaration adopted by the United Nations (UN) General Assembly on 19th September 2016. Even if it has not a binding character, it represents a global response to the challenges posed by large-scale movements of refugees and migrants worldwide.

The New York Declaration recognizes the principles of non-discrimination, human rights, and international humanitarian law as the foundation for addressing the needs and vulnerabilities of

²²⁷ Information available on the website: www.environmentalmigration.iom.int.

²²⁸ *Ibidem*.

migrants.²²⁹ It emphasizes the need to uphold the rights and dignity of all individuals on the move, “regardless of their migration status”.²³⁰ These principles apply to climate migrants who are forced to leave their homes due to environmental degradation, natural disasters, or the impacts of climate change. As a matter of fact, the New York Declaration and Global Compacts do not mention ‘climate migrants’, but they consider that climate change is a factor of displacement.

While the Declaration does not attribute new legal rights for climate migrants, it establishes a platform for discussions, cooperation, and policy development that can contribute to the ongoing debate on the creation of specific rights to protect climate migrants. It acknowledges the urgency of addressing the root causes of displacement and the need for international solidarity and responsibility-sharing in providing protection and assistance to affected individuals and communities.²³¹

Furthermore, the New York Declaration sets the stage for the development of two significant international compacts: the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees. These compacts, adopted in 2018, aim to address the specific needs and protection concerns of migrants and refugees, including those affected by climate change and environmental factors.

The Global Compact for Safe, Orderly and Regular Migration provides a comprehensive framework for managing migration and sets out a range of commitments and principles for addressing the drivers and impacts of migration, including those related to climate change. It emphasizes the importance of protecting the human rights of all migrants and promoting their inclusion and integration into host societies.²³² The compact does not specifically focus on climate migrants but recognizes the need to consider the specific

²²⁹ UNITED NATIONS GENERAL ASSEMBLY, *New York Declaration for Refugees and Migrants*, New York, October 2016, UN doc A/RES/71/1, p. 2-3. Available on the website: www.unhcr.org.

²³⁰ *Ibidem*, p. 8.

²³¹ *Ibidem*, p. 3.

²³² HEADS OF STATE AND GOVERNMENT AND HIGH REPRESENTATIVES, *Global Compact for Safe, Orderly and Regular Migration*, New York, July 2018, p. 3. Available on the website: www.data.unhcr.org.

vulnerabilities and challenges they face and to develop appropriate policies and measures to address their needs.

Similarly, the Global Compact on Refugees provides a framework for international cooperation in responding to refugee situations. It also highlights the importance of addressing the causes of displacement, providing protection, and finding durable solutions for all those forced to flee their homes, including climate migrants.²³³

The New York Declaration and the subsequent Global Compacts provide a basis for international cooperation and dialogue on the protection and well-being of migrants, including climate migrants. They emphasize the principles of human rights, non-discrimination, and shared responsibility in addressing the challenges posed by migration, including those associated with climate change.²³⁴ As Professor Pontecorvo says referring to the New York Declaration and the Compacts, “firstly, they kept the plight of “climate-induced migrants” at the heart of the political debate; secondly, they inspired further action by States and regional frameworks”.²³⁵

By integrating the principles and commitments outlined in the New York Declaration and the Global Compacts, policymakers and stakeholders can work towards strengthening the legal protection and rights of climate migrants.²³⁶ This involves developing targeted policies and measures to address the specific challenges they face, including access to adequate housing, livelihood opportunities, social services, and participation in decision-making processes. It also requires enhanced international cooperation, knowledge-sharing, and capacity-building to address the complex challenges of displacement and migration in the context of climate change.

In conclusion, the New York Declaration, together with the Global

²³³ UNITED NATIONS, *Global Compact On Refugees*, New York, 2018, p. 6. Available on the website: www.unhcr.org.

²³⁴ *Ibidem*, p. 4.

²³⁵ PONTECORVO, *Towards Litigating Climate-Induced Migration? Current Limits and Emerging Trends for the Protection of “Climate-Induced Migrants” in International Law*, in *International Legal Order and Human Rights*, March 2022, p. 101. Available on the website: www.rivistaoidu.net.

²³⁶ IONESCO, MACH, INTERNATIONAL ORGANIZATION FOR MIGRATION, *Environmental Migration in the New York Declaration*. Available on the website: www.environmentalmigration.iom.int.

Compacts on Migration and Refugees, provides a foundation for addressing the needs and protection of climate migrants within the broader context of international migration and refugee governance.²³⁷ Furthermore, these frameworks provide a platform for dialogue and knowledge exchange among governments, civil society organizations, and other stakeholders, fostering a better understanding of the complexities of climate-induced migration and the legal protections required. They encourage collaborative efforts to address the root causes of climate-induced displacement, mitigate its impacts, and facilitate durable solutions for affected populations.²³⁸ By promoting inclusive and rights-based approaches, these frameworks strive to ensure that climate migrants are not left unprotected and that their human rights and dignity are upheld throughout their migration journey.

As the global community continues to grapple with the challenges of climate change and its consequences for human mobility, the New York Declaration and the Global Compacts serve as critical milestones in advancing the discussion and action on protecting climate migrants. From this large section of the work, it emerges that there are several instruments, of a different nature, for the protection of human rights that can be leveraged and taken as a foundation for the development of a legal framework to protect climate migrants. This is important above all for the protection of human lives, but also to have a normative reference in legal disputes on the subject.

2.5 The risks of no legal protection

The risks associated with the absence of legal protection for climate migrants in a few years' time are manifold. Without legal protection, climate migrants are vulnerable to a range of human rights abuses.²³⁹ They may be subjected to arbitrary detention, denial of access to basic services, forced labour, and other forms of exploitation. Their right to

²³⁷ *Ibidem.*

²³⁸ *Ibidem.*

²³⁹ LEIGHTON IN THE GERMAN AND MARSHALL FUND OF THE UNITED STATES, *Climate Change and Migration: Key Issues for Legal Protection of Migrants and Displaced Persons*, Washington, June 2010, p. 1. Available on the website: www.seors.unfccc.int.

life, liberty, security, and dignity can be violated, undermining their well-being and fundamental human rights.

