



**December 22, 2023**

**Standing Senate Committee on Human Rights**

**Topic: Climate Migration and Displacement**

Brief submitted by the following persons and organizations:

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| <p>Camila Bustos, Assistant Professor of Law at the Elisabeth Haub School of Law at Pace University</p>   | <p>Monica Iyer, Clinical Fellow and Senior Lecturing Fellow, Duke University School of Law</p>  |
| <p>Amali Tower, Founder and Executive Director, Climate Refugees<br/>Ryan Plano, Project Officer, Climate Refugees</p>  | <p>Yumna Kamel, Co-Founder and Executive Director, Earth Refuge</p>  |
| <p>Julia Neusner, Legal Director, Stanford University Migration and Asylum Lab</p>  | <p>Geneviève Minville, PhD Student, Faculty of Environmental and Urban Change, York University</p>  |
| <p>Juliana Vélez Echeverri, Centro Latinoamericano de Estudios Ambientales</p>  |   |

## About Climate Displacement

There is an increasing consensus that climate change has significant implications for human rights protection. One of the key challenges stemming from climate change is climate-related displacement, as impacts such as flooding and agricultural disruption force millions to leave their homes.<sup>1</sup>

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

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

Migration scholars have long documented how climate change exacerbates an individual’s or a community’s underlying vulnerability and does not necessarily *cause* displacement.<sup>3</sup> Instead, environmental or climate-related events tend to intensify poverty, housing insecurity, and economic inequality, compounding existing harms for people living at the margins of society or facing multiple and intersecting discrimination. Low-income and BIPOC (Black, Indigenous, and people of color) communities are more likely to experience negative impacts from environmental or climate disasters.<sup>4</sup> In the case of Indigenous Communities in Canada, for instance, such vulnerability is related to the systemic consequences of long-standing settler colonialism.<sup>5</sup> For historically marginalized populations, it is crucial to document how climate

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<sup>1</sup> International Organization for Migration (IOM), *Migration and Climate Change*, IOM, 11 (2008), [https://www.ipcc.ch/apps/njilite/srex/njilite\\_download.php?id=5866](https://www.ipcc.ch/apps/njilite/srex/njilite_download.php?id=5866).

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

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

<sup>4</sup> Aneesh Patnaik et al., *Racial Disparities and Climate Change*, PRINCETON STUDENT CLIMATE INITIATIVE (Aug. 15, 2020), <https://psci.princeton.edu/tips/2020/8/15/racial-disparities-and-climate-change>. See generally D. Kapua’ala Sproat, *An Indigenous People’s Right to Environmental Self-Determination: Native Hawaiians and the Struggle Against Climate Change Devastation*, 35 STAN. ENV’T L.J. 157 (2016).

<sup>5</sup> See Maggie Quirt, *Why We Must Address the Colonial Dimension of Climate Migration*, THE CONVERSATION (Oct. 14, 2021), <https://theconversation.com/why-we-must-address-the-colonial-dimension-of-climate-migration-169218>.

change contributes to significant human rights losses and development setbacks that underpin their displacement.

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

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

Relatedly, lesbian, gay, bisexual, transgender, queer, or questioning, etc. (“LGBTQ+”) groups are already at heightened risk of violence or other forms of oppression, like political persecution.<sup>10</sup> Preexisting systemic inequities combined with discriminatory emergency response policies burden LGBTQ+ communities with disproportionate impacts of climate-related disasters and displacement.<sup>11</sup>

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<sup>6</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Climate Change 2022: Impacts, Adaptation and Vulnerability* at 65, Working Group II (IPCC Sixth Assessment Report, 2022)

[https://report.ipcc.ch/ar6/wg2/IPCC\\_AR6\\_WGII\\_FullReport.pdf](https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf) (emphasis added).

