

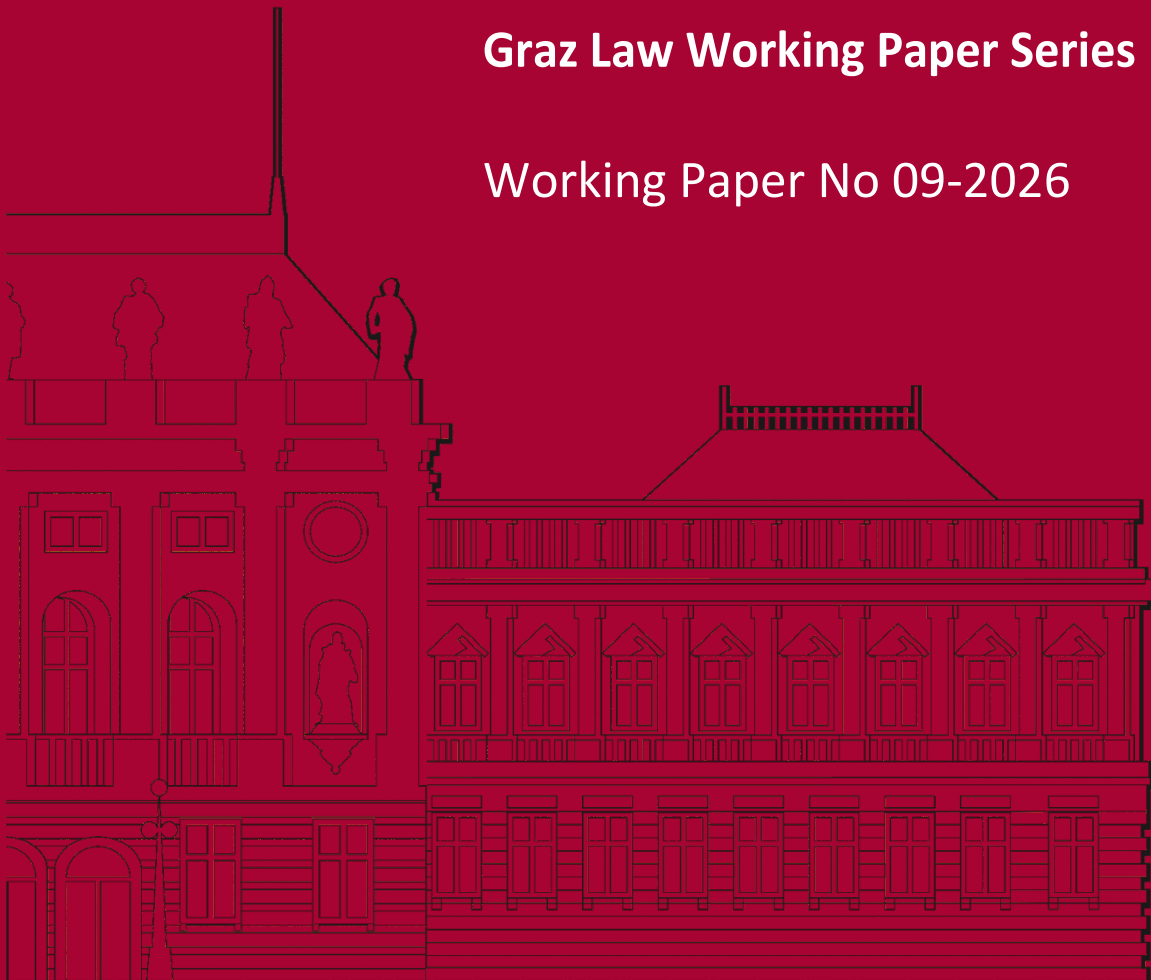


When Climate Forces Movement: The Rise of Strategic Litigation for Climate Migrants

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Abstract

Climate change is already reshaping human mobility across the globe, driving displacement through both sudden-onset disasters and slow-onset degradation, and exposing a persistent protection gap for those compelled to move. This contribution examines strategic climate litigation as a mechanism for advancing the rights of climate-affected migrants and displaced communities in the absence of a dedicated, binding international legal status. It situates “climate mobility” within a fragmented normative landscape spanning refugee law, international human rights law, climate governance, and soft-law instruments, and argues that many of the most complex cases fail not for lack of factual credibility, but because climate harm resists translation into doctrines built around persecution, individualisation, imminence, and narrow causal narratives. Through analysis of landmark decisions and quasi-judicial processes, including *Teitiota v New Zealand*, *Daniel Billy et al. v Australia*, *Sacchi et al. v Argentina et al.*, selected national jurisprudence across Europe and the Americas, and the 2025 advisory opinions of the Inter-American Court of Human Rights and the International Court of Justice, this contribution maps both the possibilities and limits of current legal pathways. It shows that strategic litigation is best understood as “foundation-laying”: it is incrementally thickening the normative framework for climate mobility, especially around dignity, cumulative risk, and the “right to stay”, while underscoring the urgent need for more precise, enforceable regional and international mechanisms that convert emerging norms into reliable pathways for protection.

Keywords: Climate-induced migration; climate-related displacement; strategic climate litigation; non-refoulement; climate mobility; right to stay; refugee law; advisory opinions

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When Climate Forces Movement: The Rise of Strategic Litigation for Climate Migrants

Oliver C. Ruppel and Ruda Murray

1 Introduction

“Migration is an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very makeup as a human family” (UNGA (2013)).

From the drowning coastlines of Kiribati to the cracked riverbeds of the Horn of Africa, and from storm-torn villages in Vanuatu to the polluted landscapes of the Niger Delta, environmental change is increasingly reshaping human movement patterns across the globe. As climate change intensifies, mobility is no longer an exceptional response but a structural feature of contemporary life.

In Sub-Saharan Africa alone, projections suggest that more than 85 million people may be displaced by 2050 due to drought, flooding, rising temperatures, and increasingly unpredictable rainfall (Ofori et al.). Globally, climate- and weather-related hazards displaced over 30 million people in 2020 alone (Ghosh and Orchiston). These figures underscore a growing reality: → *climate-related mobility* is no longer a future risk, but a present and accelerating phenomenon. Yet existing legal frameworks remain structurally ill-equipped to address it. International → *refugee law*, premised on persecution and cross-border movement, captures only a narrow subset of climate-induced displacement. While human rights law offers important safeguards — particularly through the principle of → *non-refoulement* — it does not create a general right to admission or protection for those displaced by environmental change. As a result, a significant protection gap persists.

This contribution argues that, while → *climate-related mobility* is increasingly recognised within international law, its protection remains fragmented and inconsistent. In this context, → *strategic climate litigation* has emerged as a key mechanism for testing, extending, and, in some cases, reshaping existing legal frameworks. Accordingly, this contribution is organised into three parts. First, it examines the conceptual and legal challenges associated with defining and categorising → *climate-related mobility*. Second, it analyses the extent to which existing international and domestic legal frameworks address — or fail to address — such movement.

Third, it evaluates the role of → *strategic climate litigation* in bridging these gaps, assessing both its transformative potential and its structural limitations.

2 Conceptualising Climate-Related Mobility

“Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (...) or other environmental factors (...) Even if they reach their destination, they face an uncertain reception and a precarious future” (UNGA (2016)).

→ *Climate-related mobility* does not arise from environmental change in isolation, but from its interaction with broader socio-economic and political conditions. Nowhere is this more evident than in Africa, where climate change operates as a “force multiplier”, intensifying existing vulnerabilities linked to poverty, weak governance, and limited adaptive capacity (Ruppel). Rising temperatures, erratic rainfall, drought, flooding, and desertification increasingly undermine agricultural production and rural livelihoods, particularly in regions dependent on rain-fed agriculture (Niang and Ruppel et al.). As a result, mobility often emerges as a response to livelihood collapse, contributing to patterns of urbanisation, resource competition, and, in some cases, instability (Onafeso 160–161; Chazalnoël and Randall 1). Empirical evidence illustrates these dynamics: in Western Uganda, for example, severe flooding in 2020 displaced over 120,000 people, while prolonged droughts and extreme weather events have similarly disrupted agricultural systems and triggered movement in search of more sustainable living conditions (Kwanhi et al. 3).

Despite the growing scale and complexity of such movement, there is no settled legal definition of persons displaced in the context of environmental or climate change. A range of overlapping terms — including “environmental migrants”, “climate migrants”, “environmental refugees”, and “climate refugees” — are used in policy and academic discourse, each carrying distinct legal and political implications (Ghosh and Orchiston; Olorunfemi). Early efforts to conceptualise these categories reflect both the breadth of the phenomenon and the absence of a coherent legal framework. El-Hinnawi (1985), for example, described “environmental refugees” as persons forced to leave their habitual homes due to environmental disruption, distinguishing between sudden-onset disasters, gradual

degradation, and displacement resulting from human interventions. Myers and Kent (1995) similarly emphasised the loss of viable livelihoods due to environmental factors such as drought, land degradation, and water scarcity. More recent formulations, such as that proposed by Docherty and Giannini, seek greater precision by identifying cumulative criteria, including forced cross-border movement and a demonstrable link to climate change (Docherty and Giannini 372). By contrast, the International Organization for Migration (IOM) adopts the broader, non-legal category of “environmental migrants”, encompassing both voluntary and forced movement in response to sudden or progressive environmental change. Crucially, this terminology functions as an operational descriptor rather than a legally recognised status and does not, in itself, generate enforceable rights or obligations.

This definitional plurality reflects a deeper conceptual tension. Terms such as “environmental migrant” may imply voluntariness, whereas in practice, mobility is often shaped by structural constraints and limited adaptive capacity (Ruppel and van Wyk). Conversely, the label “climate refugee” underscores the gravity of displacement but lacks recognition under international law. The 1951 Refugee Convention remains premised on a well-founded fear of persecution and requires cross-border movement, thereby excluding most forms of environmentally driven displacement. Although the 1967 Protocol expanded its temporal and geographic scope, it left the core requirement of persecution unchanged (Raleigh 440–441). As a result, individuals displaced by climate-related processes frequently fall outside existing protection regimes, particularly in cases of internal displacement or where return is precluded by environmental conditions rather than targeted harm.

Importantly, the relationship between climate change and mobility is neither linear nor monocausal. Kälin and Schrepfer caution against assuming a direct causal link, instead identifying multiple pathways through which environmental processes may contribute to movement: sudden-onset disasters; slow-onset degradation; the particular vulnerability of low-lying island states; displacement arising from state-led adaptation measures; and situations of conflict linked to resource scarcity (Kälin and Schrepfer 13–16). These dynamics complicate attempts to categorise mobility within rigid legal frameworks.

The interaction between climate change and conflict further illustrates this complexity. Rather than directly causing movement, climate change often exacerbates existing socio-political tensions by intensifying competition over scarce resources such as land, water, and livelihoods (Ruppel and van Wyk). In practice, environmental degradation and conflict are

frequently mutually reinforcing: resource scarcity may contribute to instability, while conflict, in turn, accelerates environmental degradation and undermines governance structures necessary for sustainable resource management. These dynamics blur the distinction between “environmental” and “conflict” migration, highlighting the limitations of categorical approaches. Crucially, safeguarding human dignity must remain a central and guiding principle in the governance of climate-related movement. This normative imperative is long-standing: Principle 1 of the 1972 Declaration of the United Nations Conference on the Human Environment affirms that all persons are entitled to fundamental rights, including freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.