Among the risks, there is the fact that climate migrants may be forced to leave their homes due to environmental changes, but without legal protection, they may lack the necessary support and assistance to rebuild their lives. This can lead to a humanitarian crisis. They may cross borders in search of safety and livelihood opportunities, only to find themselves in destitution and living in precarious conditions.²⁴⁰

Secondly, the absence of legal safeguards can result in the marginalization and discrimination of climate migrants. They may face challenges in obtaining legal status and recognition in their destination countries.²⁴¹ Moreover, they may face for example hostility and xenophobia in host communities. This leaves them without legal rights and protections, making it difficult for them to access healthcare, education, employment, and social welfare systems. They may be at risk of exploitation and abuse due to their undocumented or irregular status. This exclusion perpetuates cycles of poverty and inequality. It is relevant to note that climate migrants often bring with them knowledge, skills, and cultural diversity that can contribute to the development of their host communities. However, with their exclusion and the absence of legal protection, their potential contributions may be overlooked or underutilized, leading to a loss of human capital and missed opportunities for social and economic development.

Thirdly, the absence of legal protections for climate migrants can place a significant burden on host countries. The lack of clear guidelines and mechanisms for responsibility sharing may strain resources, infrastructure, and public services in host communities, leading to social tensions and conflicts.²⁴² Climate migration can also hamper the ability of governments and societies to effectively manage the economic and social impacts of migration.

Large-scale climate migration, coupled with inadequate legal protections, can have implications for peace and security.

²⁴⁰ *Ibidem*, p. 10.

²⁴¹ *Ibidem*, p. 7.

²⁴² HUGH, SIKORSKY, *Moving towards security: preparing NATO for climate-related migration*, May 2022. Available on the website: www.nato.int.

Displacement, competition over resources, and social tensions can contribute to conflicts and instability, affecting not only the migrants but also the stability of entire regions.²⁴³

From what has been illustrated so far, however, an even more remarkable complication could arise. If, due to severe climate change, some small islands were to sink underwater, the issue of stateless people would arise.²⁴⁴ If a country ceases to exist due to climate change and receiving countries do not adequately address the specific circumstances of climate migrants, the latter may be at risk of becoming stateless. Stateless individuals lack a nationality and may encounter barriers in accessing rights and services provided by states, including social welfare, housing, and legal assistance.²⁴⁵ They may be denied basic entitlements and face restrictions on their freedom of movement and ability to participate in public life.²⁴⁶ Furthermore, they may be subjected to arbitrary detention, forced labour, trafficking, and other forms of exploitation. The lack of legal protection and recognition exacerbates their vulnerability and reduces their ability to seek justice or remedy for violations.

Statelessness would complicate the ability of climate migrants to seek legal redress for any injustices they may face. They may encounter difficulties in accessing the judicial system, filing complaints, or pursuing legal remedies. The lack of legal status and nationality can limit their capacity to advocate for their rights and seek justice.²⁴⁷ The absence of legal status can impede their ability to access international protection mechanisms and seek asylum in other countries, so it is paramount to avoid some people becoming stateless and prevent the exacerbation of climate migration as much as possible.

Addressing the aforementioned risks requires the development and

²⁴³ INTERNATIONAL ORGANIZATION FOR MIGRATION, *Migration, Environment and Climate Change: Assessing the Evidence*, Geneva, December 2009, p. 369. Available on the website: www.publications.iom.int.

²⁴⁴ *Ibidem*, p. 27.

²⁴⁵ THE UNITED NATIONS REFUGEE AGENCY, *Statelessness and Climate Change*, October 2021. Available on the website: www.refworld.org.

²⁴⁶ PARK, *Legal and Protection Policy Research Series. Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States*, Geneva, May 2011, p. 13, UN doc PPLA/2011/04. Available on the website: www.unhcr.org.

²⁴⁷ *Ibidem*, p. 14.

implementation of comprehensive legal frameworks and policies at the international and national levels. This includes recognizing and protecting the rights of climate migrants, and ensuring access to legal status, social services, and opportunities for integration. Additionally, efforts should be made to prevent statelessness by facilitating pathways to nationality and legal recognition for those at risk. By addressing these risks and providing adequate legal protection, the international community can uphold the rights and well-being of climate migrants and mitigate the potential negative consequences associated with their displacement.

CHAPTER III

LEGAL PROTECTIONS FOR MIGRANTS IN THE EU AND ITALY: POSSIBLE INTERSECTIONS WITH CLIMATE MIGRANTS

3.1 The European Union and Italian legal systems combined

Examining the European Union and Italy legal systems offers a comprehensive and focused analysis that contemplates both regional and national contexts.

Different regions may experience distinct climate-related challenges and patterns of displacement.²⁴⁸ Analysing the European and Italian frameworks together allows for a comparison of how these regions address issues such as sea-level rise, extreme weather events, or environmental degradation, which can impact the legal protection of climate migrants. As a matter of fact, policies and initiatives can be aligned with unique regional priorities and challenges brought about, for example, by the severity of the impact of climate change.²⁴⁹

Moreover, while international human rights standards apply universally, their interpretation and application within the EU and Italy may take into account regional human rights jurisprudence and cultural factors.²⁵⁰ This can influence the legal protection of climate migrants within these jurisdictions.

It is relevant to consider the EU and the Italian realities together, since Italy renounces part of its sovereignty in favour of the European Union primarily through Article 11 of the Italian Constitution. This article explicitly states that Italy “*consente, in condizioni di parità con gli altri Stati, alle limitazioni di sovranità necessarie ad un ordinamento che assicuri la pace e la giustizia fra le Nazioni;*

²⁴⁸ EUROPEAN PARLIAMENT POLICY DEPARTMENT, *Climate Change and Migration. Legal and policy challenges and responses to environmentally induced migration*, Brussels, July 2020, p. 87. Available on the website: www.europarl.europa.eu.

²⁴⁹ GADANI, GALARRAGA, SAINZ DE MURIETA, *Regional climate change policies: an analysis of commitments, policy instruments and targets*, April 2020, p. 3. Available on the website: www.sustainability-seeds.org.

²⁵⁰ ZELLENTIN, *Climate Migration. Cultural Aspects of Climate Change*, January 2010, p. 63. Available on the website: www.degruyter.com.

promuove e favorisce le organizzazioni internazionali rivolte a tale scopo".²⁵¹ It provides the legal basis for Italy's participation in the European integration process and its commitment to European cooperation and integration.