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

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

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

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

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

Much of the academic literature and media coverage on climate displacement frames the issue through a racialized lens, primarily through the perspective of Global North nationals concerned with “unprecedented increases in cross-border migration” originating from the Global South.<sup>12</sup> A significant portion of the studies on and responses to climate displacement have embraced a national security framework that builds on the assumption of migration as a threat to national security.<sup>13</sup> The significant attention devoted to climate migration projections tends to paint a picture of mass migration from the Global South to the Global North, eliciting a border security narrative as opposed to the human security narrative necessary for global cooperation. Perhaps this is best evidenced by how the wealthiest countries spend 2.3 times more on border security than on climate finance.<sup>14</sup> **On average, Canada spends 15 times more on border and immigration enforcement than on climate finance.**<sup>15</sup>

There are two main problems associated with the assumption of mass migration to the Global North: (i) it disregards an understanding of the social vulnerability factors that shape displacement, while reinforcing xenophobic conceptions and “deep-seated fears and stereotypes of the dark-skinned, overbreeding, dangerous poor”<sup>16</sup> crossing borders; and (ii) it lacks a human rights approach, which centers the needs of those who are being forcibly displaced.

Although we still lack robust data, most climate-related displacement is and will be internal. According to the Internal Displacement Monitoring Centre, there were a total of 32.6 million internal displacements across the world in 2022.<sup>17</sup> In Canada, communities have already been displaced from their homes due to extreme weather impacts such as flooding, mudslides, droughts, and wildfires.<sup>18</sup> For example, in June 2023, unprecedented wildfires in Quebec, led to

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<sup>12</sup> Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 WIS. INT’L L.J. 366, 366–68 (2019); see also Carmen G. Gonzalez, *Migration as Reparation: Climate Change and the Disruption of Borders*, 66 LOY. L. REV. 401, 403 (2020). *But cf.* PAC. ISLANDS STUDENTS FIGHTING CLIMATE CHANGE ET AL., HOW TO COMMUNICATE ABOUT CLIMATE LINKED MOBILITY 4, (2022), <https://drive.google.com/file/d/1H755rIfYaj3AoY3zU9m0U75KI8IDA5cA> (advising against using “crisis language,” including phrases like “unprecedented migration,” that “feed into the threat narrative”).

<sup>13</sup> See e.g., TODD MILLER, *STORMING THE WALL* (2017).

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

<sup>15</sup> *Id.*

<sup>16</sup> Betsy Hartmann, *Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse*, 22 J INT’L DEV. 233, 238 (2010); Miles Culpepper, *The Debt We Owe Central America*, JACOBIN (Nov. 1, 2018), <https://jacobinmag.com/2018/11/centralamerica-migrant-caravan-trump>; Andrew Baldwin, *Racialisation and the Figure of the Climate Change Migrant*, 45 ENV. & PLANNING 1474 (2013).

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

<sup>18</sup> *Climate Change Displacement Mapping the issue in British Columbia*, THE CLIMATE DISPLACEMENT PLANNING INITIATIVE (CDPI) (2022), <https://www.uvic.ca/research/centres/globalstudies/projects/core-projects/climate-change->

the evacuation of more than 11,000 people.<sup>19</sup> While data on disaster evacuation are meaningful, they offer limited information about people who chose to move out of risk zones to mitigate future risks, indicating that climate displacement in Global North countries like Canada could be higher than initially estimated.

In Canada, First Nations, Inuit, and Métis communities have disproportionately experienced the consequences of climate change impacts,<sup>20</sup> including climate-related disasters. In Manitoba, for example, efforts to save cottages, agricultural areas, and communities from flooding on Lake Manitoba led government officials to divert flood water directly into Lake St. Martin First Nation, Pinaymootang, and Little Saskatchewan.<sup>21</sup> This resulted in permanent displacement of these communities.<sup>22</sup> Many First Nations communities have found that government interference has either lacked meaningful consultation<sup>23</sup> with First Nations or left them out of the plan altogether.<sup>24</sup> In other cases across Canada, Indigenous Communities have asked to be relocated to avoid future disasters,<sup>25</sup> while others have faced challenges in their adaptation to climate hazards as the result of historical and political factors.<sup>26</sup> These examples show there is no one-size-fits-all solution to the relocation of Indigenous Communities.