Beyond these dynamics, climate change also gives rise to more profound structural challenges. Low-lying island states such as Tuvalu and Kiribati face the prospect of losing their physical territory due to sea-level rise, while nonetheless seeking to preserve their sovereignty, identity, and legal continuity (Quadri et al. 233). This phenomenon unsettles foundational assumptions of international law, particularly the traditional link between statehood and defined territory, and raises complex questions concerning citizenship, nationality, and the continued enjoyment of rights in the absence of territory (Boshoff and Surbun).

A further distinction must be drawn between internal and cross-border displacement. Most → *climate-related mobility* occurs within states, and internally displaced persons do not acquire any special legal status under international → *refugee law* (Durand-Delacre). Their protection is instead grounded in domestic law, international human rights obligations, and the broader normative framework on internal displacement (McDonnell (2023)). Cross-border movement, by contrast, may engage international protection regimes, but in practice, such claims are rarely resolved through → *refugee law* alone.

Accordingly, → *climate-related mobility* is better understood as a spectrum rather than a discrete category. Movement may be temporary or permanent, internal or cross-border, and triggered by both sudden-onset events and slow-onset processes, including sea-level rise, desertification, and water scarcity (Kwanhi et al.). Circular migration, characterised by repeated movement between places, is common in contexts where environmental stress intersects with labour demand (Torres and Casey). In its most extreme form, mobility may involve the planned and permanent resettlement of entire communities from uninhabitable

regions. These patterns are not mutually exclusive: following the same climatic shock, some individuals may return once conditions stabilise, while others pursue permanent relocation depending on social and economic opportunities (Smirnov et al. 41).

As early as 2009, the Office of the United Nations High Commissioner for Human Rights (OHCHR) formally acknowledged → *climate-induced migration* as a human rights concern, a position reaffirmed in 2015 through key messages clarifying the links between climate change, mobility, and state responsibility (Serraglio et al.; UNGA (2009)). The United Nations 2030 Agenda for Sustainable Development, with its 17 Sustainable Development Goals (SDGs), incorporates migration-related targets under SDG 10 and emphasises the need for ongoing monitoring through data disaggregated, among other factors, by migratory status. The Global Compact on Refugees emphasises refugee protection and responsibility-sharing, while the Global Compact for Safe, Orderly, and Regular Migration sets out principles to guide migration governance (UNGA (2018); UNGA (2019)). Together, these interventions establish that states have obligations to protect the human rights of persons displaced or compelled to move by climate impacts, to minimise forced displacement through mitigation and adaptation, to safeguard freedom of movement, and to ensure access to justice and international cooperation. Subsequent normative development under the Human Rights Council (HRC) has reinforced these principles. In 2018, two reports addressed cross-border mobility resulting from climate change, including slow-onset processes, and states' duties on the return of individuals to territories where climate-related conditions undermine the effective enjoyment of human rights (UNGA (2017); UNGA (2018)). → *Climate-related displacement* has also been progressively integrated into the mandate of the Special Rapporteur on the Human Rights of Internally Displaced Persons, contributing to rights-based approaches throughout the displacement cycle (Serraglio et al. 7).

At the regional level, the Inter-American Commission on Human Rights (IACHR) has explicitly recognised climate-induced migrants as a particularly vulnerable group, outlining obligations relating to due process, → *non-refoulement*, access to healthcare, and remedies for climate-related harm (Resolution No. 3/2021 para 20). The Commission further clarified that the principle of → *non-refoulement* prohibits states from denying entry, expelling, or returning individuals to territories where their life, security, or liberty would be at risk due to serious disturbances of public order, including those arising from climate change and socio-environmental disasters (Resolution No. 2/2024 paras 36–39). It emphasised that such

determinations require a rigorous and individualised assessment of cumulative risk, taking into account both personal circumstances and the broader interactions among environmental harm, mobility, and the state's capacity to respond. This includes consideration of indirect and compounding factors, such as the intersection of climate impacts with violence or conflict, as well as the heightened vulnerability of particular groups.

While international law has increasingly recognised the human rights dimensions of → *climate-related mobility*, significant gaps remain (Aleinikoff 422). The conceptual ambiguity surrounding → *climate-related mobility* is not merely semantic. It has direct implications for the scope of legal protection, the allocation of responsibility, and the ability of affected individuals to access rights. It is against this backdrop of definitional uncertainty and structural limitation that the role of courts — and of → *strategic climate litigation* — must be understood. By late 2025, more than 3,099 climate-related cases were filed across 55 jurisdictions and 24 international or regional courts (UNEP). Many of these cases directly or indirectly address mobility, displacement, and human rights.

3 Key Judicial and Quasi-Judicial Decisions on Climate-Related Mobility

3.1 *Ioane Teitiota v New Zealand* (UN Human Rights Committee, 2019)

Ioane Teitiota v New Zealand (24 October 2019) (hereinafter *Teitiota*) represents one of the most prominent international articulations to date of the relationship between climate change, → *non-refoulement*, and the right to life. The principle of → *non-refoulement*, codified in Article 33 of the 1951 Refugee Convention and widely recognised as a rule of customary international law, prohibits the expulsion, return, or transfer of an individual to a place where there are substantial grounds for believing that they would face persecution or a real risk of serious harm, including threats to life, torture, or cruel, inhuman, or degrading treatment (Jastram et al.). At its core, the principle reflects the understanding that protecting those seeking asylum is fundamentally a humanitarian and social concern, rather than a matter that should give rise to inter-state disputes (Raleigh 442-443). It acknowledges that individuals fleeing persecution or conflict cannot reasonably be expected to comply with ordinary migration procedures, and therefore requires states to prioritise protection over immigration control in such circumstances (Raleigh 442-443). In practice, the 1951 Refugee Convention adopts a highly individualised approach to determining refugee status. While this reinforces the human rights dimension of asylum protection, it also complicates the process of

establishing eligibility, as claimants must demonstrate persecution on a case-by-case basis (Goodwin-Gill 898-902). This, in turn, makes it difficult to meet the threshold required to trigger → *non-refoulement*, particularly given that states may incur responsibility under both conventional and customary international law if they return individuals to harm. Where a state seeks to return individuals to countries with known patterns of refugee outflows, persistent human rights violations, armed conflict, or general instability, it must justify such actions in light of prevailing conditions in the country of origin. In such circumstances, the existence of a policy or practice of involuntary return arguably shifts the burden of proof onto the returning state, especially where there is a credible risk that those returned may face harm (Goodwin-Gill 898-902).

Refugees frequently have little choice but to turn to the United Nations High Commissioner for Refugees (UNHCR), as securing admission to a host state that is both a party to the 1951 Convention and willing to receive them is often extremely difficult (Alexander 251). There are currently 149 states that are party to either the 1951 Convention, the 1967 Protocol, or both. Most non-signatory states are concentrated in the Middle East and in South and Southeast Asia. In the Middle East, only a limited number of countries — including Iran, Israel, Egypt, and Yemen — have acceded to the Convention, while others, such as Iraq, Lebanon, Jordan, and several Gulf states, have not. A similar pattern is evident in South and Southeast Asia, where major countries, including India, Bangladesh, Pakistan, Sri Lanka, Malaysia, and Indonesia, remain outside the regime. Recent accessions have been minimal. Although 27 states joined the Convention in its first decade, the rate of new ratifications has declined markedly since 2006. Over the past two decades, only two additional states — Nauru in 2011 and South Sudan in 2018 — have become parties (Radjenovic 3).

Mr Teitiota, a national of Kiribati, entered New Zealand with his wife in 2007 and remained after their visas expired in 2010. Kiribati is a low-lying, small island developing state in the central Pacific, where livelihoods are predominantly subsistence-based and closely tied to land and marine ecosystems. Mr Teitiota originated from South Tarawa, an area facing acute pressures arising from rapid population growth, unregulated urbanisation, and inadequate sanitation infrastructure. Both sudden-onset hazards, such as storms and flooding, and slow-onset climate processes, including sea-level rise and saltwater intrusion, compounded these structural vulnerabilities. Comparative experience also shows that what makes mobility ‘forced’ is often not the hazard alone but post-disaster governance, especially relocation and

land tenure decisions (Farbotko et al.). After coming to the attention of authorities following a traffic stop in 2012, Mr Teitiota applied for refugee status and, in the alternative, protected person status under New Zealand's Immigration Act. He argued that climate change had rendered life in Kiribati untenable, citing severe freshwater scarcity due to salinisation, land erosion leading to housing shortages and violent land disputes, food insecurity, and inadequate state-led adaptation measures.

Mr Teitiota's claims were rejected at every domestic level. The Immigration and Protection Tribunal found that the harms described did not constitute persecution within the meaning of the Refugee Convention and that there were no substantial grounds for believing that his removal would violate the right to life under Article 6 of the International Covenant on Civil and Political Rights (1966) (ICCPR). As noted above, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol remain the cornerstone of international protection for forced migrants. However, refugee status is limited to persons fleeing persecution on five specific grounds — race, religion, nationality, political opinion, or membership of a particular social group — and requires cross-border movement and a well-founded fear of harm caused by human agency (Azam). According to the UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and its 1967 Protocol, the concept of "persecution" excludes such persons who are victims of famine or natural disasters.

With respect to proposals to expand the refugee definition to include → *climate-related displacement*, two central objections arise. First, such expansion risks undermining the internal coherence and normative integrity of the refugee regime (Aleinikoff 423). Second, it may dilute the level of protection afforded to existing refugees, given states' longstanding reluctance to assume additional binding obligations (Aleinikoff). Achieving the necessary consensus to amend the Convention is highly unlikely due to divergent national interests (Radjenovic 5–6). Reopening the Convention invites regression — states might exploit the opportunity to narrow existing definitions or reduce responsibilities, potentially weakening current protections rather than extending them (Radjenovic 5–6).

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) adopts a broader conception of refugeehood. In addition to persons fleeing persecution on the five conventional grounds, Article I(2) extends refugee status to individuals compelled to leave their country of origin owing to "external aggression, occupation, foreign domination or events seriously disturbing public order" (Addaney et al.).

This has occasionally been used by some states to grant protection in exceptional circumstances, such as drought-related displacement in the Horn of Africa, yet these practices remain discretionary, uneven, and underdeveloped in jurisprudence (Amadi 39-40). Likewise, in the Americas, reliance on the broader refugee definition contained in the Cartagena Declaration on Refugees (1984), in disaster contexts has been rare. Following the 2010 earthquake in Haiti and the subsequent breakdown in public order, Mexico and Ecuador granted refugee status to a small number of Haitians under the Cartagena framework, citing the heightened risk that survivors would be exposed to violence (Kälin and Chapuisat). A similar expansion can be observed in the Arab Convention on Regulating the Status of Refugees in the Arab Countries (1994), which failed to enter into force due to an inadequate number of state accessions, and explicitly includes within its definition of a refugee (Article 1) persons compelled to seek refuge due to natural disasters or grave events causing major disruption of public order.

Beyond these definitional concerns lies a more fundamental conceptual tension. The refugee regime is inherently palliative: it is designed to provide protection only after displacement has occurred, focusing on humanitarian assistance and rights within the host state. It offers little by way of prevention, nor does it meaningfully engage with questions of responsibility, causation, or accountability for the processes that give rise to displacement in the first place (Aleinikoff 424). International human rights law provides necessary but indirect safeguards, including the ICCPR and the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR), that protect a range of rights that are routinely placed at risk in contexts of displacement, notably the rights to life, adequate housing, health, and an adequate standard of living (Azam 7). Despite these advances, claims typically require proof of imminent, individualised harm, a threshold difficult to meet in slow-onset climate scenarios (Iyer; Anderson et al.; Bell-James and Collins). Human rights adjudication also focuses on individuals rather than communities, sitting uneasily with collective displacement affecting entire villages, indigenous groups, or island populations (Gharbaoui et al.). Still, applying the principle of → *non-refoulement* within international human rights law may circumvent some of the causation difficulties that arise when other legal regimes are invoked in cases of migration linked to environmental degradation (McAdam et al.; Iyer 375).

Regarding Mr Teitiota's claims, subsequent appeals to the High Court (*Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* (2013)), Court of Appeal

(*Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* (2014)), and the Supreme Court (*Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* (2015)) were unsuccessful. The High Court held that the effects of climate change in Kiribati did not entitle the applicant to refugee status, as he had not experienced persecution within the meaning of the Refugee Convention (para 51). The court further concluded that his return would not expose him to serious harm or a grave violation of human rights, and cautioned against extending the scope of the Convention to encompass millions of individuals facing climate-related hardship. Notably, however, the Supreme Court acknowledged that both the Tribunal and the High Court made clear that their rulings should not be understood as excluding, in all circumstances, the possibility that environmental degradation linked to climate change or natural disasters could give rise to protection under the Refugee Convention or the protected person regime (Sommario 56).

Having exhausted domestic remedies, Mr Teitiota submitted a communication to the HRC, alleging that his deportation violated Article 6 of the ICCPR. He identified two principal threats: violence linked to land disputes exacerbated by overcrowding, and irreversible environmental degradation, including freshwater contamination and food insecurity (*Teitiota*, para 3). The Committee declared the communication admissible, accepting that the claim related to present conditions rather than speculative future harm (*Teitiota*, para 8.5). On the merits, however, the HRC declined to find a violation. While recognising that climate change impacts could, in principle, engage → *non-refoulement* obligations, the Committee emphasised that it would not substitute its own assessment for that of domestic authorities unless their conclusions were clearly arbitrary or amounted to a denial of justice (*Teitiota*, para 9.14). It concluded that Mr Teitiota had failed to establish a real, personal, and reasonably foreseeable risk to his life at the time of removal. The Committee examined four alleged sources of harm — land-related violence, freshwater scarcity, loss of subsistence, and exposure to climate-related disasters — and found that, considered individually, none met the high threshold required (*Teitiota*, paras 9.7-11). The HRC, in General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights: The Right to Life (2019), further clarified that the risk must be individualised and cannot arise solely from the general conditions prevailing in the receiving state, save in the most exceptional circumstances. Such circumstances, the HRC explained, could occur where a person is deported to an exceptionally

violent country in which they have never lived, lacks any family or social ties, and is unable to speak the local language.

Crucially, the Committee accepted that climate change may render living conditions incompatible with the right to life with dignity before territory becomes physically uninhabitable (*Teitiota*, para 9.11). Nevertheless, it held that the projected timeframe (estimated at 10 to 15 years) allowed scope for mitigation, adaptation, and relocation, particularly with international assistance (*Teitiota*, paras 9.11-12). In dissent, Committee members criticised this reasoning, arguing that the inability to secure safe drinking water should itself have sufficed to meet the risk threshold, without requiring near-total systemic collapse (Vasilka Sancin, paras 3, 6; Duncan Laki Muhumuza, paras 1, 5.). Committee member Muhumuza also noted in dissent that “the risk to a person (...) threshold should not be too high and unreasonable”, and that it is “critical to consider all relevant facts and circumstances, including the general human rights situation in the author’s country of origin” (para 3). The decision has been widely criticised for fragmenting the analysis of harm, assessing each risk factor in isolation rather than cumulatively, and thereby underestimating the compounding effects of climate impacts (Sommariva 60). As discussed above, migration decisions are rarely attributable to a single factor, and climate change often amplifies vulnerabilities associated with poverty, inequality, marginalisation, ill health, weak governance, and limited livelihood opportunities (Almulhim et al.). As a result, isolating climate change as the sole driver of migration is methodologically difficult and conceptually misleading.

Before *Teitiota*, national courts routinely rejected climate-related protection claims on three recurring grounds: first, that environmental and climate change impacts could not constitute persecution under → *refugee law*; second, that applicants failed to demonstrate sufficiently individualised harm; and third, that evidence of climate-related loss and damage (see Ruppel and Murray) was considered too general or speculative. This pattern is evident in early cases from Australia and New Zealand involving applicants from Tuvalu, Kiribati, Tonga, Nepal, and Bangladesh (Eksimedicine; McAdam). New Zealand tribunals have occasionally granted some relief on humanitarian grounds, but without recognising climate change as an independent basis for protection (*AV (Tuvalu)* (2022) para 25). *In re AD (Tuvalu)* (2014) paras 27-30, the Tribunal considered the effects of climate change as part of the cumulative effects causing the “exceptional circumstances”. Others have recognised that climate change can, in certain contexts, open pathways to protection under the Refugee Convention where

environmental degradation interacts with armed conflict and broader security dynamics (*AF (Kiribati) v New Zealand Government* (2013) paras 55-59; Tribunale Ordinario di Firenze, X c Ministero dell'Interno (2023); Scott et al.).

3.2 *Daniel Billy et al. v Australia* (Torres Strait Islanders Petition) (UN Human Rights Committee, 2022)

In *Daniel Billy et al. v Australia* (*Torres Strait Islanders Petition*) (22 September 2022) (hereinafter *Daniel Billy*), the applicants were indigenous Australians from the Torres Strait Islands who alleged that Australia's failure to mitigate and adapt to climate change violated multiple rights under the ICCPR, including Articles 6 (right to life), 17 (right to privacy, family, home), 24(1) (children's rights), and 27 (culture, religion, language). They described how rising sea levels, erosion, flooding, and ocean acidification were already damaging marine ecosystems, infrastructure, burial grounds, and traditional livelihoods (*Daniel Billy* para 5.2). They emphasised that displacement would not merely entail physical relocation, but would threaten the survival and intergenerational transmission of their culture, which is inseparable from land and sea (*Daniel Billy* para 5.3).

The HRC found Australia in violation of Articles 17 and 27 (*Daniel Billy* paras 8.9-10). The Committee recalled that Article 17 of the ICCPR requires states to prevent serious and foreseeable interference with the rights to privacy, family life, and home, including where such interference results from environmental harm, even if that harm is not directly attributable to the state (*Daniel Billy* para 8.9). It noted that climate change can directly threaten the right to one's home, particularly where indigenous communities depend heavily on local ecosystems (*Daniel Billy* para 8.12). Concerning adaptation, it held that Articles 6, 17, 24(1), and 27 of the ICCPR impose positive obligations on states to protect individuals within their jurisdiction from violations of those rights (*Daniel Billy* para 7.7). In relation to mitigation, the Committee noted Australia's long-standing status as a significant greenhouse gas emitter and its high level of economic and human development (*Daniel Billy* para 7.8).

Although the Committee declined to find a separate violation of Article 6, it reaffirmed that climate change constitutes one of the most serious threats to the enjoyment of the right to life for present and future generations (*Daniel Billy* paras 7.10, 8.3, 8.8). Referring to *Teitiota*, it reiterated that applicants alleging rights violations linked to environmental harm must demonstrate that such harm has already affected, or poses a genuine and foreseeable risk to, their protected rights (*Daniel Billy* para 7.9). Still, the Committee observed that the applicants

were already experiencing flooding, erosion, coral bleaching, damage to burial grounds, and the loss of culturally and nutritionally significant species as direct consequences of climate change, and that these impacts were already interfering with their private and family life and their homes, causing distress and anxiety (*Daniel Billy* paras 5.2, 7.10, 8.12). Notably, the Committee emphasised that the projected 10–15-year timeframe could allow for intervening acts by the state, including relocation where necessary (*Daniel Billy* para 8.7). This reasoning reflects a broader legal assumption that mobility can mitigate risk, even in the face of anticipated threats to life (Gilmore et al.).

Beyond individual communications before treaty bodies, indigenous communities have also turned to international human rights procedures to contest climate-induced displacement at a structural level. In January 2020, five US indigenous groups — the Native Village of Kivalina in Alaska and four Louisiana coastal tribes (Point-au-Chien Indian Tribe, Grand Caillou/Dulac Band, Atakapa-Ishak Chawasha Tribe of Grand Bayou, and Isle de Jean Charles Band) — submitted a complaint to the UN Special Rapporteurs on the Human Rights of Internally Displaced Persons and on the Rights of Indigenous Peoples. They alleged that the United States had failed to fulfil its human rights obligations by failing to adequately address climate-forced displacement, relying on the Guiding Principles on Internal Displacement (1998), the Peninsula Principles on Climate Displacement Within States (2013), and the provisions of the ICCPR and the ICESCR. The communities described how rising sea levels, coastal erosion, permafrost thaw, and extreme weather events had progressively rendered their ancestral territories uninhabitable. Despite adopting relocation resolutions and identifying safer sites, they encountered persistent barriers, including federal and state authorities' refusal to provide assistance or the imposition of cost-benefit criteria ill-suited to subsistence-based communities. The complaint framed climate displacement as a human rights crisis and called for funding for community-led relocation, recognition of tribal sovereignty and self-determination, formal recognition of Louisiana tribes to enable access to disaster relief, and institutional safeguards for rights to culture, health, water, and adequate housing during relocation. In September 2020, the Special Rapporteurs issued a communication to the United States, emphasising that, notwithstanding its non-ratification of the ICESCR, it remains bound not to undermine the Covenant's object and purpose, and highlighting its obligations under Article 27 of the ICCPR regarding cultural rights. While the United States did not formally respond, the episode underscores both the growing reliance on

international mechanisms and the limited enforcement capacity of these mechanisms in addressing climate-induced displacement.

As has been observed during the third session of the Committee for the Review of the Implementation of the Convention (UNCCD 2005), “the freedom of people to stay at home, on their land and in their own culture, deserves to be supported by the international community.” This framing is increasingly vital because it resists the implicit assumption that climate responses must be delivered through relocation. For many affected communities, movement is not a neutral solution but a rupture of social, cultural, and spiritual life — losses that → *refugee law* and conventional protection categories struggle to capture. Pacific experiences illustrate this point. New Zealand’s abandoned proposal to pilot a “climate refugee” visa scheme attracted little interest, partly because participation risked signalling acceptance of the inevitable loss of ancestral lands (Huang; Kälin and Chapuisat 24). Similar resistance has been observed in Nauru and elsewhere (Eksimedicine 60). By contrast, the Australia–Tuvalu Falepili Union (2024), which frames mobility as a matter of choice and agency rather than surrender, was immediately oversubscribed (Agence France-Presse; Guilfoyle and Green). These examples complicate any binary between “staying” and “moving”: the legal question is not which should be preferred, but how law secures the conditions for meaningful choice.

The → *right to stay* should, therefore, be understood not as enforced immobility, but as part of a broader capability to choose where and how to live (O’Rourke). Empirical evidence shows that most people do not move even under severe climate stress, sometimes because they are trapped, but often because remaining is a deliberate expression of identity, autonomy, and dignity (Iyer and Schewel). Recent population data from the United States illustrates that → *climate-related mobility* is neither linear nor intuitive. Climate-vulnerable counties have continued to experience net population growth, yet this apparent stability masks significant internal redistribution (Kaplan). Studies show that following floods and hurricanes, higher-income households are more likely to exit affected areas, taking resources with them. In contrast, lower-income households are more likely to remain (Milideo). In this context, “net population” can conceal climate abandonment, economic sorting, and the gradual erosion of local adaptive capacity (Picchi). Rising insurance costs and coverage withdrawal further demonstrate how markets increasingly mediate who can remain and who is pushed out, gradually undermining the practical ability to stay (García; Hoffman; Freihardt).

The broader point is doctrinal: movement does not negate harm; it often signals constrained choice, delayed displacement, or unequal access to safety.

Legally, the → “*right to stay*” remains fragmented rather than explicitly codified, but its building blocks are present in international human rights law. Article 12 of the ICCPR protects freedom of movement and the freedom to choose one’s residence; Article 12(4) guarantees the right to enter, and, as the HRC has clarified, to remain in one’s own country (Iyer and Schewel 216-217). The legal force of staying is strongest where it intersects with other rights — private and family life, the home, non-discrimination, cultural rights, and the prohibition of inhuman or degrading treatment — and where displacement threatens collective continuity rather than merely individual residence (Iyer and Schewel 216-217). A final vignette captures what is at stake in terms that doctrine often obscures: “We believe that our land is God-given (...) I will not leave (...) I’ll wait until the ocean reaches my feet in my home” (Gharbaoui et al. 2). This sentiment is echoed in the words of those confronting displacement more broadly: “We don’t want to leave our land: here are our past, our memories, our ancestors. We don’t want to move to other parts; we don’t know what to do there” (Chazalnoël and Randall 12). This is not irrationality; it is a claim about identity, autonomy, and belonging. As climate change accelerates, the → *right to stay* will become a central site of legal contestation: who can realistically exercise it, under what material conditions, and with what allocation of responsibility among states of origin, host states, and high-emitting states whose actions make staying impossible (Iyer and Schewel 229-230).

3.3 *Sacchi et al. v Argentina, Brazil, France, Germany & Turkey* (CRC Committee, 2021)

In Committee on the Rights of the Child (CRC Committee), *Sacchi et al. v Argentina, Brazil, France, Germany & Turkey* (11 November 2021) (hereinafter *Sacchi*), the applicants were a group of children and youth from multiple countries who alleged that the respondent states had violated their obligations under the Convention on the Rights of the Child (1989) (CRC), by failing to take adequate measures to reduce greenhouse gas emissions (Lewis). The applicants argued that the respondent states’ mitigation failures infringed a range of Convention rights, including the rights to life, survival, and development (Article 6), the right to the highest attainable standard of health (Article 24), and, for indigenous child applicants, cultural rights (Article 30). Rather than presenting climate change as an abstract global problem, the applicants described concrete and differentiated impacts on children’s lives and

communities. Petitioners from indigenous communities contended that climate change undermined their ability to engage in culturally sustaining practices, such as hunting, fishing, and reindeer herding, thereby threatening cultural continuity and identity (*Sacchi* paras 3.5, 3.7). The structure of the claim was thus significant: it foregrounded children's vulnerability, intergenerational harm, and the culturally specific dimensions of climate impacts, all of which are highly relevant to → *climate mobility*, given that displacement often fractures education, health, and family unity and can interrupt the transmission of culture across generations (Fox).

The CRC Committee declared the communication inadmissible for failure to exhaust domestic remedies, underscoring how procedural requirements can operate as a decisive barrier in transnational climate litigation, particularly where harm is diffuse and multi-jurisdictional (*Sacchi* paras 10.15-10.18). Nonetheless, the Committee made several observations that have become highly influential. It accepted that states may bear responsibility for cross-border climate harms when emissions originating within their jurisdiction are subject to their regulatory control and foreseeably contribute to rights violations abroad (*Sacchi* paras 10.5-10.7; Serraglio et al. 20). This reasoning has clear implications for → *climate-related displacement*, which is predominantly experienced in the Global South, often far removed from the territories of the states most responsible for historical and current emissions (Vieira de Siqueira; Garofalo and Ruppel). A parallel strand of strategic litigation has sought to close the responsibility gap by targeting major corporate emitters through human rights mechanisms. For example, the Philippines Human Rights Commission, *In Re: National Inquiry on the Impact of Climate Change on the Human Rights of the Filipino People and the Responsibility therefor, if any, of the 'Carbon Majors'* (2022), found that major fossil fuel companies may bear responsibility for climate-related human rights harms, affirming that such accountability can extend to transboundary conduct and emphasising duties of due diligence, disclosure, and remediation. The CRC Committee also recognised the cumulative and already-manifest impacts of climate change on children's health, livelihoods, and well-being, affirming both the foreseeability of such harm and the heightened obligations of states to protect children from climate-related rights violations (*Sacchi* paras 10.13-10.14).

Sacchi also highlights the evidentiary and causal challenges that climate-mobility litigation must confront (paras 10.5, 10.7, 10.12). Even where treaty bodies accept, in principle, that transboundary obligations can arise, claimants still face the task of demonstrating a

sufficiently concrete causal pathway from state conduct to rights impairment (and the ultimate act of migration) (Kent and Behrman 24; Raleigh 447). While attribution science has advanced rapidly in demonstrating links between anthropogenic emissions and specific climatic events or trends, translating those impacts into a legally persuasive account of migration decisions, often shaped by intersecting factors such as poverty, governance deficits, conflict, and unequal access to adaptation, remains substantially more complex (Mayer). In the context of climate change, this difficulty is further compounded by the nature of risk itself. Although the potential harms are often severe, their probability is complex and variable, shaped by evolving human actions and technological developments (Raleigh 448). This makes it particularly difficult to produce the direct and specific evidence typically required to support legal claims. In practice, establishing both causation and persecution on the basis of climate change has proven especially challenging, particularly for small island developing states, which, despite contributing least to global emissions, face some of the most acute climate-related impacts (Raleigh 448). In this respect, *Sacchi* may be read as both enabling and cautionary: it expands the jurisdictional imagination of human rights law, but it also underscores the procedural and evidentiary barriers that remain.

For example, in *Re Teaitala* (2022), while the New Zealand Immigration and Protection Tribunal acknowledged the effects of climate change, it found that the applicants had not provided sufficient evidence to show that climate change would render them unable, upon return, to access the basic necessities of life or to resume a way of life broadly comparable to that which they had previously enjoyed, and thus did not give rise to “exceptional circumstances” (para 40).

Still, the second causal link is not insurmountable, particularly in contexts such as sea-level rise affecting low-lying or disappearing island states, where climate change can be identified as a decisive, if not exclusive, driver of migration (Pontecorvo 109). In such cases, associated economic and social hardships frequently flow directly from environmental degradation and cannot meaningfully be separated from it. By contrast, the first causal link remains more challenging to establish. Here, however, scholars have suggested that the “no-harm” principle offers a viable basis for attribution: although precise causation may be elusive, a sufficiently proximate causal connection can be established by reference to states’ respective contributions to global greenhouse gas emissions (Kent and Behrman 91). The Committee in *Sacchi* did note that states “carry individual responsibility for their own acts or omissions in

relation to climate change and their contribution to it” (para 10.8). On this view, responsibility for addressing → *climate-induced migration* could be apportioned according to each state’s share of emissions (Pontecorvo 109). The Dutch Supreme Court, for example, invoked the no-harm rule to attribute partial responsibility for climate harm, holding that each state may be held accountable for its proportional contribution to greenhouse gas emissions and the resulting damage (*Urgenda v Netherlands* (2019), para 5.7.5; Spier; Hoek et al.).

3.4 National Jurisprudence on Climate-Related Mobility Across Legal Regimes

National jurisprudence on → *climate-related mobility* does not follow a single doctrinal trajectory. Many states maintain discretionary humanitarian mechanisms that allow authorities to admit or regularise the stay of foreign nationals from disaster-affected countries, or to extend temporary protection to those already present (Kälin and Chapuisat 4). Outcomes vary sharply depending on the legal framework through which claims are articulated: refugee status determination, complementary or humanitarian protection, human rights-based → *non-refoulement*, internal displacement law, or ordinary public and private law remedies. The cases reviewed below are therefore not presented as a coherent line of authority but as illustrations of how the choice of legal regime fundamentally shapes judicial reasoning, thresholds of proof, and the availability of protection.

In a 2011 decision, the Austrian Constitutional Court held that return following an environmental disaster may engage → *non-refoulement* obligations, requiring asylum authorities to assess whether post-flood conditions in Pakistan would expose the applicant to inhuman or degrading treatment contrary to Article 3 of the European Convention on Human Rights (1950) (ECHR) (VfGH (Austrian Constitutional Court) U84/11; Iyer). In doing so, the court rejected a superficial reliance on the existence of internal relocation alternatives, emphasising that it is insufficient to merely point to the presence of relatives in unaffected regions without a concrete and up-to-date assessment of conditions on the ground. It held that only a well-founded evaluation of the post-disaster situation could determine whether relocation was realistically available and reasonable. The court further criticised the use of outdated country-of-origin information, noting that reports predating the July–August 2010 floods could not adequately capture the severity and consequences of the disaster.

In 2020, a German Administrative Court prohibited the deportation of an Afghan national, holding that the combined effects of humanitarian crisis and environmental degradation

would expose him to inhuman or degrading treatment contrary to Article 3 of the ECHR (VGH Baden-Württemberg 2020; Pontecorvo 108; Schloss). In the same year, the French Bordeaux Court of Administrative Appeal (Cour administrative d'appel de Bordeaux) overturned a deportation order on the grounds that air pollution would aggravate a serious medical condition of a Bangladeshi national (*M.A. v France* (2020); Dal Ben 206-209). Also in 2020, the Italian Supreme Court of Cassation overturned a refusal of humanitarian protection to a Nigerian applicant from the Niger Delta, expressly relying on *Teitiota* to hold that threats to life may arise from socio-environmental conditions linked to human activity, even in the absence of armed conflict (Italian Corte Suprema di Cassazione (Sez. II civile), *I.L. v Ministry of the Interior and Attorney General* (2021); Dal Ben). Also in Italy, the Tribunal of Milan examined the case of a Bangladeshi national who had been repeatedly displaced by flooding and faced a credible risk of further displacement from future flood events (Tribunale di Milano, decreto del 13 marzo 2024). The applicant contended that this ongoing exposure endangered his rights to life, bodily integrity, and health, and that the cumulative impact of these threats amounted to inhuman or degrading treatment. The Tribunal accepted this argument, emphasising that the Bangladeshi authorities' failure to take adequate measures to address well-known flood risks contributed materially to the applicant's vulnerability. In reaching its decision, the Tribunal assessed not only the human rights consequences of past environmental disasters, but also the state's present incapacity to prevent or mitigate harm arising from foreseeable future disasters (McAdam and Scissa).

French administrative courts, however, have consistently rejected attempts to rely on environmental harm, most notably air pollution, as grounds for residence permits, even where applicants presented credible, individualised health risks (*CAA de Paris, 1ère chambre* 7 April 2016; *Cour administrative d'appel de Nantes, 1ère chambre* 17 December 2015; *Cour administrative d'appel de Nantes* 5e chambre, 21 December 2018). A similar rigidity characterises recent United States jurisprudence. In *Cruz Galicia v Garland* (2024), a Guatemalan family sought asylum, withholding of removal, and protection under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984), arguing that recurring droughts and storms, exacerbated by the COVID-19 pandemic, had rendered survival in Guatemala impossible and placed their child at risk of starvation. The principal applicant advanced membership of a particular social group defined as "climate refugees", contending that extreme economic deprivation and the state's failure

to provide adequate assistance amounted to persecution. Although the immigration judge accepted the factual account as credible, the claim was rejected on legal grounds, and the decision was upheld on appeal. On appeal, the court confined its analysis to the cognoscibility of the proposed social group, holding that “climate refugees” lacked the requisite social distinction and that state recognition of climate-induced internal displacement did not, without more, demonstrate societal perception of such persons as a distinct group. The court further characterised the alleged harms — malnutrition, poverty, and food insecurity — as manifestations of broader structural inequality rather than as targeted persecution. Similarly, in *Refugee Application No. 1822451* (2022), the applicant advanced a claim grounded in political opinion, arising from a 2015 dispute with government officials over bauxite mining operations that had adversely affected communal farmland and contributed to environmental degradation and related climate impacts. At the Australian Administrative Appeals Tribunal hearing, he further raised concerns about economic hardship and threats to his subsistence, linked to the combined effects of mining activities and climate change on local agriculture and fisheries. These claims were supplemented by broader allegations of political corruption, police violence, and general insecurity, particularly in the event of return as a failed asylum seeker. The Tribunal rejected the claim, finding that the applicant had not established a well-founded fear of persecution on political grounds. It emphasised that no further incidents of persecution or targeting had occurred following the 2015 altercation. While acknowledging the seriousness of the environmental and climate-related hardships described, the Tribunal concluded that these conditions did not meet the threshold for persecution or amount to a real risk of significant harm under the Migration Act 1958. Also, in *Refugee Application No. 2318773* (2023), the applicant invoked fears related to political opinion, freedom of expression, economic hardship, and rising sea levels. During the hearing, however, he acknowledged that his primary motivation for seeking entry was to work in Australia to support his family, and denied having expressed political views in Tonga. The Tribunal held that the applicant could not identify any actor who would persecute him in connection with climate change, and that the alleged harms were not directed at him or any identifiable group for a Convention reason. Emphasising that the impacts of climate change affect the population of Tonga as a whole, the Tribunal found no evidence that the applicant had experienced, or would face, targeted serious harm sufficient to engage Australia’s protection obligations.

This approach contrasts sharply with the European Court of Human Rights' reasoning in *M.S.S. v Belgium and Greece* (2011), where the court held that exposing an asylum seeker to conditions of extreme poverty, homelessness, prolonged uncertainty, and the absence of any realistic prospect of improvement amounted to inhuman and degrading treatment contrary to Article 3 of the ECHR, regardless of the generalised nature of the harm (paras 254-255). Similarly, the New Zealand Immigration and Protection Tribunal has held that, although such harms may arise from a complex matrix of structural and environmental factors, including climate change, they may nevertheless cross the threshold into persecution where, in light of the applicants' particular vulnerabilities (elderly persons), there is a real chance of exposure to cruel, inhuman, or degrading treatment, especially where state action and omission materially contribute to the denial of basic socio-economic necessities and the risk of starvation (*AC (Eritrea)* (2023) paras 143-148).

The ClimMobil study (2022), which examines judicial and policy responses to → *climate-related mobility* in the European Union with a particular focus on Austria and Sweden, found that environmental disasters are rarely treated as independent grounds for protection (Ammer et al.). Instead, they are assessed alongside broader contextual and individual factors, including general security conditions, economic circumstances, and personal characteristics such as age, health, family support, and socio-economic status. Courts tend to focus not on the disaster itself, but on its downstream effects, particularly on access to basic necessities. In many cases, the availability of an internal relocation alternative operates as a decisive barrier to protection. The study also reveals significant divergence in judicial practice. Austrian courts frequently engage with environmental factors *proprio motu*, at times recognising a procedural obligation to do so, whereas Swedish courts seldom raise such considerations unless expressly invoked by applicants. Outcomes differ accordingly: in Austria, subsidiary protection is granted in a notable proportion of disaster cases, supported by higher-court jurisprudence requiring that environmental conditions be assessed under Article 3 of the ECHR. For example, in a case concerning a Somali national, the Austrian Constitutional Court set aside a decision denying subsidiary protection on the basis that the lower court had failed to properly consider country of origin information relating to drought, food insecurity, and broader humanitarian conditions, holding that such omissions rendered the assessment arbitrary (VfGH (Constitutional Court) E 1170/2019). In doing so, the Constitutional Court rejected the lower court's reliance on factors such as the existence of a family support network and perceived

improvements in security conditions, as well as its restrictive interpretation that serious harm must be attributable to an identifiable actor, thereby excluding risks arising from general conditions such as drought or supply shortages. In Sweden, by contrast, protection claims based on environmental harm are overwhelmingly rejected, with courts rarely engaging substantively with such risks. Overall, the findings point to a persistent protection gap, in which climate-related harm is only partially accommodated — primarily through subsidiary protection — and inconsistently assessed across jurisdictions.

The Colombian Constitutional Court has, by contrast, adopted one of the most expansive approaches to environmentally induced displacement to date. In *José Noé Mendoza Bohórquez et al. v Department of Arauca* (2024), the court recognised environmental and climate-related factors as causes of forced internal displacement, identified a regulatory gap in existing legislation, and ordered the state to adopt preventive, adaptive, and protective measures grounded in constitutional and international human rights law (paras 63-64, 202-203). José Noé Mendoza Bohórquez and Ana Librada Niño de Mendoza were forced to abandon the land on which they lived and worked after severe flooding of the Bojabá River and have been unable to return. They argued that, despite Colombia's displacement framework under Law 1448 of 2011 being designed for conflict-related displacement, persons displaced by environmental disasters face comparable vulnerability and should receive equivalent protection. On this basis, they alleged violations of their rights to adequate housing, work, food security, an adequate standard of living, and life and personal security. The court grounded its analysis in established international frameworks on internal displacement, notably the Deng (1998) and Pinheiro (2005) Principles (*José Noé Mendoza Bohórquez et al. v Department of Arauca* paras 66-73), global and regional human rights treaties, including the African Charter on Human and Peoples' Rights (1981), the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009), and the Revised African Convention on the Conservation of Nature and Natural Resources (2013), as well as environmental and climate regimes such as the UN Framework Convention on Climate Change (1992) (UNFCCC), alongside relevant policy instruments such as the IOM's Migration, Environment, and Climate Change Strategy (2021-2030) (*José Noé Mendoza Bohórquez et al. v Department of Arauca* paras 75-94). The court clarified that forced internal displacement is not limited to conflict-related scenarios and may arise from multiple causes, including both sudden-onset disasters and slow-onset environmental degradation, such as

sea-level rise and desertification (*José Noé Mendoza Bohórquez et al. v Department of Arauca*, paras 95, 97-98). Drawing on international human rights expertise, such as the UNGA Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons (2020), it emphasised that environmentally induced displacement often occupies a spectrum between voluntariness and compulsion, particularly where livelihoods and identity are closely tied to land and natural resources. The court recognised the heightened vulnerability of communities (predominantly indigenous and Afro-descendant peoples) whose cultural, spiritual, and economic lives are deeply connected to their territories (*José Noé Mendoza Bohórquez et al. v Department of Arauca* paras 110-111). While accepting that a natural disaster had forcibly displaced the applicants and that they were therefore entitled to special constitutional protection, the court identified a legislative gap in Colombian law, noting that existing displacement legislation was confined to conflict-related displacement (*José Noé Mendoza Bohórquez et al. v Department of Arauca* paras 145-172). It consequently ordered legislative reform to address environmental and → *climate-related displacement* (*José Noé Mendoza Bohórquez et al. v Department of Arauca* paras 173-180). At the same time, it affirmed that the absence of specific statutory provisions does not relieve the state of its constitutional and international obligations (*José Noé Mendoza Bohórquez et al. v Department of Arauca* para 216). Public authorities, including environmental and disaster-management bodies, remain bound to prevent forced displacement, provide humanitarian assistance, maintain displacement registries, and ensure conditions for voluntary, safe, dignified, and sustainable return or relocation, with particular attention to groups subject to special constitutional protection (i.e., indigenous peoples) (*José Noé Mendoza Bohórquez et al. v Department of Arauca* paras 119, 129).

This approach was built on the Colombian Constitutional Court's earlier reasoning in *Judgment T-369/21 – Rights of Persons Affected by Disasters*, where it considered the case of an internally displaced farmer whose displacement resulted from an environmental disaster linked to the Ituango hydroelectric megaproject. Another earlier case is *The Raizal Community of Providencia and Santa Catalina v Colombia* (T-333/22, 2022), where the Constitutional Court addressed the aftermath of Hurricane Iota, which devastated the islands and displaced the Raizal community. The court found that the government's reconstruction efforts violated multiple fundamental rights, including housing, water, sanitation, health, and a healthy environment, and crucially held that emergency conditions do not suspend the duty of prior

consultation with affected communities. While declining to formally recognise climate-disaster displacement under the armed conflict framework, the court required that reconstruction incorporate climate adaptation measures and the “build back better” principle, framing the disaster as part of an ongoing climate-related vulnerability rather than a one-off event (Naglieri 343-344).

Against this backdrop, *Pabai Pabai & Anor v Commonwealth of Australia* (2025) reveals a sharply contrasting judicial response (Owen and Foster). The applicants, senior elders from the Torres Strait Islands, did not seek protection status or relocation but instead argued that Australia owed a duty of care to mitigate climate change and to fund adaptation measures necessary to preserve the habitability of their islands and the practice of *Ailan Kastom* (traditional practices) (*Pabai* paras 4-6, 10). They presented evidence that, if current trajectories persist, they will be forced to abandon their islands, resulting in the loss of their homes, culture, and collective identity. While the Federal Court rejected the claim, it made extensive factual findings in favour of the applicants, accepting that climate change has already caused serious and ongoing harm to the Torres Strait Islands and that Australia’s emissions targets were inconsistent with best available climate science (*Pabai* paras 58, 1272-1274). The court acknowledged that climate impacts were already disrupting food systems, burial grounds, and intergenerational cultural transmission, and that some Islanders had relocated as a direct consequence of these impacts (*Pabai* paras 665, 187, 611-612, 904). Nevertheless, the claim failed because Australian negligence law was held to provide no viable avenue for addressing harms arising from high-level government policy choices (*Pabai* paras 866, 978, 1132, 1275). As the court observed, until the law evolves, the primary avenue available to communities in the applicants’ position remains political rather than judicial, namely “recourse via the ballot box” (*Pabai* para 1275).

Taken together, this body of jurisprudence demonstrates that the success or failure of → *climate-related mobility* claims depend less on the credibility of climate harm than on the pathway through which that harm is presented. For strategic litigants, these cases underscore the importance of regime selection, rights framing, and remedial ambition in determining whether courts will engage with climate-induced displacement as a matter of protection, responsibility, or mere policy.

This pattern also reflects a broader structural dynamic. → *Strategic climate litigation* signals a reconfiguration of the relationship between courts and political institutions in the context

of the climate crisis. Courts are increasingly called upon to address governance failures by enforcing under-implemented obligations, scrutinising the adequacy of mitigation and adaptation measures, and translating international norms and scientific standards into justiciable benchmarks (Naglieri 332). Yet the intersection of climate change and human mobility exposes both the potential and limits of this judicial role. Climate-induced displacement cuts across multiple legal regimes — → *refugee law*, human rights law, environmental law, and migration governance — none of which was designed to address it directly (Naglieri 333). The resulting fragmentation produces profound uncertainty, particularly where legal frameworks require individualised harm, identifiable causation, or temporal imminence, criteria that sit uneasily with the diffuse, cumulative, and long-term nature of climate impacts (Naglieri 333-334). These structural tensions help explain why → *climate mobility* claims continue to encounter persistent doctrinal obstacles. Whether framed as protection claims or as challenges to inadequate state action, they confront the same underlying problem: legal systems built around discrete, attributable harm struggle to accommodate the systemic and probabilistic character of climate change (Naglieri 334).

3.5 Advisory Opinions and the Expanding Normative Framework

3.5.1 *Advisory Opinion on the Climate Emergency and Human Rights, (IACtHR, 2025)*

The IACtHR, through Advisory Opinion AO-32/25: Climate Emergency and Human Rights, requested by the Republic of Chile and the Republic of Colombia (2025), delivered its most comprehensive articulation to date of states' human rights obligations in the context of climate change, with particular emphasis on human mobility, displacement, and immobility. Of relevance to also mention here is the IACtHR's Advisory Opinion OC-23/17: The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity) (2017), requested by the Republic of Colombia, where the court endorsed the notion of a right not to be forcibly displaced in the context of climate and environmental change, recognising that such phenomena frequently jeopardise the enjoyment of fundamental human rights (para 66).

The court recognised that climate change is already driving both internal and cross-border displacement and that such movements can contribute to political instability, violent conflict, and violations of family unity (Advisory Opinion AO-32/25 para 403). It affirmed that the right

to freedom of movement and residence under Article 22 of the American Convention on Human Rights (1969) (ACHR) includes not only the right to move and choose one's residence, but also the right not to be forcibly displaced and not to be arbitrarily removed from territory where one is lawfully present (Advisory Opinion AO-32/25 para 414). The court identified multiple pathways through which climate change affects mobility: direct displacement caused by sudden-onset disasters; indirect displacement where climate impacts compound pre-existing vulnerabilities such as poverty, food insecurity, violence, or inequality; displacement driven by slow-onset processes including drought, sea-level rise, land degradation, and water scarcity; and the phenomenon of involuntary immobility, where individuals or communities are unable to move despite escalating risk (Advisory Opinion AO-32/25 paras 416-419). It also emphasised that climate change disproportionately affects populations already in situations of displacement, intensifying risks and prolonging displacement (Advisory Opinion AO-32/25 para 421).

Crucially, the court held that states have positive obligations of enhanced due diligence to prevent, mitigate, and respond to → *climate-related displacement*. These obligations extend across a wide range of rights, including the rights to life, personal integrity, health, private and family life, a healthy environment, property, housing, work, social security, water, food, culture, and education (Advisory Opinion AO-32/25 paras 422-423). States must adopt regulatory, policy, institutional, and budgetary measures to protect populations exposed to climate risks, integrate displacement prevention into mitigation and adaptation strategies, and address the converging factors that heighten vulnerability before, during, and after displacement (Advisory Opinion AO-32/25 paras 424-425). Where displacement occurs or becomes unavoidable, states are required to ensure access to humanitarian assistance, adequate shelter, health care, food and water, and to safeguard family unity (Advisory Opinion AO-32/25 paras 427-428). The court placed particular emphasis on procedural rights, including access to information, participation in risk assessment and decision-making, early warning systems, advance notice of relocation, and the free, informed consent of affected communities (Advisory Opinion AO-32/25 paras 403-404). Planned relocation, the court stressed, must be exceptional, participatory, and grounded in human rights standards, with guarantees of compensation, access to land of comparable quality and legal status (especially for indigenous peoples), and, where feasible, mechanisms for voluntary, safe, dignified, and sustainable return (Advisory Opinion AO-32/25 para 429). States must also maintain registries

of displaced persons, protect property left behind, and provide pathways for restitution and reparation (Advisory Opinion AO-32/25 para 429).

The court underscored that → *climate-related mobility* is a shared responsibility of the global community (Advisory Opinion AO-32/25 para 431). It affirmed robust duties of cooperation, including the development of bilateral and regional agreements, the establishment of international funding mechanisms consistent with principles of equity and common but differentiated responsibilities, and the creation of legal and administrative pathways, such as humanitarian visas, temporary residence permits, or other protection statuses, to safeguard persons displaced across borders by climate change and to prevent refoulement (Advisory Opinion AO-32/25 paras 430, 432-433). The court also highlighted the heightened vulnerability of children in → *climate-related mobility* contexts and reaffirmed states' obligations to adopt child-centred, best-interests-based approaches in line with earlier → *advisory opinions*, such as the IACtHR's Advisory Opinion OC-21/14: Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (2014), requested by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, and the Oriental Republic of Uruguay.

Unfortunately, AO-32/25's practical impact remains constrained by its advisory nature, relying on domestic implementation and political will rather than direct enforceability (Kamel, 2025). Also, the court does not explain how existing refugee and human rights instruments should be applied to climate-induced displacement, nor does it provide concrete guidance on interpreting asylum, → *non-refoulement*, or the Refugee Convention in climate contexts (Riemer and Scheid (2025)). This gap is especially evident in its silence on the Cartagena Declaration and its only cursory reference, in a footnote, to IACHR Resolution No. 2/24 on Human Mobility Induced by Climate Change (2024), both of which explicitly address climate-related protection needs (Riemer and Scheid (2024)). AO-32/25 also overlooks relevant administrative and judicial practice recognising the link between climate harm and humanitarian protection, despite such jurisprudence having been placed before the court (Riemer and Scheid (2025)).

3.5.2 *Advisory Opinion on the Obligations of States regarding Climate Change, (ICJ, 2025)*

In its Advisory Opinion on the Obligations of States in Respect of Climate Change (23 July 2025), the International Court of Justice (ICJ) confirmed that → *non-refoulement* obligations

may be triggered by life-threatening conditions linked to climate change (para 378). The court recognised displacement as one of the “severe and far-reaching” consequences of climate change, characterising it as an “urgent and existential threat”, and emphasised that sea-level rise poses particularly acute risks for small island states and low-lying coastal regions, including forced displacement within and across borders and challenges to territorial integrity and permanent sovereignty over natural resources (Advisory Opinion, 23 July 2025 paras 73, 357). In doing so, the court reinforced the interdependence of international human rights law, international environmental law, and climate change law, thereby opening new avenues for protection claims arising in climate-related contexts (Advisory Opinion, 23 July 2025 para 404; McAdam).

Read holistically, the Opinion has been interpreted as advancing several propositions of particular relevance to climate-related migration. First, it affirmed existing jurisprudence that → *non-refoulement* obligations arise where climate impacts expose individuals to a real risk to life, recognising that climate-related conditions may both compel individuals to seek protection abroad and render return unsafe (McAdam 2). Second, it recognised the right to a clean, healthy, and sustainable environment as a necessary precondition for the effective enjoyment of many other human rights (Advisory Opinion, 23 July 2025 para 393). Third, it underscored the centrality of international cooperation, including in relation to adaptation measures and, potentially, → *climate-related mobility* (Advisory Opinion, 23 July 2025 para 364). Fourth, it clarified that the loss of territory or population due to sea-level rise does not, in itself, entail the loss of statehood or international legal personality (Advisory Opinion, 23 July 2025 para 363).

Displacement featured prominently throughout the proceedings, with a substantial proportion of state submissions and civil society interventions addressing → *climate-related mobility* as a core human rights concern (McAdam 2). Vanuatu, for example, highlighted existing and anticipated displacement patterns, emphasising that forced removal from ancestral lands results in profound cultural loss, weakens territorial sovereignty, and constrains communities’ ability to exercise meaningful choice over their futures (Written Statement submitted by the Republic of Vanuatu (21 March 2024) para 300). Consistent with earlier UNHCR guidance, such as the Legal Considerations Regarding Claims for International Protection made in the Context of the Adverse Effects of Climate Change and Disasters (2020), the court acknowledged that climate impacts rarely operate in isolation but are frequently

intensified by structural factors such as weak governance, resource scarcity, socio-economic inequality, and political or social tensions, which may, in turn, generate violence and compel cross-border movement.

The court's articulation of → *non-refoulement* is particularly significant. By referring to "conditions resulting from climate change which are likely to endanger the lives of individuals", the court implicitly endorsed a contextual and cumulative assessment of risk, rather than a narrow focus on singular hazards (Advisory Opinion, 23 July 2025 paras 378, 384). This approach recognises that climate change undermines the material foundations of a dignified life, including access to food, safe drinking water, sanitation, housing, healthcare, and education. In separate opinions, Judges Charlesworth (paras 15, 17-19) and Aurescu (paras 25-26) pushed the analysis further. Judge Charlesworth highlighted the erosion of indigenous knowledge systems, rituals, and customary practices caused by climate-induced displacement, while Judge Aurescu argued that states' obligations should include positive duties to prevent refoulement proactively, such as conducting individualised risk assessments, admitting persons seeking protection, issuing temporary residence permits, and safeguarding against indirect refoulement through detention or harm by non-state actors.

Although the court did not elaborate in detail on the substantive content of the right to a clean, healthy, and sustainable environment, it acknowledged its close relationship with the right to an adequate standard of living, as reflected in Article 11 of the ICESCR and Article 25 of the Universal Declaration of Human Rights (UDHR 1948) (Advisory Opinion, 23 July 2025 para 380). Judge Charlesworth further clarified that this right encompasses both substantive elements, such as a safe climate, clean air, sufficient water, adequate sanitation, and sustainable food systems, and procedural guarantees, including access to information, participation in decision-making, and access to effective remedies (para 9).

Finally, the court reaffirmed that the duty to cooperate lies at the heart of the Charter of the United Nations (1945), emphasising the collective dimension of states' responsibilities in responding to climate-related harm (Advisory Opinion, 23 July 2025 para 140). Sea-level rise, the court noted, generates interconnected economic, social, cultural, and humanitarian challenges that cannot be addressed unilaterally (Advisory Opinion, 23 July 2025 paras 364-365, 457). Several states advanced more explicit interpretations of what cooperation might entail regarding climate-induced mobility. Portugal suggested that states may, depending on the circumstances, be required to facilitate cross-border movement, provide temporary or

permanent residence, or establish bilateral and regional arrangements to manage displacement (Verbatim Record 48 (10 December 2024) para 41). The Netherlands similarly characterised accommodation of climate-displaced persons as a collective obligation of the international community (Written Statement (21 March 2024) para 5.44). The Cook Islands and Tuvalu emphasised the primacy of enabling communities to remain on ancestral lands, warning that displacement entails profound losses of place, identity, culture, and traditional ways of life (Written Statement of the Cook Islands (20 March 2024) para 110; Written Statement of Tuvalu (22 March 2024) para 59).

Overall, while the ICJ's Advisory Opinion signals a significant normative shift by firmly situating → *climate-related displacement* within the scope of international human rights obligations, its impact remains constrained by its advisory nature (Kamel). Compared with the more detailed and operational guidance provided by the IACtHR, the ICJ's approach is comparatively abstract (Nedeski et al.).

3.6 Strategic Litigation and the Limits of Existing Frameworks

This contribution adopts a broad understanding of strategic litigation, not merely as precedent-driven activism, but as a collaborative process through which courts, affected communities, civil society, and policymakers progressively shape the application of existing legal norms to → *climate-related mobility* (Scott et al.). While not all of the cases discussed were initiated as strategic litigation in the strict sense — that is, as deliberately selected test cases designed from the outset to generate systemic change — many nonetheless operate strategically in effect (Rink 157). Individual protection claims may acquire broader significance through their downstream impact, while others explicitly or implicitly pursue higher-order objectives, such as clarifying state responsibility, expanding the scope of → *non-refoulement*, or articulating rights-based limits on displacement. The classification of a case as “strategic” or “non-strategic” is, moreover, inherently context-dependent and analytically contingent, and is not intended to suggest that cases falling outside a narrow conception of strategic litigation are any less significant or impactful in shaping legal doctrine, institutional practice, or policy responses (Luporini 204).

According to Naglieri, within this landscape, a first category of cases concerns claims for international protection grounded in climate-related harms in the country of origin. Applicants seek to bring such harms within the scope of existing frameworks, including the 1951 Refugee

Convention, regional refugee instruments, complementary protection regimes, and human rights-based → *non-refoulement* obligations (Naglieri 335). These regimes, however, were not designed to address environmental displacement, and such cases therefore test the limits of established protection architectures. At the same time, applicants frequently rely on international human rights law as an alternative pathway, particularly through the prohibition of → *non-refoulement*. Under this framework, expulsion or deportation is precluded where there are substantial grounds for believing that an individual would face a real risk of serious harm, including threats to life or inhuman or degrading treatment (Kälin and Schrepfer 34-36). Importantly, the focus of this assessment lies not on the conduct of the receiving state as such, but on the responsibility of the sending state, which violates its obligations where it knowingly initiates a chain of events leading to such harm (Kälin and Schrepfer 34-36). While this human rights-based approach provides an important safeguard, it remains structurally limited: it constrains return but does not establish a corresponding right to admission or to remain, thereby leaving significant protection gaps in cases of cross-border → *climate-related displacement*.

This limitation is not absolute. As Kälin and Schrepfer demonstrate, the 1951 Refugee Convention may still apply in climate-related contexts where environmental harm intersects with persecution on Convention grounds. In particular, protection may be triggered when state authorities respond to disasters in a discriminatory manner — for example, by withholding assistance, implementing targeted policies, or enforcing relocation measures that disproportionately disadvantage specific groups (Kälin and Schrepfer 32–33). In such cases, the climate-related origin of the harm is legally incidental; what matters is whether the threshold of persecution is met. This underscores a key point: the constraint of → *refugee law* lies not in its total incapacity to address climate-related harm, but in its narrow doctrinal focus, which captures only a limited subset of climate-induced displacement.

Beyond → *refugee law*, a related strand of claims concerns internal displacement and the extension of existing protection frameworks within domestic legal systems (Naglieri 337). Where these avenues prove ineffective, affected communities — particularly indigenous groups — have increasingly turned to international human rights mechanisms. Across cross-border claims, however, a consistent pattern emerges: outcomes are determined less by the credibility of climate harm than by the legal framework through which it is articulated (Naglieri 338). Applicants must meet specific thresholds — whether framed in terms of → *non-*

refoulement, risk to life and dignity, or inhuman or degrading treatment — that are not easily aligned with the diffuse and multi-causal nature of climate impacts.

Litigation strategies have therefore followed two main approaches. The first seeks to expand existing protection categories, either by stretching the definition of refugee or protected status, or by advancing anticipatory claims based on territorial uninhabitability (Naglieri 338). The second relies more directly on human rights law, invoking positive state obligations to prevent harm. Despite increasingly sophisticated arguments, outcomes have remained largely unfavourable. Adjudicative bodies routinely accept the factual reality of climate harm, yet deny relief on doctrinal grounds: climate impacts lack identifiable persecutors, affect populations collectively, and arise from cumulative global processes. Efforts to define affected groups as a “particular social group” are frequently rejected, while climate-related hardship is treated as generalised adversity rather than persecution (Naglieri 340–342).

While human rights law offers important safeguards — particularly through the rights to life and dignity — it does not create enforceable entitlements to admission, relocation, or long-term protection (Quadri et al. 242). At the domestic level, disaster-response frameworks and internal displacement regimes provide assistance, but remain primarily oriented towards emergency relief and do not translate into predictable cross-border protection. Similarly, temporary or subsidiary protection mechanisms operate largely on a discretionary basis, lacking the stability associated with rights-based regimes (Kälin and Schrepfer 45–46).

A second category of cases shifts the analytical frame. Rather than seeking protection status, systemic climate litigation presents displacement as a consequence of inadequate climate action. In these “migration as impact” claims, applicants challenge failures of mitigation and adaptation, using the risk of displacement to demonstrate the severity and foreseeability of harm (Naglieri 336). Here, mobility functions not as the legal claim itself, but as evidence supporting broader assertions of state responsibility. In some cases, displacement is central, particularly when territorial loss is imminent; in others, it is part of a broader constellation of harms, including impacts on health, livelihoods, culture, and infrastructure (Naglieri 347). This distinction is significant, as it shapes both the strategic deployment of mobility within litigation and the extent to which courts engage with it as a legally relevant harm.

Taken together, the cases surveyed do not simply show “mixed” outcomes. They map the contours of what strategic litigation can currently achieve for climate migrants, and where existing legal frameworks predictably break down. The most striking pattern is that adjudicators repeatedly accept the factual reality of climate harm while denying legal relief because the harm does not “fit” the available doctrinal boxes. *Teitiota* is the clearest illustration. The Committee did not deny sea-level rise, saltwater intrusion, or insecurity. It rejected the claim because the → *non-refoulement* threshold was treated as requiring a real, personal, and reasonably foreseeable risk at the point of removal, and because the assessment was fragmented across individual risk factors rather than evaluated cumulatively (Kent and Behrman). The message for litigation strategy is stark: the bottleneck is legal translation — how slow-onset degradation and compounding vulnerabilities are converted into the idiom of imminence, individualisation, and “exceptional circumstances”. It has further been argued that, because environmental harm affects entire populations rather than discrete individuals, protection against refoulement cannot be afforded on an individual basis (Iyer 379). This reasoning has been criticised by the HRC as akin to forcing a drowning person back onto a sinking vessel because others remain aboard (2019 para 6).

The French cases mentioned in this paper show how, under ordinary residence frameworks, even credible, individualised health risks linked to environmental conditions can be treated as legally insufficient in the absence of a clear statutory mandate (Kent and Behrman). Likewise, *Cruz Galicia* demonstrates the continuing rigidity of refugee and asylum law when climate harm is framed through the architecture of persecution and protected grounds: the climate narrative is squeezed into the “particular social group” doctrine and then rejected on the basis of the social distinction/nexus requirements. This helps explain why many of the more viable pathways have been pursued through human rights and constitutional frameworks, rather than through orthodox refugee status determination (Caligiuri). *Daniel Billy (Torres Strait Islanders)* is the key example. The Committee stopped short of finding a violation of Article 6, and it treated internal relocation possibilities as weighing against the imminence requirement. Yet it still found violations of Articles 17 and 27. That matters profoundly for → *climate mobility*, because displacement is often experienced first as the erosion of belonging, livelihoods, graves, rituals, language transmission, and family unity — precisely the harms that → *refugee law* struggles to capture. As the OHCHR has emphasised in Technical Note: The Principle of Non-refoulement under International Human

Rights Law (2018), → *non-refoulement* prohibits states from transferring or removing individuals from their jurisdiction or effective control where there are substantial grounds for believing that return would expose them to irreparable harm, including “serious human rights violations.” This is also where the → “*right to stay*” becomes legally legible: not as a freestanding entitlement with a single treaty home, but as an emergent claim assembled from overlapping rights (home, family, culture, non-discrimination, children’s rights, procedural rights, and protection against degrading treatment) (Kerwin et al.; Atapattu).

At the international level, the IACtHR and ICJ → *advisory opinions* provide the most expansive articulation of obligations relevant to → *climate mobility*: prevention, due diligence, protection during displacement, family unity, participation, safeguards for planned relocation, and cross-border humanitarian pathways. Their value for strategic litigation is twofold. First, they provide authoritative synthesis that can be deployed across forums: domestic courts, tribunals, human rights bodies, and advocacy processes (Pasqualucci). Second, they support a shift from reactive to proactive obligations: not only “do not refole” but prevent displacement drivers, protect rights through adaptation, and establish legal categories (humanitarian visas, temporary protection, or similar mechanisms) where cross-border mobility becomes necessary. Yet the limitation is equally essential: → *advisory opinions* are normative accelerators, not self-executing remedies (Tabak). They strengthen arguments, but they do not themselves deliver status, admission, or relocation. However, refer to Tigre and Rocha’s view that ambiguity and limited enforceability are structural features, rather than anomalies, of international climate law. This is the central paradox of climate-mobility litigation right now: the normative framework is rapidly thickening while enforceable pathways remain thin.

The contrast between Colombia and *Pabai* captures how much it turns on the court’s institutional posture and the elasticity of the cause of action. Colombia demonstrates the high-water mark of judicial willingness to (i) recognise environmentally induced displacement as forced displacement; (ii) diagnose a regulatory gap; and (iii) order legislative and administrative action grounded in constitutional and international human rights duties. It shows what strategic litigation can do when courts are comfortable with structural remedies and positive obligations. *Pabai*, by contrast, shows that even strong factual findings and compelling cultural harm can fail where the claim is filtered through doctrines of justiciability, salient features, and the judicial reluctance to police high policy (Kent and Behrman). As the

United States Court of Appeals observed in *Juliana v United States* (2016), “not every problem posing a threat — even a clear and present danger (...) can be solved by federal judges.” Invoking Justice Cardozo’s warning against judges acting as “knight-errants, roaming at will in pursuit of [their] own ideal of beauty or of goodness,” the court emphasised that judicial power must remain “disciplined by system.” By contrast, in dissent, Judge Staton cautioned that such restraint risked collapsing into abdication, that deference taken to this extreme undermines the judiciary’s countervailing responsibility to intervene where governmental action — or inaction — runs afoul of foundational principles. This judicial hesitation is not incidental but reflects a broader institutional tension recognised across jurisdictions. As Robert Spano has noted, arguments against an expanded judicial role in climate matters often emphasise separation of powers, institutional competence, and the risk of judicial “adventurism”. Yet he also underscores that where climate change implicates binding human rights norms, it remains “the province and duty of judges to interpret and apply such norms”. This dual framing captures the persistent dilemma: courts are simultaneously constrained by institutional limits and compelled by the normative force of rights. It is precisely this structural impasse that makes the proposal for a World Climate Court all the more intriguing (Keller et al.). A judicial body expressly mandated to assess the adequacy of states’ climate commitments would be both institutionally viable and normatively justified.

Sacchi shows how procedural rules can defeat substantively powerful claims. Exhaustion of domestic remedies, jurisdictional limits, attribution burdens, and evidentiary demands function as gatekeepers in transnational climate cases (Gage). At the same time, the CRC Committee’s openness to cross-border responsibility and foreseeability reasoning signals an emerging legal logic essential to → *climate mobility*: harms are often experienced in one place but produced by regulatory choices elsewhere (Kent and Behrman 20).

Strategic litigation thus operates across three intertwined tracks: protection (testing the limits of → *non-refoulement*, complementary protection, and humanitarian status), responsibility (articulating enforceable duties of mitigation, adaptation, and international cooperation, including extraterritorial dimensions), and immobility/right-to-stay (foregrounding rights-based limits on displacement and safeguards for remaining in place, including participatory standards for planned relocation where unavoidable).

These developments should not, however, obscure the structural limits of → *strategic climate litigation*. While its achievements are significant — courts have compelled

governments to strengthen climate commitments, recognised enforceable obligations for major emitters, and elevated principles such as intergenerational equity — its constraints are equally substantive. Litigation is inherently slow, often unfolding over years, whereas climate change operates on an urgent, accelerating timescale (Gallagher). Even favourable judgments may take years to translate into meaningful emissions reductions, depending on implementation, appeals, and political will. Moreover, courts remain institutionally cautious in crafting remedies, typically recognising the existence of obligations without prescribing detailed measures for compliance (Gallagher). Access to litigation also remains highly unequal, as climate cases require substantial legal, financial, and technical resources, limiting their accessibility for the communities most directly affected (Gallagher). Finally, there is an inherent risk of adverse precedent: unsuccessful claims, particularly before higher courts, may entrench restrictive interpretations that constrain future litigation (Gallagher).

4 Strategic Implications and Future Pathways

Since 2008, climate-related disasters have displaced more than 376 million people worldwide (Apap et al. 2). Yet, despite the scale and persistence of this phenomenon, the legal framework governing → *climate-induced migration* remains, as Kent and Behrman aptly describe, a “gaping legal hole”. Existing responses have been fragmented, largely confined to non-binding instruments, aspirational commitments, and indeterminate policy frameworks (Noorda; Omolere; McDonnell (2019)). International law does not recognise climate migrants as a distinct category of protected persons. Instead, as noted in the UNGA Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change (2023), protection is fragmented across → *refugee law*, international human rights law, climate governance instruments, and regional freedom-of-movement regimes (Francis).

This fragmentation is not merely a technical deficiency; it reflects a deeper structural mismatch between existing legal categories and the realities of → *climate mobility*. The 1951 Refugee Convention, while foundational, remains inherently ill-suited to climate-induced displacement. It applies only to cross-border movement and requires a well-founded fear of persecution, thereby excluding the vast majority of environmentally driven mobility. More fundamentally, the conventional distinction between voluntary migration and forced displacement fails to capture the lived reality of → *climate mobility*, which unfolds along a

spectrum between choice and necessity and frequently operates as a form of adaptation rather than a discrete act of forced movement (Ruppel 19).

At the same time, these structural limitations do not entirely foreclose legal development. As Feller has emphasised, the Refugee Convention must be interpreted flexibly and in light of its object and purpose, ensuring that its protections remain practical and effective. This aligns with the broader principle that human rights instruments are “living instruments”, capable of evolving in response to contemporary conditions, as recognised in the jurisprudence of the European Court of Human Rights and other courts (*Hirsi Jamaa and Others v Italy* (2012) para 175; *Sepet (FC) and Another (FC) v Secretary of State for the Home Department* (2003) para 6). While such interpretive approaches cannot resolve the systemic inadequacies of existing frameworks, they create space — albeit limited — for incremental expansion of protection in climate-related contexts.

These doctrinal constraints are reinforced by the intergovernmental design of climate governance, which reflects enduring sovereignty concerns, particularly regarding migration (Smirnov et al. 41–42). Although mechanisms such as the Green Climate Fund hold potential to support adaptation and resilience-building, access remains uneven. Procedural complexity, capacity constraints, and entrenched inequalities in resource allocation continue to limit their effectiveness, disproportionately affecting those states most exposed to climate risks (Azam 12). As a result, the capacity to respond to climate-induced mobility remains deeply uneven, shaped not only by environmental exposure but by broader patterns of global inequality.

At the same time, the scale and evolving character of → *climate-related displacement* underscore the urgency of more coherent responses. With nearly 45.8 million disaster displacements recorded globally in 2024 and almost 10 million people living in internal displacement due to disasters, → *climate mobility* can no longer be understood as episodic or exceptional (Internal Displacement Monitoring Centre). Climate shocks do not produce uniform migration responses; rather, these responses are mediated by wealth, governance capacity, and access to adaptation (Letta et al.). Many affected populations do not move at all, either because they can adapt locally or because they lack the means to relocate, resulting in conditions of involuntary immobility alongside forced movement. This reality challenges legal frameworks that remain oriented toward movement, rather than the conditions under which individuals are able to remain.

Within this fragmented and uneven landscape, → *strategic climate litigation* has emerged as a critical — if imperfect — mechanism for advancing legal recognition and accountability. However, the transformative potential of strategic litigation must be understood alongside its structural limits. Looking forward, closing the protection gap will require more than incremental doctrinal evolution. A central challenge lies in developing more coherent and binding legal frameworks addressing → *climate-induced migration* (Azam 12). One proposed pathway is the adoption of a supplementary protocol to the 1951 Refugee Convention, enabling tailored responses to contemporary forms of displacement without reopening the Convention itself (Radjenovic 6). Alternative approaches, such as the Model International Mobility Convention (2018), seek to establish more comprehensive frameworks integrating protection, responsibility-sharing, and migration governance across different forms of mobility, including forced migrants (within which environmental and → *climate-related displacement* may be accommodated).

Yet such developments remain constrained by political realities. State reluctance to expand binding obligations continues to limit the scope of reform. This is reflected in the slow ratification of regional mobility frameworks, including within the African Union, with the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (2018), where concerns relating to sovereignty, economic pressures, and administrative capacity persist.

In this context, the future of → *climate-related mobility governance* is likely to remain characterised by incremental and contested development. Interpretive evolution, strategic litigation, and selective institutional innovation will continue to shape emerging norms. However, without more coordinated and politically supported legal frameworks, the gap between the scale of climate-induced displacement and the adequacy of legal protection is likely to persist. In this light, creating synergies across policy areas can also help strengthen the resilience and adaptive capacity of countries and communities (e.g., the development of integrated disaster risk reduction and climate change adaptation strategies and plans addressing human mobility challenges, at the national level); improve the link between humanitarian and development efforts at the multilateral level; and facilitate addressing the longer-term developmental challenges to strengthen the resilience of affected communities and find durable solutions to displacement (Platform for Disaster Displacement).

5 Conclusion

→ *Climate-related mobility* exposes a fundamental limitation of international law: systems designed to address discrete, individualised harm struggle to respond to the diffuse, cumulative, and systemic nature of climate change. As this contribution has shown, existing frameworks provide only partial and fragmented protection, leaving a significant gap for those displaced by environmental change. → *Strategic climate litigation*, understood broadly, encompasses legal action that seeks, or acquires, effects extending beyond the immediate dispute (Ramsden; van der Pas). While such litigation carries risks — including the entrenchment of restrictive doctrines, the narrowing of debate, and potential chilling effects on broader reform efforts (Duffy 77-79; Nedeski et al. 304) — it nonetheless plays a critical role in testing legal boundaries, documenting harm, and reframing → *climate-induced migration* as a matter of rights, responsibility, and justice. The increasing willingness of courts and quasi-judicial bodies to engage with climate-mobility claims, even where relief is ultimately denied, reflects a process of judicial “foundation-laying” (Kent and Behrman 5).

At the same time, these developments unfold within a deeply political context. Profound North–South asymmetries continue to shape states’ willingness and capacity to respond, while judicial intervention remains constrained by concerns relating to legitimacy, institutional competence, and separation of powers (Kent and Behrman).

Addressing → *climate-related mobility* will ultimately require more coherent and forward-looking frameworks. As Goodwin-Gill has cautioned, reform efforts should focus not on dismantling existing regimes, but on strengthening and adapting them through cooperative, incremental development, mindful of the risk that attempts at expansion may inadvertently weaken existing protections. In this regard, the challenge is not only to protect those forced to move but also to secure the conditions under which individuals and communities can remain, with dignity, in the places they call home.

As climate impacts intensify, this dual imperative — mobility with protection, and immobility with dignity — will become one of the defining challenges for international law in the twenty-first century. As Nelson Mandela (1995) observed, “to be free is not merely to cast off one’s chains, but to live in a way that respects and enhances the freedom of others.” In the context of → *climate-induced migration*, this requires legal and policy frameworks that are not only protective, but enabling: grounded in human rights, responsive to inequality, and capable of supporting both movement and the meaningful choice to stay.

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