3.2 The European Union framework

The Common European Asylum System (CEAS) is a framework established by the European Union to harmonize the asylum policies and procedures among its member states. It aims to ensure a consistent and fair approach to the treatment of asylum seekers and the provision of international protection within the EU. The CEAS consists of legal instruments and regulations that govern various aspects of the asylum process, including asylum procedures, and reception conditions.

The CEAS was initially launched in 1999 with the adoption of the Tampere Programme, which set out the objective of creating a common asylum system in the EU.²⁵² In the first years, six legislative instruments were approved to establish minimum standards for asylum: the Eurodac Regulation, the Temporary Protection Directive, the Reception of Asylum Seekers Directive, the Dublin Regulation that replaces the Dublin Convention of 1990, the Qualification Directive, and the Asylum Procedures Directive.²⁵³

Specifically, in order to prevent, detect or investigate the most serious crimes, the EURODAC Regulation allows law enforcement authorities access to the EU database of the fingerprints of asylum seekers.²⁵⁴

The Temporary Directive provides immediate and temporary protection in the event of a mass influx of displaced people from non-EU countries who cannot return to their country of origin.²⁵⁵

²⁵¹ Information available on the website: www.senato.it.

²⁵² Information available on the website: www.home-affairs.ec.europa.eu.

²⁵³ *Ibidem*.

²⁵⁴ Regulation No 2725/2000 of the Council of the European Union of December 2000, concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

²⁵⁵ Directive 2001/55/EC of the Council of the European Union of July 2001, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

In addition, in order to guarantee a dignified standard of living in accordance with the Charter of Fundamental Rights, the Reception of Asylum Seekers Directive ensures that common standards for reception conditions are established for asylum seekers across the European Union.²⁵⁶

The Dublin Regulation clarifies the rules governing the relations between states and enhances the protection of asylum seekers during the process of establishing the State responsible for examining the applications.²⁵⁷

Moreover, the Qualification Directive strengthens decisions on asylum by clarifying the grounds for granting international protection.²⁵⁸

The Asylum Procedures Directive seeks to lay forth the requirements for just, efficient, and effective asylum decisions.²⁵⁹

In the following ten years, the system was further developed and expanded through subsequent legislative initiatives and reforms.

The reforms of the CEAS in 2013 aimed at enhancing the effectiveness, fairness, and harmonization of asylum policies among EU member states. The key components of the reform package included the recast of the Asylum Procedures Directive, the recast of the Reception Conditions Directive, and the recast of the Qualification Directive.²⁶⁰ These directives established common standards for asylum procedures, reception conditions for asylum seekers, and the criteria for granting refugee or subsidiary protection status.²⁶¹

²⁵⁶ Directive 2003/9/EC of the Council of the European Union of January 2003, laying down minimum standards for the reception of asylum seekers.

²⁵⁷ Regulation No 343/2003 of the Council of the European Union of February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

²⁵⁸ Directive 2004/83/EC of the Council of the European Union of April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

²⁵⁹ Directive 2005/85/EC of the Council of the European Union of December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status.

²⁶⁰ Directive 2013/32/EU of the European Parliament and the Council of the European Union of June 2013, on common procedures for granting and withdrawing international protection (recast).

²⁶¹ *Ibidem*.

The reform of the CEAS has been driven by various factors, including the need for a more coherent and efficient asylum system across the EU, the challenges posed by increasing migration flows, and the commitment to uphold human rights and international obligations in the context of asylum and protection.²⁶² The reforms aim to establish a more unified approach to asylum within the EU, ensuring that individuals in need of international protection receive fair and consistent treatment regardless of the member state they apply to.²⁶³

It is remarkable that the CEAS is an ongoing process, since discussions and debates about further reforms continue to take place to address emerging challenges and enhance the functioning of the asylum system within the EU.

The Common European Asylum System primarily focused on addressing forced displacement and persecution based on traditional grounds, such as those outlined in the Geneva Convention.²⁶⁴ However, with the increasing recognition of climate change as a driver of migration, the EU is grappling with the integration of climate migration into its existing framework. This is supported by Professor Francesca Perrini, who affirms that “it must be sadly noted that this attention to the issue in question has not been followed by the adoption of specific acts within the Union’s legal system aimed at protecting those who are forced to migrate in order to escape the environmental damage caused by climate change”.²⁶⁵ Nevertheless, the EU migration and asylum system could intersect indirectly with climate migration.

The interpretation of persecution under the EU Qualification Directive can be crucial in determining whether climate migrants qualify for international protection, as it will be explained in the following paragraph.

In addition to the asylum system, the EU also emphasizes resilience-

²⁶² *Ibidem*.

²⁶³ *Ibidem*.

²⁶⁴ Information available on the website: www.home-affairs.ec.europa.eu.

²⁶⁵ PERRINI, *Il nuovo patto sulla migrazione e l’asilo ed I migranti ambientali: una categoria “Dimenticata”?*, in *Towards a common European framework and a new governance of migration and asylum*, Naples, 2021, p. 250. Available on the website: www.fsjeurostudies.eu.

building and adaptation measures to address the impacts of climate change. These measures focus on strengthening the capacity of vulnerable communities to withstand and recover from climate-related challenges.²⁶⁶

Despite from this, Professor Giuseppe Morgese stresses “the need for a European ad hoc legal instrument dealing with every aspect of the protection of environmental migrants, no matter if it takes the form of an extension of the notion of subsidiarity protection, or a new temporary protection instrument, as well as a comprehensive humanitarian protection provision or a specific HAS”,²⁶⁷ where HAS stands for ‘humanitarian admission schemes’.²⁶⁸

The legal framework and interpretation of existing directives continue to evolve, reflecting the recognition of the specific challenges posed by climate-induced displacement.²⁶⁹ Further policy developments, coordination, and international cooperation are necessary to ensure a comprehensive and coherent approach to the protection of climate migrants within the EU.

The EU Qualification Directive and the Temporary Protection Directive are two key legal instruments within the European Union system.