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

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[displacement/index.php](#); Yvonne Su, *Wildfire and flood disasters are causing 'climate migration' within Canada*, THE CONVERSATION, (Sept. 20, 2021) <https://theconversation.com/wildfire-and-flood-disasters-are-causing-climate-migration-within-canada-167730>.

<sup>19</sup> Marie-Michèle Sioui & Sébastien Tanguay, *Le nord du Québec sur le qui-vive*, LE DEVOIR, (Jun. 7, 2023), <https://www.ledevoir.com/politique/quebec/792518/vers-15-000-evacues-a-cause-des-feux-de-foret-les-avions-citernes-manquent-de-pilotes>.

<sup>20</sup> See generally, Climate Atlas of Canada, <https://climateatlas.ca/indigenous>.

<sup>21</sup> Shirley Thompson, Myrle Ballard & Donna Martin, *Lake St. Martin First Nation Community Members' Experiences of Induced Displacement: "We're Like Refugees"*, 29 REFUGE. 76, 84 (2014).

<sup>22</sup> *Id.*

<sup>23</sup> See *Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act*, <https://www.justice.gc.ca/eng/declaration/about-afropos.html> ("On June 21, 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act received Royal Assent and immediately came into force.").

<sup>24</sup> *Id.* at 75.

<sup>25</sup> See generally Future Tuktoyaktuk, *Kashechewan, Ontario*, <https://futuretuktoyaktuk.org/kashechewan>

<sup>26</sup> See generally Mahmood Fayazi et. al., *Barriers to Climate Change Adaptation in Indigenous Communities: A Case Study on the Mohawk Community of Kanasatake, Canada*, 49 INT'L J. DISASTER RISK REDUCTION 101750 (2020), <https://doi.org/10.1016/j.ijdr.2020.101750>.

## Existing Gap in Protection

Existing law at the international, regional, and domestic level is insufficient to provide adequate protection to climate displaced people. In the Americas, individuals displaced by environmental disasters are typically not granted refugee status and are instead offered precarious protection through ad hoc and discretionary measures that fail to guarantee long-term status.

In the United States, climate displaced people may qualify for Temporary Protected Status (TPS), a program that temporarily protects people already present in the United States from return to countries with dangerous conditions, including conditions caused by environmental disasters.<sup>27</sup> In other contexts, receiving countries may extend other forms of temporary protection such as humanitarian visas or private sponsorship programs. For example, Argentina has created a humanitarian program for climate displaced people relocating from Central American and Caribbean countries who meet certain eligibility criteria.<sup>28</sup> The program requires civil society organizations to sponsor eligible applicants. As of December 2023, the private sponsorship program has not yet been implemented.

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

Refugee and asylum law provides limited protection for climate-displaced people who also experience persecution. Research has shown many asylum seekers experience devastating climate-related disasters such as hurricanes, droughts, and floods, which exacerbate their conditions of social and economic vulnerability.<sup>29</sup> Asylum seekers identify the destruction of their homes, agricultural lands, and businesses due to climate-related causes as a contributing

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<sup>27</sup> Carey DeGenaro, Comment, *Looking Inward: Domestic Policy for Climate Change Refugees in the United States and Beyond*, 86 U. COLO. L. REV. 991, 992–96 (2015) (explaining why current processes are insufficient and proposing new legislation to fill the gaps); see also International Refugee Assistance Project, ADVOCACY MEMO ON CLIMATE DISPLACEMENT: KEY LEGAL LEVERS 2 (2022), <https://refugeerights.org/wp-content/uploads/2022/11/Climate-Displacement-Advocacy-Memo-Nov-2022.pdf>.

<sup>28</sup> Disposition No. 891/2022, May 19, 2022, [34.923] B.O. 63 (Arg.).