3.2.1 EU Qualification Directive (Directive 2011/95/EU)

The EU Qualification Directive plays a crucial role in harmonizing the standards for granting international protection within the European Union. While the directive does not explicitly mention climate change as a basis for persecution, it leaves room for interpretation.²⁷⁰ The EU Qualification Directive has been applied in cases involving asylum seekers and individuals seeking refugee or subsidiary protection

²⁶⁶ NOONAN, RUSU, *The future of climate migration, in Strategic Foresight and Capabilities Unit*, March 2022. Available on the website: www.europarl.europa.eu.

²⁶⁷ MORGESE, *Environmental Migrants and the EU Immigration and Asylum Law: Is There any Chance for protection?*, in BRUNO, PALOMBINO, ROSSI, *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward*, Rome, 2017, p. 73. Available on the website: www.iriss.cnr.it.

²⁶⁸ *Ibidem*, p. 68.

²⁶⁹ EUROPEAN PARLIAMENT POLICY DEPARTMENT, *op. cit.*, p. 85.

²⁷⁰ *Ibidem*, p. 251.

status.²⁷¹ The directive acknowledges refugee status within the EU, as well as the EU's own subsidiary protection status. Therefore, it grants protection to individuals who seek protection within the EU due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, or due to serious harm in their home countries.²⁷²

First of all, the concept of persecution could be interpreted to include not only persecution by other humans but also situations in which individuals are targeted by the impacts of climate change.²⁷³ As a matter of fact, "the EU should officially recognise climate migrants as 'vulnerable' people inclined to experience 'forced' displacement."²⁷⁴ For example, individuals who are displaced due to sea-level rise, extreme weather events, or environmental degradation may argue that they face persecution in their home country due to climate change-related factors.

Moreover, to qualify for refugee status, individuals must demonstrate a well-founded fear of persecution based on the protected grounds defined by the Geneva Convention.²⁷⁵ Establishing the nexus between climate-related factors and the protected grounds requires careful examination and consideration by decision-makers, as Professor Perrini states: "an extensive interpretation by case law of the requirements of the aforementioned convention rule is certainly possible, but this would be for the specific case".²⁷⁶ In this regard, "environmental disasters can still indirectly also be a reason for the application of the refugee status, for example if a state arbitrarily restricts access to socio economic rights in the course of a natural disaster and thereby discriminates against a certain group of people and thus the condition of persecutor is met".²⁷⁷

Secondly, there is the concept of subsidiary protection, which is

²⁷¹ *Ibidem*, p. 51.

²⁷² *Ibidem*.

²⁷³ COURNIL, TABAU, *Human rights and climate change: European Union policy options*, Brussels, 2012, p. 68, PE 457.066. Available on the website: www.europarl.europa.eu.

²⁷⁴ *Ibidem*.

²⁷⁵ *Supra*, paragraph 2.4.5.

²⁷⁶ PERRINI, *op. cit.*, p. 248.

²⁷⁷ EUROPEAN PARLIAMENT POLICY DEPARTMENT, *op. cit.*, p. 72.

granted to individuals who do not meet the strict criteria for refugee status but would face a real risk of serious harm if returned to their home country.²⁷⁸ Serious harm includes:

“the death penalty or execution, or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

This concept introduced in the EU Qualification Directive can be relevant for climate migrants.²⁷⁹ The application of subsidiary protection to climate migrants depends on the recognition of climate-related harm as a basis for protection.²⁸⁰

However, there are some obstacles. Firstly, it is necessary to conduct a future-focused risk forecast in order to determine if a person is eligible for subsidiary protection.²⁸¹ Therefore, if the situation in the country of origin has since improved, those who departed after an environmental incident or process cannot claim subsidiary protection.²⁸² Instead, the hypothetical condition that will exist upon a person’s return is key.²⁸³

Secondly, a person applying for subsidiary protection must be subjected to the “inhuman or degrading treatment”²⁸⁴ in their nation of origin, or it must be unreasonable for them to leave and settle in a safe

²⁷⁸ Directive 2011/95/EU of the European Parliament and the Council of the European Union of December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

²⁷⁹ COUNIL, TABAU, *op.cit.*, p. 250.

²⁸⁰ *Ibidem*, p. 251.

²⁸¹ *Ibidem*.

²⁸² *Ibidem*.

²⁸³ *Ibidem*.

²⁸⁴ Directive 2011/95/EU of the European Parliament and the Council of the European Union of December 2011, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

location, according to Article 15(b).²⁸⁵

Thirdly, many as refugees (would) most certainly encounter the same barriers as for economic migrants (such as the requirement for a visa, the existence of carrier sanctions, or tightened border controls) while trying to enter EU territory.²⁸⁶ This implies that they would frequently need to enter or remain on the territory of the Member States using unauthorized ways.²⁸⁷

In the case *Mohamed M'Bodj v État belge*, the CJEU noted that

“Article 15(b) (...) must be interpreted as meaning that serious harm (...) does not cover a situation in which inhuman or degrading treatment (...) to which an applicant suffering from a serious illness may be subjected if returned to his country of origin, is the result of the fact that appropriate treatment is not available in that country, unless such an applicant is intentionally deprived of health care.”²⁸⁸

This argument leads to the conclusion that the serious harm must originate from a third party and not be the outcome of “a general shortcoming in the health system of the country of origin”.²⁸⁹ In other words, “an actor of serious harm is required”.²⁹⁰

3.2.2 EU Temporary Protection Directive (Directive 2001/55/EC)

The Temporary Protection Directive provides a legal framework for responding to large-scale influxes of displaced persons, particularly in situations of armed conflict or other mass emergencies.²⁹¹ It could be

²⁸⁵ AMMER, MAYRHOFER, SALSBURY, *Time to act. How the EU can lead on climate change and migration*, June 2014, p. 31. Available on the website: www.eu.boell.org.

²⁸⁶ *Ibidem*.

²⁸⁷ *Ibidem*.

²⁸⁸ Court of Justice of the European Union (Grand Chamber), Case *Mohamed M'Bodi v État belge*, December 2014.

²⁸⁹ *Ibidem*.

²⁹⁰ DELVAL, *From the U.N. Human Rights Committee to European Courts: Which protection for climate-induced displaced persons under European Law?*, April 2020. Available on the website: eumigrationlawblog.eu.

²⁹¹ Directive 2001/55/EC of the Council of the European Union of July 2001, on minimum standards for giving temporary protection in the event of a mass influx of

used in situations of armed conflict, general violence, or other circumstances that result in a significant and temporary displacement of people. It has been applied once, for the Ukrainian war emergency. The directive enables EU member states to grant temporary protection status to “mass influx of displaced persons from third countries who are unable to return to their countries of origin”.²⁹² It establishes provisions for the reception and treatment of individuals under temporary protection, including access to essential services and non-refoulement guarantees.²⁹³

Although climate migrants are not explicitly mentioned in the directive, its provisions could be relevant in addressing the needs of individuals displaced by climate-related events.

The researchers Kraler, Cernei and Noack clearly explain:

“The Temporary Protection Directive’s list is not limited as long as the wording of the provision of Article 2(c) specifies ‘in particular’ where the “persons have fled areas of armed conflict or endemic violence” (Art.2 (c)i) and “persons at serious risk of, or who have been victims of, systematic or generalized violations of their human rights” (Art.2 (c) ii). In addition, the situation of the applicants for protection may not fall only under the refugee convention but also under “other international or national instruments giving international protection” (Art. 2(c)). All these stipulations may be interpreted in a sufficiently broad manner in order to identify ‘environmentally displaced individuals’ as falling under the scope of the Temporary Protection Directive”.²⁹⁴

Thus, it is possible that these provisions are interpreted in a non-restrictive way and also include persons who have been forced to

displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

²⁹² *Ibidem*, Article 13.

²⁹³ *Ibidem*.

²⁹⁴ KRALER, CERNEI, NOACK, ‘*Climate Refugees*’: *legal and policy responses to environmentally induced migration*, Brussels, December 2011, p. 54. Available on the website: www.europarl.europa.eu.

emigrate due to environmental or climatic disasters.²⁹⁵

In the context of climate migrants, the Temporary Protection Directive could be invoked in response to mass displacements resulting from environmental disasters or the adverse effects of climate change.²⁹⁶

For instance, it could be applied to situations where large numbers of people are forced to leave their homes due to the increased risk of flooding, land degradation, or the loss of agricultural productivity caused by climate-related factors.

It is paramount to note that while the existing EU directives, such as the Qualification Directive and the Temporary Protection Directive, could both be relevant to climate migrants, there is an ongoing discussion within the international community regarding the need for specific legal instruments and frameworks to comprehensively address the challenges posed by climate-induced displacement. As a matter of fact, in a resolution adopted by the European Parliament on addressing refugee and migrant movements in 2017, the European Parliament “takes the view that persons displaced by the effects of climate change should be given a special international protection status which takes account of the specific nature of their situation”.²⁹⁷

To conclude, the European Union institutions have been actively engaged in discussions and actions related to climate change and migration, but there is no specific EU-wide legal framework or consensus on the protection of climate migrants.

3.3 Possible approaches for climate migrants within the Italian framework

Within the Italian legal framework, there are several possible scenarios to consider in addressing the protection of climate migrants. The legal elements considered below could be explored to provide

²⁹⁵ GAUDINO, *La gestione dei migranti climatici all'interno dell'UE*, February 2019. Available on the website: www.opiniojuris.it.

²⁹⁶ SCIACCALUGA, *Sudden-Onset Disasters, Human Displacement, and the Temporary Protection Directive: Space for a Promising Relationship?*, in *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward*, Rome, 2017, p. 89. Available on the website: www.iriss.cnr.it.

²⁹⁷ Resolution 2015/2342(INI) of the European Parliament of 5 April 2017, on addressing refugee and migrant movements: the role of EU External Action.

legal avenues for those displaced by environmental factors and climate change.

Actual forms of protection for foreign nationals in Italy include political asylum, subsidiary protection, special protection. Since refugee status²⁹⁸ and subsidiary protection²⁹⁹ have been discussed extensively above, it is suitable to define special protection.

3.3.1 Special protection

Humanitarian protection was a category of subsidiary protection that allowed individuals who did not qualify for refugee status or subsidiary protection to be granted a temporary residence permit in Italy.³⁰⁰ Humanitarian protection aimed to provide temporary relief to vulnerable individuals who did not meet the strict criteria for other forms of protection but were deemed in need of international assistance.

Order 5022/2021 of the Italian Court of Cassation Second Civil Section of February 2021 is a key humanitarian protection case related to the environmental disruption of a country from which a migrant arrived in Italy. In this order, the Italian Court of Cassation recognises the possibility of humanitarian protection being granted to migrants fleeing their country of origin due to environmental disasters.³⁰¹

The order concerns a migrant from the Niger region, from where he fled for ‘environmental disaster’.³⁰² Once in Italy, he applied for a residence permit for international or, at the time, humanitarian protection.³⁰³ The application was rejected by the competent Territorial Commission, which considered that the situation was not sufficient for the configuration of a condition of generalised violence

²⁹⁸ *Supra*, paragraph 2.4.5.

²⁹⁹ *Supra*, paragraph 3.1.1.

³⁰⁰ PRESIDENTE DELLA REPUBBLICA, *Decreto legislativo 28 gennaio 2008*, n. 25. Available on the website: www.gazzettaufficiale.it.

³⁰¹ PERRINI, *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della Corte di Cassazione*, in *Ordine internazionale e diritti umani*, 2021, p. 349. Available on the website: www.rivistaoidu.net.

³⁰² CORTE SUPREMA DI CASSAZIONE SECONDA SEZIONE CIVILE, *Ordinanza 5022/2021*, February 2021. Available on the website: www.asgi.it.

³⁰³ *Ibidem*.

relevant to the recognition of subsidiary protection.³⁰⁴ It was also subsequently rejected by the tribunal.

The appellant complained about the irrelevance attributed by the trial judge to the environmental and climatic situation of his place of origin.³⁰⁵ As a matter of fact, on the one hand, ethnopolitical conflicts, and sabotage resulted in oil spills that made the area highly polluted and, on the other hand, kidnappings of public authorities and attacks against police forces that have long undermined the political stability of the area.³⁰⁶

The Court of Cassation upholds the appeal of the citizen of Niger. Firstly, the Court refers to the *Teitiota v. New Zealand* case,³⁰⁷ decided before the UN Human Rights Committee, which recognised the relevance of the effects of climate change on migration policies,³⁰⁸ inferring that environmental degradation that prevents a person from living in a certain area of the world can be a relevant element for the recognition of refugee status.³⁰⁹

For this reason, the Cassation Court maintains

“il pericolo per la vita individuale che rileva ai fini del riconoscimento della protezione, infatti, non deve necessariamente derivare da un conflitto armato, ma può dipendere da condizioni socio-ambientali comunque riferibili all'azione dell'uomo. [...] La guerra, o in generale il conflitto armato, rappresentano la più eclatante manifestazione dell'azione autodistruttiva dell'uomo, ma non esauriscono l'ambito dei comportamenti idonei a compromettere le condizioni di

³⁰⁴ *Ibidem*.