<sup>29</sup> International Refugee Assistance Project (IRAP), U.S. Committee for Refugees and Immigrants, and Human Security Initiative (HUMSI), *Climate of Coercion: Environmental and Other Drivers of Cross-Border Displacement in Central America and Mexico*, (March 2023), <https://refugeerights.org/news-resources/climate-of-coercion-environmental-and-other-drivers-of-cross-border-displacement-in-central-america-and-mexico>.

factor to their decisions to flee their home country.<sup>30</sup> Nonetheless, individuals displaced by climate impacts alone generally do not qualify for refugee protection. First and foremost, refugee protection is afforded to those who cross a border in pursuit of protection from a fear of persecution in their nation of origin.<sup>31</sup> Persecution in the context of this framework requires proof of a targeted threat against that individual on the basis of their identity (e.g., nationality, race, religious belief, political opinion, or belonging to a particular social group). It is difficult, though not impossible, for an asylum applicant to incorporate climate-related claims in a successful application.<sup>32</sup>

## Potential Solutions

Leveraging existing legal protections and establishing new pathways while prioritizing the needs of the most vulnerable, is critical to effectively confronting the challenges that arise in the context of a changing climate. There is no one-size-fits-all solution, but national governments can begin addressing the gap in protection through the following actions:

1. Recognizing climate displacement and the right to stay across legal frameworks;<sup>33</sup>
2. Training judges, lawyers, and immigration officials on how climate change may intersect with valid claims under existing refugee law;
3. Increasing the use of humanitarian visas in the context of climate change, particularly for countries or regions that are severely affected;

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<sup>30</sup> *Id.*

<sup>31</sup> United Nations Convention relating to the Status of Refugees, Article 1(2), *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

<sup>32</sup> See e.g., International Refugee Assistance Project, *Climate Displacement Client Story: Isabel*, <https://refugeerights.org/issue-areas/climate-displacement>; Flora Bensadon, *France's First Climate Refugee – A Sign of a Promising Future for Climate Migration?*, EARTH REFUGE (March 18, 2021), <https://earthrefuge.org/frances-first-climate-refugee-a-sign-of-a-promising-future-for-climate-migration/>.

<sup>33</sup> Some advocates have recently suggested developing an optional protocol to the Refugee Convention to address cross-border climate displacement, including Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry. See Ian Fry, *Providing legal options to protect the human rights of persons displaced across international borders due to climate change (A/HRC/53/34)*, <https://reliefweb.int/report/world/providing-legal-options-protect-human-rights-persons-displaced-across-international-borders-due-climate-change-ahrc5334-enarruzh>. Significantly, this suggestion would not entail reopening the existing protections under the Convention. See also Claudia Savage, *UN chief warns refugee rights would 'go backwards' amid populist rhetoric*, THE INDEPENDENT (Oct. 4, 2023), <https://www.independent.co.uk/news/uk/belfast-suella-braverman-lake-chad-washington-dc-icc-b2423906.html> (“Opening up the UN Refugee Convention to reform would cause the world to “go backwards” on refugee rights, a UN leader has said.”).

4. Developing effective relocation processes for internally displaced communities that center their needs through a human rights-centered approach;<sup>34</sup>
5. Adopting long-term legislative solutions to codify protections in domestic law, providing a more permanent and comprehensive response;
6. Thinking creatively about existing immigration pathways.

## Asylum and Refugee Law

Although the international refugee framework was not designed to protect climate displaced people, it certainly offers the possibility of protection for those individuals who can demonstrate that they meet the eligibility requirements under the law. For instance, environmental defenders who can show that they were persecuted on account of a protected identity may apply for asylum.<sup>35</sup> The U.N. High Commissioner for Refugees has issued special guidance in the climate displacement context, reflecting an increasing recognition among the international community that people displaced by climate change may meet the criteria for protection under international refugee law.<sup>36</sup>

Several advocacy organizations have started training immigration lawyers working on asylum cases on how climate change may intersect with their clients' claims. For example, the Center for Gender and Refugee Studies has put together training materials on the ways in which climate displaced individuals may be able to avail themselves of protection under U.S. law and considerations for advocates arguing for eligibility within the existing asylum framework.<sup>37</sup> In a recent advisory, CGRS recommends:

Although not all cross-border displacement caused by climate change will give rise to asylum eligibility, climate change often exacerbates existing inequalities in a society by contributing to conflict, violence and severe economic deprivation tied to the [1951 Refugee] Convention's protected grounds. Therefore, rather than assume that asylum [] is unavailable for climate-displaced individuals, advocates may be able to build cases with careful background research, factual

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<sup>34</sup> As described below in the "Enabling the Right to Stay" section, relocation should be treated as a last resort measure.

<sup>35</sup> U.N. High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters* ¶¶ 7–9 (2020), <https://www.refworld.org/docid/5f75f2734.html>.

<sup>36</sup> *Id.*

<sup>37</sup> Center for Gender and Refugee Studies, *Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters: Making the Best Use of Existing Legal Frameworks* (June 14, 2023), <https://cgrs.uclawsf.edu/our-work/publications/asylum-claims-individuals-fleeing-climate-change-or-environmental-disasters>



development, and legal analysis to include persons adversely affected by climate change and disasters.<sup>38</sup>

Despite Canada's moral obligation towards climate migrants, the country is not prepared to respond to cross-border climate displacement. Significant gaps in Canadian immigration policies remain,<sup>39</sup> notwithstanding having provided temporary and selective support to disaster-affected populations in the past.<sup>40</sup> The Canadian Association of Refugee Lawyers (CARL) argues that Canada should take proactive steps to address climate migration and displacement issues<sup>41</sup> and urges the Canadian government to adopt the following policy options: (1) expanding the Humanitarian and Compassionate Guidelines to consider climate migrants as eligible for permanent residency on humanitarian and compassionate grounds; (2) creating a public policy class for climate migrants; (3) providing Temporary Residents Permits to climate migrants “in conjunction with more meaningful, long-term pathways to status and protection”; (4) considering “whether removal would subject an individual to a risk of life, liberty, or security of the person as a result of climate related events”; (5) expanding “the definition of the country of asylum class, and introducing a new class under the humanitarian-protected persons class”; and (6) creating pilot programs to test potential legislation.<sup>42</sup>

### Regional and Bilateral Initiatives

Outside of Canada, there are other initiatives that have emerged to address climate displacement. In Africa, the recently launched African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers<sup>43</sup> and a companion Study on African Responses to

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<sup>38</sup> *Id.*

<sup>39</sup> See generally Aviva Basman et. al., *The Canadian Association of Refugee Lawyers' 2023 Report on Climate Migrants*, The Canadian Association of Refugee Lawyers (CARL) (2023), <https://carl-acaadr.ca/wp-content/uploads/2023/11/CARL-Climate-Report-October-2023-1-002.pdf>; see also Stephanie Dickson, Sophie Webber & Tim K. Takaro, *Preparing BC for Climate Migration* (Climate Justice Project), CANADIAN CENTRE FOR POLICY ALTERNATIVES, (Nov. 2014), [https://policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2014/11/ccpa-bc\\_ClimateMigration\\_web.pdf](https://policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2014/11/ccpa-bc_ClimateMigration_web.pdf)

<sup>40</sup> See generally Eric Omeziri, & Christopher Gore, *Temporary Measures: Canadian Refugee Policy and Environmental Migration*, 29 J. EVTL. DISP. & FORCED MIGR. 43 (Feb. 26, 2014). <https://doi.org/10.25071/1920-7336.38166>

<sup>41</sup> See *supra* note 39. CARL cites as an example a 2021 report published by the U.S. government on this issue, see The White House, *Report on the impact of climate change on migration*, (Oct. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>

<sup>42</sup> See generally *supra* note 39.

<sup>43</sup> African Commission on Human and Peoples' Rights, *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers*, (Oct. 20, 2023), <https://achpr.au.int/en/soft-law/african-guiding-principles-human-rights-all-migrants-refugees>.

Migration and the Protection of Migrant Rights<sup>44</sup>—adopted by the African Commission on Human and Peoples’ Rights—included a broad definition of migrant, as well as the first global definition of a climate migrant and climate refugee.<sup>45</sup>

The Kampala Convention is the world’s only legally binding regional instrument on internal displacement. The Kampala Convention seeks to uphold the 1998 Guiding Principles on Internal Displacement across all African states, noting that “States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.”<sup>46</sup> At least 33 member states of the African Union have become Parties to the Kampala Convention thus far.