³⁰⁵ SCISSA, *Migrazioni ambientali tra immobilismo normativo e dinamismo giurisprudenziale: Un'analisi di tre recenti pronunce*, May 2021, p. 6. Available on the website: www.questionegiustizia.it.

³⁰⁶ *Ibidem*.

³⁰⁷ *Supra*, paragraph 2.4.3.

³⁰⁸ UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS HUMAN RIGHTS COMMITTEE, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016*, cit.

³⁰⁹ MASCHIETTO, *Cambiamento Climatico, Disastro Ambientale e violazione dei Diritti Umani: il nesso c'è anche per la Cassazione*, in *RGAonline*, June 2021, p. 11. Available on the website: www.rgaonline.it.

vita dignitosa dell'individuo".³¹⁰

The environmental disaster is seen by the Court as a possible violation of fundamental rights such as the right to life, liberty, and self-determination,³¹¹ referring to the “*nucleo ineliminabile costitutivo dello statuto della dignità personale*”.³¹² In this case, the granting of a residence permit on humanitarian grounds is justified for their protection.³¹³ Therefore, the Court allowed the appeal and referred the case back to the General Court.³¹⁴

The Cassation Court's decision is innovative from many perspectives: first of all, for recognising a now essential principle, namely the need to provide protection to migrants who leave their country of origin due to environmental disasters; secondly, because the reasoning adopted by the Court is based on the decision of the UN Human Rights Committee concerning the *Teitiota* case, which shows the wide scope that the activity of quasi-judicial monitoring bodies can take; finally, for recognising the institution of humanitarian protection as a useful means to protect so-called environmental migrants who do not have a specific protection system.³¹⁵

Ordinance 5022/2021, allows the applicant to receive humanitarian protection, thus granting the first protection to a climate migrant in Italy. Unfortunately, this case seems to be the only one at the moment. This is because the definition of humanitarian protection has been superseded by legislative policy decisions taken in 2018.

As a matter of fact, with the approval of Legislative Decree No 113 of 4 October 2018,³¹⁶ Italy made significant changes to its immigration and asylum system on the issuance “*speciali permessi di soggiorno temporanei per esigenze di carattere umanitario*”.³¹⁷ This decree law

³¹⁰ *Ibidem*.

³¹¹ SCISSA, *op. cit.*, p. 7.

³¹² CORTE SUPREMA DI CASSAZIONE SECONDA SEZIONE CIVILE, *Ordinanza 5022/2021*, cit.

³¹³ SCISSA, *op. cit.*, p. 7.

³¹⁴ CORTE SUPREMA DI CASSAZIONE SECONDA SEZIONE CIVILE, *Ordinanza 5022/2021*, cit.

³¹⁵ PERRINI, *op. cit.*, p. 351.

³¹⁶ PRESIDENTE DELLA REPUBBLICA, *Decreto-Legge 4 ottobre 2018*, n. 113. Available on the website: www.gazzettaufficiale.it.

³¹⁷ *Ibidem*.

was subsequently converted into Law No 132 of 1 December 2018.³¹⁸ One of the key changes was the abolition of the humanitarian protection status for migrants and asylum seekers in Italy.

Instead of humanitarian protection, the reform introduced the so called Special protection.³¹⁹ Under this protection, individuals who would have previously been considered for humanitarian protection are now assessed for special protection under specific circumstances.

The Legislative Decree No 130 of 21 October 2020 Article 1a(a) states that among the residence permits that can be converted into work permits if the requirements are met, there is:

“a) *permesso di soggiorno per protezione speciale, di cui all'articolo 32, comma 3, del decreto legislativo 28 gennaio 2008, n.25*”.³²⁰

Article 32 (3) of Legislative Decree No 25 establishes that “*nei casi in cui non accolga la domanda di protezione internazionale e ritenga che possano sussistere gravi motivi di carattere umanitario, la Commissione territoriale trasmette gli atti al questore per l'eventuale rilascio del permesso di soggiorno*”.³²¹

To resume, for the issuance of a (two-year) residence permit under the special protection regime, the conditions set out in Article 19(1) and (1.1) of *Testo Unico sull'Immigrazione* must be met. While Article 19 (1) regards persecution, Article (1.1) states “*non sono ammessi il respingimento o l'espulsione o l'extradizione di una persona verso uno Stato qualora esistano fondati motivi di ritenere che essa rischi di essere sottoposta a [...] violazioni sistematiche e gravi di diritti umani*”.³²²

The category ‘special cases of asylum’ aims to provide tailored protection for individuals who face particular vulnerabilities or compelling humanitarian needs “*in occasione di conflitti, disastri naturali o altri eventi di particolare gravità in Paesi non appartenenti*

³¹⁸ PRESIDENTE DELLA REPUBBLICA, *Legge 1° dicembre 2018*, n. 132. Available on the website: www.gazzettaufficiale.it.

³¹⁹ *Ibidem*.

³²⁰ PRESIDENTE DELLA REPUBBLICA, *Decreto-Legge 21 ottobre 2020*, n. 130. Available on the website: www.gazzettaufficiale.it.

³²¹ PRESIDENTE DELLA REPUBBLICA, *Decreto legislativo 28 gennaio 2008*, n. 25, cit.

³²² *Testo Unico sull'Immigrazione*, Decreto legislativo n. 286 del 25 luglio 1998. Available on the website: www.altalex.com.

all'Unione Europea”, as stated in Article 20 (1) of *Testo Unico*.³²³

It is crucial to consider how these legal changes may impact the legal frameworks for protecting climate migrants in Italy. As a matter of fact, “*sistematiche e gravi violazioni dei diritti umani*”³²⁴ in the imminent future could affect who migrates due to climate reasons.