In the Americas, several Latin American and select Caribbean countries have adopted the broader refugee definition developed in the 1984 Cartagena Declaration, which defines refugees as people “who have fled their country because their lives, safety or freedom have been threatened by . . .”, among others, “massive violations of human rights” or “other circumstances which have seriously disturbed the public order.”<sup>47</sup> This definition has been used in the past to offer protection to individuals displaced by environmental disasters.

More recently, Australia and Tuvalu signed the Falepili Union treaty. The treaty sets a precedent by explicitly identifying climate change as an existential threat to Tuvalu and its citizens.<sup>48</sup> The treaty recognizes that “climate change is Tuvalu’s greatest national security concern” and seeks to provide the citizens of Tuvalu with a special human mobility pathway to access Australia underpinned by a shared understanding and commitment to ensuring human

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<sup>44</sup> African Commission on Human and Peoples’ Rights, *Study on African Responses to Migration and the Protection of Migrant Rights*, (Nov. 8, 2023), <https://achpr.au.int/en/soft-law/study-african-responses-migration-and-protection-migrant-rights>

<sup>45</sup> Also in Africa, the Intergovernmental Authority on Development (IGAD) has adopted the Free Movement Protocols of Persons, which recognizes the “positive effects of migration that can mitigate the impacts of poverty, conflict, unemployment and underemployment, but also drought, disasters, climate change and environmental degradation that drive displacement and migration,” as well as the IGAD Protocol on Transhumance, which aims to address the specific needs of pastoralists affected by drought and the extreme effects of climate change. Amali Tower & Ryan Plano, *Climate Change is Controlling Everything, Let Them Compensate Us: Stories of Loss and Damage in Kenya* at 86-87, (Aug. 14, 2023), <https://www.climate-refugees.org/reports/kenya-loss-and-damage>

<sup>46</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Art. V(4), [https://au.int/sites/default/files/treaties/36846-treaty-kampala\\_convention.pdf](https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf)

<sup>47</sup> United Nations High Commissioner for Refugees (UNHCR), Table No. 1. Definition of refugees (Cartagena) Latin American countries that have incorporated it into their national legislation, (June 2017) <https://www.refworld.org/es/docid/59c29a094.html>

<sup>48</sup> Yumna Kamel, *What Does the World’s First Bilateral Climate Mobility Treaty Mean for Tuvalu?* (Nov. 15, 2023), <https://earthrefuge.org/what-does-the-worlds-first-bilateral-climate-mobility-treaty-mean-for-tuvalu/>

mobility with dignity”.<sup>49</sup> The Falepili Treaty is novel for a number of reasons. It is explicitly dedicated to human mobility linked to climate change without deeming this the ultimate solution to such a nuanced challenge. The treaty recognizes both introducing a safe and legal route to movement, and preservation of the right to stay in response to a changing climate. Most importantly, it is the first legally binding bilateral instrument at the intersection of climate change and migration.

## Legislative Proposals

A recent legislative example comes from Colombia, where a group of lawmakers introduced legislation in 2023 to recognize forced displacement as a result of climate change.<sup>50</sup> If passed, the legislation would “recognize the existence of forced internal displacement due to causes associated with climate change and environmental degradation”, providing social and legal protections amongst others.<sup>51</sup> Other examples include marker legislation in the United States, where Senator Markey and Representative Velázquez have introduced the Climate Displaced Persons Act (CDPA). The CDPA would “enact a national strategy that would provide a more equitable immigration pathway to the United States for people displaced by climate change and critical support for people affected by climate disasters internationally.”<sup>52</sup>

## Managed Retreat

Additionally, some practitioners and scholars have cautiously proposed “managed retreat” as an interim solution while countries and organizations work towards long term solutions to climate change. This refers to the planned relocation of communities facing severe climate risks. However, these processes can often be riddled with significant political, social, and economic challenges. To conduct managed retreat or planned relocation effectively, the following factors are essential: (1) steady and robust communication between all