In 2021, a foreign citizen of Pakistan declared himself an ‘environmental migrant’ and complained that “*la sopravvivenza sua e della sua famiglia era minacciata dai mutamenti climatici*”.³²⁵ For this reason, he requested the issuance of a residence permit for “*status di rifugiato [...] o in subordine del diritto alla protezione sussidiaria [...] o in ulteriore subordine del diritto alla protezione umanitaria*”.³²⁶

The Tribunal of Ancona rejected his claims, so the Pakistani citizen appealed to the Court of Cassation.³²⁷ The latter, in upholding the appeal of the interested party, claims that

“il ricorso va accolto limitatamente al vizio di motivazione denunciato con il primo motivo [...], avuto riguardo al mancato esame di una delle due ragioni che, come riconosciuto dallo stesso tribunale, hanno indotto il ricorrente a lasciare il suo paese, segnatamente l’inondazione verificatasi nel 2013, e ciò in relazione a tutte le richieste di protezione invocate; [...] – invero, a fronte delle allegazioni svolte nella domanda introduttiva [...] il richiedente racconta che nel 2013 vi è stata una forte inondazione a Gujranwala, dove la famiglia all’epoca viveva, fonte di danni e di perdite di vite umane. Notizie della inondazione si rinvergono agevolmente nei mass media”

This is the reason why the Court referred the case back to the Court of Ancona to review the Pakistani national’s applications “*di riconoscimento dello status di rifugiato [...] o in subordine del diritto alla protezione sussidiaria [...] o in ulteriore subordine del diritto alla*

³²³ *Ibidem*.

³²⁴ *Supra*, Article 19(1.1) of *Testo Unico sull’Immigrazione*.

³²⁵ CORTE SUPREMA DI CASSAZIONE PRIMA SEZIONE CIVILE, *Ordinanza n. 6964*, march 2023. Available on the website: www.meltingpot.org.

³²⁶ *Ibidem*.

³²⁷ *Ibidem*.

protezione umanitaria”,³²⁸ as it had not dealt with the causes of the severe flooding in Pakistan in 2013,³²⁹ by stating “*la famiglia del ricorrente ha risentito pesantemente delle conseguenze della inondazione*”.³³⁰

The issue is more topical than ever.

The special protection was modified by the so-called ‘*Cutro*’ Legislative Decree 20/2023, converted into Law 50/2023. In particular, the grounds for prohibiting refoulement indicated in Article 19 were narrowed down,³³¹ in turn restricting the possibilities of issuing such a residence permit.

Protecting people fleeing climate disasters is a hot topic. Bologna Court Judge Matilde Betti, in one of her articles on complementary and special protection, argues that “*gli obblighi internazionali assunti dal nostro Stato in materia ambientale e di lotta alla povertà possono costituire ambiti di ulteriore approfondimento per l’interprete, in considerazione della frequenza con cui tali questioni vengono sottoposte alla giurisprudenza di merito*”.³³²

In this regard, there is another article of the TUI that can be referred to.

3.3.2 Temporary protection

Temporary protection is a concept introduced at the EU level through the Temporary Protection Directive,³³³ then transposed into the Italian legal system. In particular, Article 20 of the *Testo Unico per l’Immigrazione* lays the legal groundwork for granting temporary protection to specific categories of migrants: “*per rilevanti esigenze*

³²⁸ *Ibidem*.

³²⁹ *Ibidem*.

³³⁰ *Ibidem*.

³³¹ PRESIDENTE DELLA REPUBBLICA, *Legge 5 maggio 2023*, n. 50. Available on the website: www.gazzettaufficiale.it.

³³² BETTI, *I fondamenti unionali e costituzionali della protezione complementare e la protezione speciale direttamente fondata sugli obblighi costituzionali ed internazionali dello Stato*, June 2023. Available on the website: www.questionegiustizia.it.

³³³ Directive 2001/55/EC of the Council of the European Union of July 2001, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

umanitarie, in occasione di conflitti, disastri naturali o altri eventi di particolare gravità in Paesi non appartenenti all'Unione Europea".³³⁴

Temporary protection is a short-term measure that aims to address immediate humanitarian needs without granting permanent residence status or refugee status.

Article 20-bis of TUI on the issuance of residence permits refers to 'calamities'.³³⁵ Given that the Italian legal system provides for multiple and different definitions of calamity, it seems likely that natural calamities, whether environmental or climatic, man-made and, according to a recently advanced thesis, sanitary, as in the case of epidemics or pandemics, could have fallen within the scope of the then Article 20-bis.³³⁶

In the first half of the year 2023, changes were made to Article 20-bis of the TUI with Decree Law 20/2023, converted into Law 50/2023, thus limiting the issuance of permits for natural disasters to "situazione di contingente ed eccezionale calamità"³³⁷ and no longer to 'grave calamità', making it renewable for only 6 months. It can be inferred that it is only for emergency situations of short duration.

However, while temporary protection can be a vital short-term response to humanitarian crises, for the time being it may not offer a comprehensive and long-term solution for climate migrants. The temporary nature of this protection means that individuals granted such status might face uncertainty regarding their future legal status and residence rights.

³³⁴ *Testo Unico sull'Immigrazione*, Decreto legislativo n. 286 del 25 luglio 1998, cit.

³³⁵ *Ibidem*.

³³⁶ SCISSA, *La protezione per calamità: una breve ricostruzione dal 1996 a oggi*, in *Forum di Quaderni Costituzionali*, January 2021, p. 145. Available on the website: www.forumcostituzionale.it.

³³⁷ PRESIDENTE DELLA REPUBBLICA, *Legge 5 maggio 2023*, n. 50, cit.

CONCLUSION

The plight of climate migrants stands as a compelling challenge in the contemporary world, revealing a critical gap in legal recognition and protection at the international level. The absence of dedicated legal frameworks addressing the unique vulnerabilities posed by climate-induced displacement leaves countless individuals in a precarious situation, devoid of the safeguards and rights afforded to traditional refugees and migrants.³³⁸ This work has underscored that while the international community acknowledges the urgency of climate migration, concrete legal mechanisms have yet to materialize, resulting in a protection void that affects the most vulnerable populations.

It is possible, however, that the basis of law to protect climate migrants could germinate on some pre-existing legal elements.³³⁹ This is why the international, the EU regional and the Italian frameworks have been analysed. It emerged that the path towards protecting climate migrants is still a long one, due to the different types of scenarios that can be generated within the concept of climate migration, including migration for a sudden climate disaster, a slow onset event, or even people migrating to prevent an emergency, e.g., an area at risk of being flooded by rising water levels.³⁴⁰

As explained in chapter 2, at the international level there are Charters, Pacts and Declarations which aim at protecting migrants' rights and generally human rights. However, to this point, it is clear that none of the elements analysed is specific to climate migrants.

Notwithstanding, on 23 June in Geneva, Mr Ian Fry, who is the UN Human Rights Council's first Special Rapporteur on the promotion and protection of human rights in the context of climate change, spoke out. He appealed to the international community and individual states,

³³⁸ BATES-EAMER, *Border and Migration Controls and Migrant Precarity in the Context of Climate Change*, June 2019, p. 7. Available on the website: www.mdpi.com.

³³⁹ SUSSMAN, *A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?*, in *Chicago Journal of International Law*, Winter 2023, p. 43. Available on the website: www.cjil.uchicago.edu.

³⁴⁰ *Supra*, paragraph 2.3.

recommending specific ways to develop. First of all, the Human Rights Council should prepare a resolution for submission to the UN General Assembly “urging the body to develop an optional protocol under the Convention relating to the Status of Refugees to address displacement and legal protection for people all over the world affected by the climate crisis”.³⁴¹ Moreover, “until then, I urge all nations to develop national legislation to provide humanitarian visas for persons displaced across international borders due to climate change, as an interim measure,”³⁴² the expert claimed.

As a matter of fact, people who emigrate due to climate change can be subjected to violations of their human rights, since they can be deprived of their right to life in some cases, but also of right to housing, health, food and water, and sanitation. Climate change is getting worse and the preamble to the Paris Agreement sets:

“Acknowledging that climate change is a common concern of humankind, parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, the empowerment of women and intergenerational equity”.³⁴³

This passage reinforces what is written in the document published by the UN General Assembly in April 2023 on the role of the international community. The latter has the duty to secure the necessary resources, as well as technical and humanitarian support, to aid persons who have been forcibly displaced across international borders and safeguard their rights.³⁴⁴

³⁴¹ UN PRESS STAFF, *UN expert calls for full legal protection for people displaced by climate change*, June 2023. Available on the website: www.ohchr.org.

³⁴² *Ibidem*.

³⁴³ UNITED NATIONS, *Paris Agreement*, 2015. Available on the website: www.unfccc.int.

³⁴⁴ UN HUMAN RIGHTS COUNCIL, *Providing legal options to protect the human rights of persons displaced across international borders due to climate change. Report of the Special Rapporteur on the promotion and protection of human rights*

In the conclusions of the documents, it is stated that there is “an urgent need to provide a legal regime to protect the rights”³⁴⁵ of this kind of migrants.

To make up for the legislative vacuum of climate migrants, it is important to mention what has been done in jurisprudence by international bodies and national courts.

The Human Rights Committee’s decision in the Teitiota case³⁴⁶ is significant because it expanded the application of the Covenant’s non-refoulement norm. In fact, this principle also applies to environmental migrants when their integrity in their nation of origin is in jeopardy owing to breaches of their rights to life, the prohibition of torture, or inhumane or degrading treatment.³⁴⁷ Although the decision is non-binding, it highlights the importance of the issue of climate migrants.

Among the most recent developments in the legal regime of migration there is the 2018 Global Compact for Migration,³⁴⁸ which not only explicitly recognises climate change, as causes of migration, but also highlights the urgency of cooperation.³⁴⁹ Albeit soft law, it is in fact the first universally applicable instrument signed by states in which the link between climate change and migration has been clearly identified.³⁵⁰

Besides what has been said about Italy,³⁵¹ it is also worth mentioning Finland and Sweden among the EU states. The Finnish Aliens Act of 2004 also includes environmental disasters as a reason for a foreigner to stay on Finnish territory, to which a form of temporary protection of up to three years is allocated.³⁵² The Swedish Aliens Act of the

in the context of climate change, Ian Fry, A/HRC/53/34 of 18th April 2023. Available on the website: www.documents-dds-ny.un.org.

³⁴⁵ *Ibidem*.

³⁴⁶ *Supra*, paragraph 2.4.3.

³⁴⁷ BRUZZESE, *La tutela internazionale ed europea dei migranti climatici: le lacune giuridiche e i tentativi di colmarle*, Naples June 2022, p. 5. Available on the website: www.aisdue.eu.

³⁴⁸ *Supra*, paragraph 2.4.8.

³⁴⁹ BRUZZESE, *op. cit.*, p. 5.

³⁵⁰ *Ibidem*.

³⁵¹ *Supra*, paragraph 3.3.

³⁵² MINISTRY OF THE INTERIOR OF FINLAND, *Aliens Act 301/2004*. Available on the website: www.ec.europa.eu.

following year similarly includes rapid-onset natural disasters.³⁵³ Both were suspended after the European migration crisis of 2015. There was a recent development, instead, in Germany.³⁵⁴ In 2020, the German High Administrative Court, with an interpretation under Article 3 ECHR on the prohibition of torture and inhuman or degrading treatment or punishment inhuman or degrading treatment or punishment, granted an Afghan national the right to non-refoulement to his home country, where the consequences of natural disasters had been further exacerbated by the spread of Covid-19.³⁵⁵ These developments demonstrate the attention that is being paid to climate migrants, despite the fact that they are not yet legally recognised.

In a nutshell, this work has illuminated the complex landscape of climate migrants' legal status and protection. The recognition of climate change as a global challenge is unequivocal, yet translating this recognition into effective legal safeguards demands concerted international and regional efforts. As climate migration continues to escalate, the urgency to bridge the gap between recognition and protection becomes more pronounced, since it would ensure the dignity, rights, and security of those whose lives are upended by the consequences of a changing climate.

³⁵³ MINISTRY OF JUSTICE OF SWEDEN, Sweden Alien Act 2005/716. Available on the website: www.rkrattsbaser.gov.se.

³⁵⁴ BRUZZESE, *op. cit.*, p. 7.

³⁵⁵ VGH BADEN-WÜRTTENBERG, *Judgment of 17 December 2020*, A11S 2042/20. Available on the website: www.openjur.de.

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