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<sup>49</sup> Australia-Tuvalu Falepili Union treaty, Austl.-Tuvalu, Art. 1 ¶ b, Austl. Dept. of Foreign Affairs and Trade, Nov. 9, 2023, <https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty>

<sup>50</sup> INFORME DE PONENCIA PARA PRIMER DEBATE DEL PROYECTO DE LEY NO. 299 DE 2022 -CÁMARA- “POR MEDIO DE LA CUAL SE ESTABLECE LA DEFINICIÓN DE DESPLAZAMIENTO FORZADO POR CAUSAS CLIMÁTICAS, SE FIJAN LINEAMIENTOS PARA SU IDENTIFICACIÓN Y SE DICTAN OTRAS DISPOSICIONES, (Mar. 2023) <https://www.camara.gov.co/camara/visor?doc=/sites/default/files/2023-03/Informe%20de%20Ponencia%201er%20Debate%20PL%20299%20de%202022%20-%20Desplazamiento%20por%20causas%20clim%C3%A1ticas.docx>”

<sup>51</sup> Amali Tower & Rahul Balasundaram, *Colombia Moves Closer to Recognizing Internal Climate Displacement*, Climate Refugees, (May 30, 2023), <https://www.climate-refugees.org/spotlight/2023/5/30-colombia>.

<sup>52</sup> *Ahead of COP28, Senator Markey, Congresswoman Velázquez Announce Legislation to Create Pathway for People Displaced by Climate Change*, (Nov. 16, 2023), <https://www.markey.senate.gov/news/press-releases/ahead-of-cop28-senator-markey-congresswoman-velazquez-announce-legislation-to-create-pathway-for-people-displaced-by-climate-change>.

stakeholders,<sup>53</sup> (2) just compensation for the loss of those relocating,<sup>54</sup> (3) voluntary participation of those relocating,<sup>55</sup> (4) considering the needs of receiving areas,<sup>56</sup> and (5) designing plans to be specific and localized to best serve a community.<sup>57</sup>

## Enabling the Right to Stay

While it is necessary to close protection gaps for those migrating in the context of climate change, it is also imperative to take immediate and forceful climate mitigation actions and enable community-driven in situ adaptation options that will permit people to choose to stay in their homes. For if migration is a right,<sup>58</sup> then in the climate context, we must also be ensuring one's right to stay. While many assume that climate impacts will inevitably lead to relocation, many of those in climate-affected communities are both clearly expressing a preference for staying in their homes and offering policy and practical solutions, such as turning back to traditional agricultural and land management techniques, that will enable them to do so.<sup>59</sup> Though many others might prefer to opt for relocation as an adaptation solution, they are unable to do so due to resource constraints or other considerations.<sup>60</sup> **The ultimate goal should be neither preventing nor requiring relocation, but rather creating a system that allows all people to choose their place of residence in safety, equality, and dignity.**

One key element of accomplishing this goal is limiting climate change to the maximum extent possible. States, particularly those that have contributed significantly to greenhouse gas emissions, have a human rights obligation to move immediately and decisively towards ending such emissions, in particular by ending global reliance on fossil fuels. This is also enshrined in the legal principle of “common but differentiated responsibilities” within the United Nations

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<sup>53</sup> Wendy Karen Brag, Sara Tasse Gonzalez, Ando Rabearisoa & Amanda Daria Stoltz, *Communicating Managed Retreat in California*, 13 *WATER* 1, 8 (2021).

<sup>54</sup> A.R. Siders, *Social Justice Implications of U.S Managed retreat buyout programs*, 239 *CLIMATIC CHANGE* 1, 4-5 (2018); Katherine Lieberknecht & Elizabeth Mueller, *Planning for Equitable Climate Relocation: Gaps in Knowledge and a Proposal for Future Directions*, 38 *JOURNAL OF PLANNING LITERATURE* 229, 231 (2023).

<sup>55</sup> *Id.* at 6.

<sup>56</sup> Robert R.M. Verchick & Lynsey R. Johnson, *When Retreat is the Best Option: Flood Insurance after Biggert-waters and Other Climate Change Puzzles*, 47 *J. MARSHALL L. REV.* 695, 700 (2013).

<sup>57</sup> Elizabeth Feris, *Climate Change, Migration, Law, and Global Governance*, 44 *N.C. J. INT'L* 425, 456; Robin Bronin, *Rights, Resilience and Community-Led Relocation: Creating a National Governance Framework*, 45 *HARBINGER* 25, 34 (2021).

<sup>58</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at Art. 13 (1948).

<sup>59</sup> See generally Monica Iyer & Kerilyn Schewel, *Articulating and Claiming the Right to Stay*, 38 *GEO. IMMIGRATION L. J.* (forthcoming 2024).

<sup>60</sup> E.g., Ingrid Boas et al., *Climate mobilities: migration, im/mobilities and mobility regimes in a changing climate*, 48 *J. ETHNIC & MIGRATION STUD.* 3365 (2022).

Framework Convention on Climate Change (UNFCCC).<sup>61</sup> One important step that States can take in this area is to end fossil fuel subsidies. **However, a 2020 study ranked Canada last among G20 countries in support for continued oil and gas exploration and in progress towards ending such support.**<sup>62</sup> If Canada seriously wishes to contribute to a human rights-based approach to climate-related displacement, it must strengthen its commitment to climate change mitigation efforts.

States that have contributed the most to climate change also have an obligation to support adaptation efforts through international cooperation.<sup>63</sup> This means not just providing sufficient levels of climate finance—the Climate Action Tracker currently rates Canada’s climate finance efforts as “Highly Insufficient”<sup>64</sup>—and ensuring that such finance is equitably distributed between mitigation and adaptation efforts, but also guaranteeing that funding for climate adaptation projects goes to community-led projects that incorporate a human rights-based approach.

## Conclusion

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

From a human rights perspective, push-back<sup>65</sup> policies that force people back to their country of origin and/or to unsafe third countries and physically prevent arriving migrants from

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<sup>61</sup> United Nations Framework Convention on Climate Change, opened for signature 4 June 1992, 1771 UNTS 30822 (entered into force 21 March 1994), Art. 3, para. 1; Art. 4, para. 1.

<sup>62</sup> INT’L INST. SUSTAINABLE DEV. ET AL., DOUBLING BACK AND DOUBLING DOWN: G20 SCORECARD ON FOSSIL FUEL FUNDING vii (2020), <https://www.iisd.org/publications/g20-scorecard>.

<sup>63</sup> Such a position was formally adopted in 2009 in Copenhagen at the United Nations Conference of the Parties 15 (COP15), when developed countries (historic polluters) committed to mobilizing 100 billion USD annually to help developing countries (historic non-polluters) adapt to climate change. To date, this commitment has not been fully met, with annual climate adaptation funding falling woefully below the 100 billion USD goal. Organisation for Economic Co-operation and Development, *Climate Finance and the USD 100 billion goal*, (Nov. 16, 2023) OECD, <https://www.oecd.org/climate-change/finance-usd-100-billion-goal/>.

<sup>64</sup> *Canada*, CLIMATE ACTION TRACKER (Dec. 20, 2022), <https://climateactiontracker.org/countries/canada/>.

<sup>65</sup> Special Rapporteur on the human rights of migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, (May 2021), <https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea>. The Special Rapporteur describes “pushbacks” as “various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international

entering, violate States' obligations under international law. Displaced persons, refugees, and migrants alike should be free to "exercis[e] their rights to leave any country or territory, not to be detained arbitrarily, to seek and enjoy asylum, and to have individual rights and duties determined in a due process proceeding."<sup>66</sup>

As The Global Compact on Migration states, Canada must "ensure effective respect, protection and fulfillment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle", while "reaffirm[ing] the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance against migrants and their families."<sup>67</sup>

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

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border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement."

<sup>66</sup> *Id.* at 12.

<sup>67</sup> Global Compact for Safe, Orderly and Regular Migration, Art. 15 para. 6, 13 July 2018, U.N. Doc. A/CONF.231/3 (2018), [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf)