

# INTER-AMERICAN COURT OF HUMAN RIGHTS

## AMICUS CURIAE BRIEF

ON ISSUES RELATED TO THE RESPONSE TO CLIMATE DISPLACEMENT IN THE REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE REPUBLICS OF COLOMBIA AND CHILE

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The Center for Gender & Refugee Studies (CGRS) at the University of California College of the Law, San Francisco; the International Refugee Assistance Project (IRAP); the Global Center for Legal Environmental Studies (GCELS) at the Elisabeth Haub School of Law at Pace University; the Sir Arthur Lewis Institute of Social and Economic Studies (SALISES) of The University of the West Indies, Jamaica; Alianza Americas; Refugees International; and Professor Shana Tabak respectfully submit this *amicus curiae* brief to the Inter-American Court of Human Rights in response to the invitation to submit comments on the issues raised in the request for an Advisory Opinion by the States of Colombia and Chile.

## I. INTEREST OF AMICI

The **Center for Gender & Refugee Studies (CGRS)** protects the fundamental human rights of women, children, LGBTQ individuals, and others compelled to flee their home countries, including those displaced by the adverse effects of the climate emergency. Through strategic litigation, comprehensive policy advocacy, and a robust technical assistance program supporting advocates who represent asylum seekers, CGRS is committed to advancing protection for refugees in the United States and across the Americas. We envision a world where the right to seek asylum is unconditionally upheld and work tirelessly to align U.S. domestic and regional policies with international human rights standards.

The **International Refugee Assistance Project (IRAP)** is a global legal aid and advocacy organization working to create a world where refugees and all people seeking safety are empowered to claim their right to freedom of movement and a path to lasting refuge. Using existing legal tools and building on our expertise providing legal services to refugees and displaced people, as well as our work on legal advocacy and impact litigation, we identify and advocate for pathways to safety for people displaced by climate change. IRAP has been counsel to hundreds of refugees, asylum seekers, and people seeking humanitarian protection in courts since its founding in 2008.

The **University of the West Indies (UWI)** is a regional tertiary institution with a global presence and a strong reputation and record for education and development in the Caribbean region and beyond. The UWI is especially renowned for independent and commissioned research on policy issues of pertinence to Caribbean small island developing states. Through the **Sir Arthur Lewis Institute of Social and Economic Studies (SALISES)**, formerly the Institute of Social and Economic Research (ISER), The UWI has conducted research on migration for nearly eight decades. The research of ISER/SALISES and scholars based in other University Departments has been critical to understanding the protection needs of vulnerable migrants. SALISES is currently home to

the Migration and Development Cluster, an inter-disciplinary research cluster examining contemporary issues of migration in the Caribbean, including forced displacement. The Cluster is chaired by Dr. Natalie Dietrich Jones. For the past three years, Dr. Dietrich Jones has supported policy development and capacity building efforts related to human mobility within the context of climate change and disasters, in Eastern Caribbean states.

**Refugees International** is an organization created in 1979 that advocates for the rights and humanitarian needs of forcibly displaced people worldwide by working with displaced communities, investigating the challenges they face, recommending policy solutions, mobilizing action and holding the powerful to account. Since 2009, Refugees International's Climate Displacement Program has offered cutting-edge expertise on the complex relationship between extreme weather, loss of land, food insecurity, conflict over resources, and displacement. In recent years Refugees International has suggested ways to better incorporate the perspectives of displaced people in plans to respond to climate change and has reported on the needs of people displaced by climate events in Guatemala, Puerto Rico, and Haiti.

**Alianza Americas** is a network of Latin American and Caribbean migrant-led organizations working in the United States, across the Americas, and globally to create an inclusive, equitable, and sustainable way of life for communities across North, Central, and South America. We are committed to empowering community leaders, government agencies, labor organizers, and faith-based communities, to work transnationally to provide a more dignified and just way of life for all people in the Americas.

The **Global Center for Environmental Legal Studies (GCELS)** at the Elisabeth Haub School of Law at Pace University anchors innovative projects to develop laws to address the world's most pressing global environmental issues, especially climate change. Our work is guided by the paramount need to promote global action to remediate the causes of climate change and to ensure human rights and environmental justice for communities most affected by environmental degradation. GCELS is one of only two U.S. law schools that is a voting member of the International Union for the Conservation of Nature. The Center's faculty members have written extensively on international human rights law and environmental law, and on States' obligations to address the impacts of climate change.

Professor **Shana Tabak** is an Adjunct Professor of Law at Georgetown University Law Center and an Affiliated Scholar at the Institute for the Study of International Migration (ISIM). She teaches and writes on international migration, focusing on the nexus between the climate crisis and human mobility. She has published articles on human rights law, immigration and refugee law, gender, and public international law, and while serving as a clinical law professor, litigated extensively before the Inter-American Human Rights System.

## II. INTRODUCTION

The focus of this brief is climate-related displacement. Specifically, in response to the advisory opinion request, this brief addresses question E.3,<sup>1</sup> particularly as it pertains to communities' right to not be displaced. Additionally, the brief answers question F.3<sup>2</sup> concerning the obligations and guiding principles that should guide States' response to climate-related displacement. The arguments presented shed light on the profound connection between the adverse effects of climate change and the human rights of individuals who are compelled to leave their homes as a result. In addition to displacement, the effects of climate change are inextricably entwined with other human rights violations and exacerbate the precarity and violence faced by marginalized populations.

The brief analyzes the threat posed by climate change and disasters,<sup>3</sup> highlighting the significant potential of existing legal frameworks to protect climate-displaced persons both internally and across borders, as well as the need for greater cooperation by States in this regard.

**Section III** explains the detrimental impact of the climate emergency on a host of human rights, calling attention to how it often leads to displacement and perpetuates cycles of marginalization and vulnerability. This section explores advisory opinion request question E.3, as the effects of climate change may threaten several rights, including to life, health, personal integrity, cultural identity, and a healthy environment — the last of which the Inter-American Court of Human Rights (hereafter, this Court) recognized in its 2017

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<sup>1</sup> Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, Jan. 9, 2023, 12, [https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2023\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf) (hereafter, Request) (“What specific considerations should be taken into account to guarantee the right to defend a healthy environment and the territory based on intersectional factors and differentiated impacts, inter alia, of indigenous peoples, peasant farmer communities, and Afro-descendant persons in the context of the climate emergency?”).

<sup>2</sup> Request, 13 (“What obligations and principles should guide the individual and coordinated measures that the States of the region should adopt to deal with involuntary human mobility, exacerbated by the climate emergency?”).

<sup>3</sup> See United Nations High Commissioner for Refugees (UNHCR), <https://www.unhcr.org/what-we-do/build-better-futures/environment-disasters-and-climate-change/climate-change-and> (last visited Nov. 8, 2023) (According to UNHCR, the term ‘climate change and disasters’ underscores the intertwined relationship between the long-term climatic shifts and the immediate, often catastrophic events they precipitate. Such events, intensified by climate change, lead to heightened community vulnerabilities and resultant displacements. The combined terminology serves not only to highlight the evolving climatic conditions but also the urgent and tangible repercussions of these changes on affected populations).

advisory opinion.<sup>4</sup> Critically, these impacts are not just natural or inevitable consequences of climate change; they are significantly shaped by state policies and practices that exacerbate their risks. To illustrate this interaction, the section presents a case study on Honduras, providing a concrete example of how state action—or the lack thereof—intensifies the severity of the climate emergency, with disproportionately adverse effects on marginalized groups.

**Section IV** responds to advisory opinion request question E.3 by elaborating on the obligation of States to protect the inherent right of individuals to remain in their homes and communities. This entails taking measures to improve coordination among relevant internal agencies as well as proactively establishing adequate adaptation measures to ensure the safety of those displaced due to climate events. States must recognize and fulfill their responsibility to safeguard this right—ensuring the well-being and security of individuals within their borders—which, in turn, must inform States’ coordinated response to those who cross borders.

**Section V** answers advisory opinion request question F.3 by articulating how existing international and regional refugee and human rights laws offer crucial protection to many climate-displaced individuals. It is essential for States to interpret and apply these laws accordingly, recognizing the challenges faced by climate-displaced individuals and providing them with requisite protection and assistance. Individuals may be forced to flee in a variety of contexts created or exacerbated by climate change. As recognized by the 2015 Paris Agreement—joined by all States in the Americas and nearly all others worldwide—climate change implicates human rights.<sup>5</sup> The 1951 Convention relating to the Status of Refugees<sup>6</sup> (Refugee Convention) and its 1967 Protocol,<sup>7</sup> the 1984 Cartagena Declaration,<sup>8</sup> and other regional and international human rights instruments should be understood to include and protect many climate-displaced individuals. Given the upcoming fortieth anniversary of the Cartagena Declaration, the Court’s guidance for States on how

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<sup>4</sup> The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A), (Nov. 11, 2017), [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>5</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, 138 U.N.T.S. 287, [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>6</sup> Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 137.

<sup>7</sup> Protocol Relating to the Status of Refugees, art. I, *opened for signature* Jan. 31, 1967, 606 U.N.T.S. 267.

<sup>8</sup> Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico & Panama (Nov. 22, 1984), ¶ 3.3, <https://www.refworld.org/docid/3ae6b36ec.html>.

cross-border climate-related displacement should be understood in the context of these legal instruments would come at a crucial moment.

Furthermore, Section V requests that the Court clarify that States have an obligation to protect the human rights of climate displaced individuals and respond to climate displacement following principles of international law, including international cooperation. Existing regional migration processes demonstrate that States are already aware of these obligations and can serve as a tool for addressing the challenges posed by climate displacement going forward.

**Section VI** concludes by urging the Court to reinforce States's obligations to protect the human rights of individuals displaced, whether internally or across borders, in the context of the climate emergency.

### **III. ANTHROPOGENIC CLIMATE CHANGE IS FORCING UNPRECEDENTED DISPLACEMENT AND EXACERBATING HUMAN RIGHTS VIOLATIONS**

The United Nations High Commissioner for Refugees (UNHCR) estimates that an average of 21.5 million people worldwide have been displaced by disasters and climate events each year since 2008.<sup>9</sup> While most of this displacement is internal, experts calculate that approximately 1 out of every 4 such individuals end up leaving their countries in search of safety.<sup>10</sup> The Intergovernmental Panel on Climate Change anticipates that in the coming decades, environmental disruptions stemming from anthropogenic climate change will compel millions more to abandon their homes.<sup>11</sup> Habitat loss from sea level rise and extreme weather events directly influence the ability of communities to remain in place, driving migration and displacement.<sup>12</sup> Climate change impacts pose further threats to rural

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<sup>9</sup> UNHCR, FREQUENTLY ASKED QUESTIONS: CLIMATE CHANGE AND DISASTER DISPLACEMENT, <https://www.unhcr.org/news/stories/frequently-asked-questions-climate-change-and-disaster-displacement> (last visited Sept. 14, 2014).

<sup>10</sup> Al Jazeera, *Climate Change could displace 216 million by 2050: Report* (Sept. 14, 2021), <https://www.aljazeera.com/news/2021/9/14/climate-change-could-displace-216-million-by-2050-report>.

<sup>11</sup> Intergovernmental Panel on Climate Change, Annual Report 6, Working Group II, Technical Summary at 52 (2022), [https://www.ipcc.ch/report/ar6/wg2/downloads/report/ipcc\\_ar6\\_wgii\\_technicalsummary.pdf](https://www.ipcc.ch/report/ar6/wg2/downloads/report/ipcc_ar6_wgii_technicalsummary.pdf); Oli Brown, *Migration & Climate Change*, Int. Org. Migration, *Migration Research Series*, No. 31, 64 (2008), [https://publications.iom.int/system/files/pdf/mrs-31\\_en.pdf](https://publications.iom.int/system/files/pdf/mrs-31_en.pdf) (observing that the “most widely repeated prediction [has been] 200 million by 2050”).

<sup>12</sup> François Gemenne, Caroline Zickgraf, Elodie Hut & Tatiana Castillo Betancourt, *Forced Displacement Related to the Impacts of Climate Change and Disaster*, (June 2021),



livelihoods as extended periods of drought, flooding, or intense storms, coupled with the emergence of new agricultural diseases, lead to devastation and economic loss.<sup>13</sup>

Neither the cause nor the effects of the climate emergency occur in a vacuum. The climate emergency, unlike weather changes in the past, is caused by human activity.<sup>14</sup> Its effects are shaped by State policies and existing societal structures. For instance, the aftermath of a hurricane is largely influenced by State policies on resilience and preparedness, as well as relief, assistance, and recovery. The effects of climate change and disasters often intensify existing social and economic inequalities, acting as catalysts for broader societal challenges.<sup>15</sup> In addition, human-caused environmental degradation, such as deforestation, pollution, and soil erosion, both accelerate the climate emergency and hinder the resilience of vulnerable communities in the face of disasters.<sup>16</sup> This underscores the importance of understanding climate change not merely as a series of natural hazards,<sup>17</sup> but as a human-caused phenomenon with unequal impacts on society.

The following sections delve into the acute manifestations of the climate emergency in Latin America and the Caribbean, illuminating its impact on human rights and displacement. Through a detailed case study on Honduras, we explain the role of State policies and practices in exacerbating the country's vulnerability to the climate emergency. We highlight how these factors, coupled with State action or negligence, deepen the plight of marginalized groups, and contribute to an escalating cycle of displacement and rights violations.

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[https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Franc%CC%A7ois-Gemenne-et-al\\_Forcement-displacement-related-to-the-impacts-of-climate-change-and-disasters.pdf](https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Franc%CC%A7ois-Gemenne-et-al_Forcement-displacement-related-to-the-impacts-of-climate-change-and-disasters.pdf).

<sup>13</sup> Food and Agriculture Organization of the United Nations, *Climate Change and Food Security: Risks and Responses* (2015), <https://www.fao.org/3/i5188e/i5188E.pdf>.

<sup>14</sup> National Aeronautics and Space Administration (NASA), *The Causes of Climate Change*, <https://climate.nasa.gov/causes/> (last visited Nov. 16, 2023).

<sup>15</sup> United Nations Human Rights Council (UNHRC), *Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, A/HRC/53/34, ¶¶ 11, 14, 16 (Apr. 18, 2023).

<sup>16</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report*, ¶ B.2.1 (2022), <https://www.ipcc.ch/report/ar6/wg2/>.

<sup>17</sup> This can include slow onset and sudden events. Slow onset events refer to environmental changes that occur gradually over time, such as sea-level rise, increasing temperatures, and related impacts such as salinization of water and soil, and desertification. On the other hand, sudden onset events are characterized by their rapid emergence and include hurricanes, floods, and wildfires.

## **A. The Effects of the Climate Emergency in Latin America and the Caribbean Include Human Rights Violations and Displacement**

The Latin America and Caribbean region is significantly affected by extreme weather events exacerbated by the climate emergency, such as mega-droughts, intense rainfall, hurricanes, heat waves, ocean warming, and glacier melting.<sup>18</sup> According to the International Organization for Migration (IOM), climate change and disasters are significant drivers of regional displacement.<sup>19</sup> In 2020 alone, nearly three million people were displaced either internally or across borders in several countries in Central America and the Caribbean in the aftermath of Hurricanes Laura, Eta, and Iota.<sup>20</sup>

The Inter-American Commission on Human Rights (hereafter, the Commission) has explicitly recognized that the effects of climate change pose a significant threat to the “enjoyment of a wide range of rights, inter alia, the right to life, food, housing, health, water, and the right to a healthy environment.”<sup>21</sup> These threats disproportionately impact segments of the population already in conditions of vulnerability and marginalization due to existing discrimination, exclusion, or inequalities – including women, children, the elderly, disabled individuals, people living in rural communities, Indigenous peoples, and Afro-descendant communities – and contribute to their displacement.<sup>22</sup>

Even though the Latin America and Caribbean region does not significantly contribute to the global climate emergency, government policies in the region exacerbate the crisis by allowing, if not encouraging, environmental degradation. The Commission has warned that even policies designed and implemented by States to respond to the climate emergency also carry risks that can undermine the full enjoyment of human rights.<sup>23</sup> For example, hydroelectric dams were once heralded as sustainable climate solutions. Now, they are recognized not only for their substantial emissions of greenhouse gases, but also for instigating a host of human rights violations,<sup>24</sup> including the forced relocation of

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<sup>18</sup> See World Meteorological Organization, *State of the Climate in Latin America and the Caribbean* (2021), <https://public.wmo.int/en/our-mandate/climate/wmo-statement-state-of-global-climate/LAC>.

<sup>19</sup> International Organization for Migration (IOM), *World Migration Report 2022*, 107-108, (2023), <https://worldmigrationreport.iom.int/wmr-2022-interactive>.

<sup>20</sup> *Id.* at 107.

<sup>21</sup> *Climate Emergency: Scope of Inter-American Human Rights Obligations*, Inter-Am. Comm’n H.R., Res. No. 3/2021, 5 (adopted Dec. 31, 2023), [https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion\\_3-21\\_ENG.pdf](https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf).

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> See International Rivers, *10 Reasons why Hydropower Dams are a False Climate Solution* (2022), <https://www.internationalrivers.org/news/10-reasons-why-hydropower-dams-are-a-false-climate-solution/>.

Indigenous groups and the destruction of their cultural heritage.<sup>25</sup> This Court has articulated the nuanced relationship between environmental policies and human rights, finding that the degradation of the environment poses a serious threat to an array of human rights, including the fundamental right to a healthy environment.<sup>26</sup>

While climate change affects human rights differently across countries, the following case study on Honduras provides an example of how these effects exacerbate human rights violations and contribute to displacement.

## **B. Case Study: The Climate Emergency in Honduras**

In 2022, representatives from amicus Center for Gender & Refugee Studies traveled to Honduras on a fact-finding mission, gathering accounts that paint a vivid portrait of the climate emergency's severe impacts on local communities. This case study draws on the insights of local experts and affected persons, exploring how the intensifying climate crisis—far from being a series of mere natural events—unfolds in a context shaped by human actions and state policy.

The root causes and devastating effects of the climate emergency, while often perceived as natural phenomena, are in fact significantly influenced by anthropogenic factors. As this case study will help illustrate, “natural disasters” are, in fact, events transformed into disasters through human influence, including inadequate State responses and policies that fail to protect those most vulnerable. It is within this framework of human-induced environmental degradation and compounded societal inequalities that the necessity for rights-based interventions targeting State behavior becomes starkly apparent.

The following sections delve into the impact of climate change in Honduras and how it is exacerbated by State actions. First, we document how climate change has caused untold damage in the country. Second, we analyze how Honduran agricultural, industrial, and environmental policies contribute to the climate emergency, leading to further environmental degradation and increased societal vulnerability. Third, we discuss the unequal impact of the climate emergency on marginalized groups, with a special emphasis on Indigenous communities and women.

### **1. Climate change has wrought untold damage in Honduras**

The adverse effects of climate change seriously impact Hondurans' lives, health, and personal integrity. First, climate change affects the frequency and intensity of hurricanes

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<sup>25</sup> Business & Human Rights Centre, *Investor Snapshot Hydropower & Human Rights* (2018), [https://media.business-humanrights.org/media/documents/files/Hydro\\_-\\_Investor\\_snapshot\\_0.pdf](https://media.business-humanrights.org/media/documents/files/Hydro_-_Investor_snapshot_0.pdf).

<sup>26</sup> Inter-Am. Ct. H.R., *supra* note 4, ¶¶ 56, 64.

and floods, which claim lives and destroy crops, homes, and key infrastructure.<sup>27</sup> For example, in October 1998, Hurricane Mitch killed over 10,000 people and destroyed over 70 percent of the country's infrastructure and crops. In November 2020, the catastrophic impact of Hurricanes Eta and Iota, marked by rapid intensification, high peak wind speeds, and a deceleration before landfall – distinctive signs of climate change's influence – was stark. Over one hundred lives were lost, more than 300,000 people were displaced, and the agricultural sector suffered a nearly 80 percent loss in output.<sup>28</sup>

Second, climate change affects the magnitude and severity of droughts; rainy seasons are shorter and less frequent.<sup>29</sup> The southern and western regions of Honduras are part of Central America's Dry Corridor,<sup>30</sup> and are particularly affected by extended droughts and irregular rainfall patterns.<sup>31</sup> As an example of the increasing impacts of climate variability, two years of consecutive drought starting in 2014 led to a loss of 96 percent of the corn crop and 87 percent of the bean crop in the Dry Corridor.<sup>32</sup>

Third, progressive sea level rise caused by climate change exacerbates land erosion. This phenomenon destroys homes and contaminates water and soil.<sup>33</sup> As a result of the impacts of the climate emergency, many people in Honduras suffer from water scarcity,

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<sup>27</sup> United States Agency for International Development (USAID), *Climate Change Risk Profile Honduras* (2017),

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

<sup>28</sup> International Federation of Red Cross, *Honduras: Hurricane Eta and Iota - Emergency Appeal n° MDR43007 Operation Update no. 2, 2*, (Jan. 21, 2021),

<https://reliefweb.int/report/honduras/honduras-hurricane-eta-and-iota-emergency-appeal-n-mdr43007-operation-update-no-2>.

<sup>29</sup> Georgina Gustin, *Ravaged by Drought, a Honduran Village Faces a Choice: Pray for Rain or Migrate*, Inside Climate News (July 8, 2019), <https://insideclimatenews.org/news/08072019/climate-change-migration-honduras-drought-crop-failure-farming-deforestation-guatemala-trump>.

<sup>30</sup> The Dry Corridor is a strip of land that covers nearly half of the surface of Honduras, Guatemala, El Salvador, and Nicaragua; it is an ecological region vulnerable to long periods of drought, followed by intense rains.

<sup>31</sup> See Gustin, *supra* note 29.

<sup>32</sup> See USAID, *supra* note 27.

<sup>33</sup> María Celeste Maradiaga & Laura García, *Climate Crisis and Water Scarcity Sees Refugees Fleeing the Dry Corridor of Southern Honduras*, *Contra Corriente* (Feb. 11, 2022),

<https://contracorriente.red/en/2022/02/11/climate-crisis-and-water-scarcity-sees-refugees-fleeing-the-dry-corridor-of-southern-honduras>.

lack of food security, and loss of livelihood.<sup>34</sup> Hundreds of thousands have been forced into internal displacement or exile over the past decade.<sup>35</sup>

## **2. Honduran policies exacerbate the climate emergency by fostering environmental degradation**

Honduras' policies, along with the government's inadequate response to the climate emergency, have significantly intensified the country's environmental crisis, primarily through the promotion of environmental degradation. The expansion of mega-industrial projects—such as intensive agriculture (monocultures), mining operations, and hydroelectric projects—demonstrates this trend, as these projects have not only exacerbated the effects of climate change, but have actively contributed to it.

The rapid development of these industrial projects was chiefly made possible by (1) land reforms that allowed corporations to appropriate large swaths of land, impacting peasant cooperatives, Indigenous collective lands, and small landowners;<sup>36</sup> (2) granting concession permits to multinational companies without meaningful consultation with and participation

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<sup>34</sup> See e.g., International Water and Sanitation Centre, *Climate Change, Water Resources, and WASH Systems, Country Case: Honduras* (July 2021), 3,

[https://www.ircwash.org/sites/default/files/climate\\_change\\_wrm\\_and\\_wash\\_in\\_honduras\\_-\\_country\\_case\\_-\\_jul\\_2021.pdf](https://www.ircwash.org/sites/default/files/climate_change_wrm_and_wash_in_honduras_-_country_case_-_jul_2021.pdf); PBS News Hour, *Climate Change Is Killing Crops in Honduras - And Driving Farmers North*, PBS (Apr. 2, 2019), <https://www.pbs.org/newshour/show/climate-change-is-killing-crops-in-honduras-and-driving-farmers-north>; see also Maradiaga & García, *supra* note 33.

<sup>35</sup> Internal Displacement Monitoring Center (IDMC), COUNTRY PROFILE: HONDURAS, <https://www.internal-displacement.org/countries/honduras> (last visited Nov. 16, 2023) (reporting over one million climate disasters-related internal displacements in Honduras between 2008 and 2022); see also UNHCR, REFUGEE DATA FINDER: HONDURAS, ASYLUM SEEKERS AND REFUGEES, 2008-2022, <https://www.unhcr.org/refugee-statistics/download/?url=efR9P7> (last visited Sept. 20, 2023) (showing that over 400,000 Hondurans applied for asylum between 2008 and 2022).

<sup>36</sup> See Interview by Refugee and Human Rights Clinic (RHRC) and Center for Gender for Refugee Studies (CGRS) with Elvin Hernandez, Equipo de Reflexión, Investigación y Comunicación SJ (ERIC-SJ), San Pedro Sula, Hond. (Oct. 29, 2022) (on file with CGRS); see also Andres Leon Araya, *The politics of dispossession in the Honduran palm oil industry: A case study of the Bajo Aguán*, 71 *J. Rural Stud.* 134 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S074301671730623X>.

from local communities;<sup>37</sup> and (3) brutally repressing any opposition.<sup>38</sup> These systemic practices necessitate a closer examination of how such developments have compounded environmental issues and led to grave human rights abuses.

### **a. Persecution of defenders and lax environmental oversight**

Opposition to industrial projects is met with violence perpetrated by corporate actors with the direct or indirect participation of State officials.<sup>39</sup> The existing laws and mechanisms to protect environmentalists and land defenders<sup>40</sup> are not enforced or are plagued with corruption and lack of resources.<sup>41</sup> Consequently, Honduras is one of the most dangerous countries for land defenders and environmentalists.<sup>42</sup>

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<sup>37</sup> See Interview by RHRC/CGRS with Elvin Hernandez, ERIC-SJ, *supra* note 36, see also Interview by RHRC/CGRS with Donald Hernandez, Director of Honduran Centre for the Promotion of Community Development (Centro Hondureño de Promoción para el Desarrollo Comunitario, CEHPRODEC), Tegucigalpa, Hond. (Nov. 2, 2022) (on file with CGRS); See Interview by RHRC/CGRS with Kenia Olivia, Bufete Jurídico, Tegucigalpa, Hond. (Oct. 31, 2022) (on file with CGRS); Office of the High Commissioner for Human Rights (OHCHR), *Statement at the end of visit to Honduras by the United Nations*, (Aug. 29, 2019), <https://www.ohchr.org/en/statements/2019/08/statement-end-visit-honduras-united-nations>.

<sup>38</sup> Marlon Gonzalez, *Answers Sought in Killings of 2 Honduran Environmentalists*, Associated Press, (Jan. 19, 2023), <https://apnews.com/article/crime-homicide-caribbean-honduras-c013c376c9e7ab39543f1d029dcaa060> (stating that “Honduras is considered one of the world’s most dangerous countries for environmental activists”).

<sup>39</sup> DANA FRANK, *THE LONG HONDURAN NIGHT: RESISTANCE, TERROR, AND THE UNITED STATES IN THE AFTERMATH OF THE*, 105 (2018); Ian Fry, *Statement at the conclusion of the country visit to Honduras by the special rapporteur on the promotion and protection of human rights in the context of climate change* (Sept. 27, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/statements/eom-statement-honduras-sr-climate-2023-09-27-en.pdf> (“People still live in fear from corrupt officials and companies that allegedly use crime gangs to intimidate and attack people who are trying to defend their human rights to a healthy and sustainable environment. Much more needs to be done to protect these people.”).

<sup>40</sup> See, e.g., *Ley de Protección para las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia* (Law for the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Operators), Decree No. 34-2015 (May 15, 2015) (Hond.), [https://www.tsc.gob.hn/web/leyes/Ley\\_Proteccion\\_defensores\\_der\\_humanos\\_periodistas\\_op\\_just.pdf](https://www.tsc.gob.hn/web/leyes/Ley_Proteccion_defensores_der_humanos_periodistas_op_just.pdf); and the *Mecanismo de Protección (Protection Mechanism)* which issues restraining orders.

<sup>41</sup> See e.g., Interview by RHRC/CGRS with Donald Hernandez, *supra* note 37; Interview by RHRC/CGRS with Elvin Hernandez, *supra* note 36; See also Interview by RHRC/CGRS with Kenia Olivia, *supra* note 37.

<sup>42</sup> Global Witness, *Standing Firm: The Land and Environmental Defenders on the Frontlines of the Climate Crisis* (Sept. 2023), <https://www.globalwitness.org/en/campaigns/environmental->

The State's failure to properly regulate, monitor, or control activities that cause environmental damage has aggravated the situation. Environmental licenses and permits are granted without any environmental assessments, with a near total lack of transparency.<sup>43</sup> Generally, State agencies responsible for conducting environmental impact studies neglect their duties. Even when these studies are conducted, companies often disregard environmental regulations, as it is more cost-effective to pay fines rather than to implement the required measures.<sup>44</sup> Furthermore, State authorities fail to investigate or pursue legal action against illegal projects that cause environmental harm, including mines, palm oil plantations, and logging.<sup>45</sup>

### **b. Environmental degradation and increased vulnerability**

As a result of these practices and the insufficient enforcement of environmental regulations, mega-industrial projects amplify the adverse effects of climate change, heightening Honduras' pre-existing vulnerability to floods.<sup>46</sup> For example, expansive monocultures such as palm oil plantations damage riverbanks and soil, and increase sedimentation in rivers, increasing the area's susceptibility to inundations.<sup>47</sup>

Mega-industrial projects also diminish the country's resilience to drought. They considerably reduce access to drinkable water by contaminating and/or drying up the rivers and increase food insecurity by destroying the ecosystem and monopolizing arable lands. For instance, mining contaminates water supplies with toxic heavy metals, including lead, mercury, and cyanide, causing severe health problems in the communities where

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[activists/standing-firm/](#) (reporting that Honduras is in the top five most deadly countries for land defenders).

<sup>43</sup> See Interview by RHRC/CGRS with Kenia Olivia, *supra* note 37.

<sup>44</sup> Juan Pablo Duron, *Impactos del Extractivismo en la Vida de las Mujeres Indígenas y Campesinas Defensoras de Derechos Humanos y de los Territorios*, (Dec. 12, 2022) (onfile with CGRS).

<sup>45</sup> See e.g., Max Radwin, 'It's Getting Worse': National Parks in Honduras Hit Hard By Palm Oil, Mongabay, (Apr. 11, 2019), <https://news.mongabay.com/2019/04/its-getting-worse-national-parks-in-honduras-hit-hard-by-palm-oil/>; Earthsight, *No Respite For Honduras' Protected Forests As Illegal Oil Palm Continues To Advance*, (June, 14, 2019), <https://www.earthsight.org.uk/news/idm/no-respite-honduras-protected-forests-illegal-oil-palm-continues>.

<sup>46</sup> See Radwin, *supra* note 45; see also Interview by RHRC/CGRS with Donald Hernandez, *supra* note 37; Leonardo Guevara & Lesly Frazier, *Palm Oil, Fire Pushing Protected Areas in Honduras to the 'Point of no Return'*, Mongabay (Dec. 30, 2019), <https://news.mongabay.com/2019/12/palm-oil-fire-pushing-protected-areas-in-honduras-to-the-point-of-no-return/>; see also Interview by RHRC/CGRS with Yolanda Rodriguez, ERIC-SJ, Zoom (June 22, 2022) (on file with CGRS).

<sup>47</sup> See, e.g., Interview by RHRC/CGRS with Elvin Hernandez, *supra* note 36.

mining companies operate.<sup>48</sup> Mining also requires an extraordinary amount of water in a region already suffering from water scarcity, and has, in some places, completely dried up water sources.<sup>49</sup> People in communities where these mega-projects operate have been forced to leave in search of water, food, and safety.<sup>50</sup>

In sum, Honduras' environmental crisis is worsened by policies that have facilitated unchecked industrial activity at a high cost to people and nature. This pattern exacerbates the effects of the climate emergency, including an increase in human rights violations, and underlines the State's negligence of its most vulnerable populations. The next section will address the acute and disproportionate impact of this crisis on marginalized groups.

### **3. The disproportionate impact of the climate emergency on certain Hondurans**

Marginalized groups, entitled to special protections under Inter-American standards, are particularly susceptible to the effects of climate change and environmental degradation in Honduras. These groups include Indigenous peoples and women.

#### **a. Indigenous peoples**

The way of life of Indigenous and Garifuna peoples is deeply connected to their lands, with their survival relying on access to and the integrity of local ecosystems.<sup>51</sup> Development projects, such as the San Andrés gold mine in the Province of Copán, have wrought lasting devastation on local Indigenous communities. The mine commenced operations without the required proper consultation with communities,<sup>52</sup> adequate environmental impact assessments, or regulatory enforcement. This neglect resulted in air and water pollution that caused a host of health issues among locals, including respiratory, skin and gastro

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<sup>48</sup> *Id.*; see also Interview by RHRC/CGRS with Donald Hernandez, *supra* note 37.

<sup>49</sup> See e.g., Environmental Network for Central America (ENCA), *A Two Sided Story – Mine-Affected Communities tell their Stories of Destruction and Death outside Honduras' "First International Mining Congress"*, (Jul. 19, 2015), <https://enca.org.uk/blog/2015/07/19/a-two-sided-story-mining-honduras/> (reporting on the Martin mining project in Valle de Siria, owned by Canadian mining corporation Goldcorp, which dried up 17 out of the 21 water sources of the local area).

<sup>50</sup> Peace Brigades International, *Update Guatemala, Mexico, Honduras (Aug. 15 to Oct. 21, 2022)*, 28 (2022) (on file with CGRS).

<sup>51</sup> See e.g., Interview by RHRC/CGRS with Donald Hernandez, *supra* note 37; Interview by RHRC/CGRS with Elvin Hernandez, *supra* note 36.

<sup>52</sup> Karen Spring, *Mining in a State of Impunity*, Honduras Solidarity Network & MiningWatch Canada 4, (June 28, 2016) [https://issuu.com/karenspring/docs/mining\\_in\\_a\\_state\\_of\\_impunity\\_june](https://issuu.com/karenspring/docs/mining_in_a_state_of_impunity_june).



intestinal conditions.<sup>53</sup> Mining activities led to the depletion of vital streams,<sup>54</sup> undermining the community's ability to sustain itself. The related destruction of an ancestral cemetery dealt a further blow to their cultural identity and connection to the lands.<sup>55</sup>

Despite Honduras' official acknowledgement of the inherent right of Indigenous people to environmental conservation and their traditional practices' contribution to this end,<sup>56</sup> the State continues to deprive Indigenous people of control over their territories.<sup>57</sup> Moreover, Indigenous peoples throughout Honduras are threatened, criminalized, disappeared, and forcibly displaced as a consequence of their efforts to protect their lands and their stances against policies and projects that harm the environment.<sup>58</sup> Entrenched racial biases and a

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<sup>53</sup> See e.g., Jessica Sherman, *Honduras: Open Pit Mines Threaten San Andrés Communities*, Global Greengrants Fund (Jan. 28, 2005), <https://www.greengrants.org/2005/01/28/honduras-open-pit-mines-threaten-san-andres-communities/>; Anna Cody, *Presentation to the Committee on Economic, Social & Cultural Rights (CESR): Gold Mining in Honduras*, CESR, <https://www.cesr.org/sites/default/files/downloads/CESCR%20presentation%20on%20Honduras%20by%20CESR.pdf>; Spring, *supra* note 52; Rory Carroll, *Gold Giant Faces Honduras Inquiry Into Alleged Heavy Metal Pollution*, *The Guardian* (Dec. 9, 2009),

<https://www.theguardian.com/environment/2009/dec/31/goldcorp-honduras-pollution-allegations>.

<sup>54</sup> See Maxwell Radwin, *Mining Company Destroys Indigenous Cemetery During Expansion in Honduras*, *Mongabay* (revised June 21, 2022), <https://news.mongabay.com/2022/06/mining-company-destroys-indigenous-cemetery-during-expansion-in-honduras/>; Carroll, *supra* note 53.

<sup>55</sup> See Radwin, *supra* note 54.

<sup>56</sup> G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Oct. 2, 2007), <https://www.refworld.org/docid/471355a82.html>.

<sup>57</sup> See, e.g., Interview by RHRC/CGRS with Donald Hernandez, *supra* note 37; see also Case of the Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶ 259-260 (Oct. 8, 2015), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_305\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_305_ing.pdf) (IACtHR decision in favor of the Garífuna community of Triunfo de la Cruz, which orders the State of Honduras to grant the community a title of collective property over the territories they inhabit. The Court concluded that the State of Honduras had violated the right to collective ownership of ancestral territory, and the right to prior, free and informed consent).

<sup>58</sup> See e.g., Anastasia Moloney, *Honduran Minority Fears for Survival After Leaders Abducted*, *Reuters* (July, 31, 2020); Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (OACNUDH), *Sobre la Situación de los Derechos Humanos en Honduras*, 10, (Mar. 6, 2023), <https://reliefweb.int/report/honduras/situacion-de-los-derechos-humanos-en-honduras-informe-del-alto-comisionado-de-las-naciones-unidas-para-los-derechos-humanos-sobre-la-situacion-de-los-derechos-humanos-en-hondura-ahrc5224-advance-unedited-version> (Although Indigenous and Garífuna people represent only about 10 percent of Honduras' population, almost 40 percent of the attacks against human rights defenders in Honduras in 2022 were directed at them).

legacy of social exclusion deny Indigenous peoples' access to the protection and justice they are due.<sup>59</sup>

Compounding these challenges is the State's failure to provide basic infrastructure and services in rural areas, predominantly inhabited by Indigenous groups. Such communities often lack developed roads, schools or health centers, and access to running water. Consequently, these populations are left out of post-disaster State relief efforts, making them particularly susceptible to devastation brought by the climate emergency.<sup>60</sup>

## **b. Women**

The impacts of the climate emergency and environmental degradation in Honduras place women's lives, personal integrity, and health at particular risk. This manifests in several ways, including increased displacement.

Honduras, like many other countries in the Americas, is dominated by patriarchal norms where women are relegated to the domestic or private sphere.<sup>61</sup> As one example, in most rural households, women and girls are responsible for collecting water.<sup>62</sup> Droughts caused by the climate emergency force women to travel further away from their homes in search of water.<sup>63</sup> This increases their risk of being sexually assaulted, raped, or kidnapped.<sup>64</sup> In addition, women are disproportionately affected by conditions such as cancers, skin diseases, and miscarriages,<sup>65</sup> due to their increasingly frequent and prolonged contact with water contaminated as a result of human-induced environmental degradation.

In the aftermath of environmental disasters like Hurricanes Eta or Iota, the incidence of gender-based violence surges. Many women, and even girls, are coerced by State authorities or other relief workers to exchange sex for emergency aid. Additionally, they face an escalated risk of sexual violence and other violent assaults in emergency shelters,

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<sup>59</sup> See OACNUDH, *supra* note 58, at 13; See also International Service for Human Rights, *El Rol de las Empresas y los Estados en las Violaciones Contra los Defensores y las Defensoras de los Derechos de la Tierra, el Territorio y el Ambiente*, CEHPRODEC (Oct. 2015), 42, <https://cehprodechn.org/wp-content/uploads/2020/12/Civil-society-organization-joint-reopr-defensoras-del-medio-ambiente-2015.pdf>.

<sup>60</sup> See *e.g.*, Series of Interviews by RHRC/CGRS with Donald Hernandez, Director of Honduran Centre for the Promotion of Community Development (CEHPRODEC) (Nov. 2022 to Sept. 2023) (on file with CGRS).

<sup>61</sup> Claudia Herrmannsdorfer, Honduran Attorney and Women's Rights Expert, Expert Declaration (June 28, 2023) (on file with CGRS).

<sup>62</sup> See Interview by RHRC/CGRS with Donald Hernandez, *supra* note 60.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

where community safety structures have broken down.<sup>66</sup> Experts note that disasters precipitate a rise in early forced marriages or unions for girls.<sup>67</sup>

Within the scope of mega-industrial projects previously discussed, corporations have employed gender-based violence as a tactic to seize land or quell community resistance.<sup>68</sup> Women taking a stand to defend their territories against harmful environmental policies or large-scale projects often face brutal repression.<sup>69</sup>

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As illustrated by this case study on Honduras, the climate emergency in the Latin American and Caribbean region compounds existing injustices, with marginalized communities facing systemic violations of their rights to life, health, and personal integrity, among others. These violations, in turn, fuel displacement and perpetuate a cycle of marginalization and vulnerability. As much climate-related displacement occurs internally within a country, we turn next to international and regional legal standards relating to the right to stay and governing the protection and assistance of internally displaced persons.

#### **IV. STATES HAVE AN OBLIGATION TO PROTECT POPULATIONS BEFORE AND AFTER DISPLACEMENT OCCURS, UPHOLDING THE RIGHTS OF COMMUNITIES TO STAY IN PLACE AND TO RETURN WHEN POSSIBLE**

The vast majority of climate displaced people will move internally before seeking refuge outside their country's borders<sup>70</sup> and thus, States have a duty to assist and protect populations that are internally displaced in the context of the adverse effects of the climate emergency.<sup>71</sup> In 2022, environmental disasters forced 32.6 million people to leave their

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

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See Duron, *supra* note 44.

<sup>70</sup> UNHCR, WHY UNHCR IS TAKING ACTION ON CLIMATE CHANGE DISPLACEMENT, <https://www.unhcr.org/innovation/why-unhcr-is-taking-action-on-climate-change-displacement/> (last visited Nov. 16, 2023); UNHCR, *Global Trends: Forced Displacement in 2017*, 2, (2018), <http://www.unhcr.org/5b27be547.pdf>.

<sup>71</sup> Amici express their gratitude to Alexandra Rose Rinaldi, a student specializing in Environmental and International Law at the Elisabeth Haub School of Law at Pace University, for her contribution to this section of the brief.

homes, nearly 50 percent higher than the average number of displacements in the past decade and most of which were induced by weather-related hazards.<sup>72</sup>

States have an obligation to design, develop, and implement comprehensive management policies to protect the rights of adversely affected populations before and in the aftermath of sudden and slow-onset events, including respecting the rights of people to stay in their communities and their countries, as well as allowing return when possible.<sup>73</sup>

The following sections will delve into crucial aspects of frameworks in place to protect the right to stay for populations at risk of or internally displaced in the context of the climate emergency. Specifically, we will examine the international human rights framework safeguarding these communities and highlight rights enshrined in the American Convention on Human Rights (“American Convention”).

## **A. International human rights law protects both the rights of communities to remain *in situ* and the rights of internally displaced persons.**

### **1. The right to not be displaced in international law**

Individuals have the inherent right to remain in their countries, safeguarding their identity and cultural heritage. Multiple international law instruments protect the right of individuals to choose their residence and imply the existence of the right not to be displaced.<sup>74</sup> The

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<sup>72</sup> IDMC, *Global Report on Internal Displacement* (2023), <https://www.internal-displacement.org/global-report/grid2023/>; see also Migration Data Portal, *Environmental Migration* [https://www.migrationdataportal.org/themes/environmental\\_migration\\_and\\_statistics](https://www.migrationdataportal.org/themes/environmental_migration_and_statistics) (last visited Aug. 23, 2023); Climate Refugees, *Global Displacement On the Rise, But Lack Of Comprehensive Data and Understanding Of Climate Change Displacement Persists*, <https://www.climate-refugees.org/spotlight/2023/06/26/climate-displacement> (last visited Aug. 30, 2023).

<sup>73</sup> See generally *Climate Emergency: Scope of Inter-American Human Rights Obligation*, Inter-Am. Comm’n H.R., Res. No. 3/2021, 5 (adopted Dec. 31, 2023), [https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion\\_3-21\\_ENG.pdf](https://www.oas.org/en/iachr/decisions/pdf/2021/resolucion_3-21_ENG.pdf).

<sup>74</sup> Maria Stavropoulou, *The Right Not to be Displaced*, 9 Am. Univ. Int’l Law Rev. 689 (1994), <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1473&context=auilr>; see also Michèle Morel, Maria Stavropoulou & Jean-François Durieux, *The history and status of the right not to be displaced*, 41 Forced Migration Rev. 5 (2013) <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/preventing/morel-et-al.pdf> (observing that “[t]he many existing fragments of law relating to arbitrary displacement have a common thread running through them, revealing a human right not to be displaced.”). Furthermore, “the International Law Association (ILA), a non-governmental organization devoted to the study and development of international law, adopted the London Declaration of International Law Principles on Internally Displaced Persons which includes an explicit reference to the right not to be displaced.” *Id.* at 5; see also Romola Adeola, *The right not to be arbitrarily displaced under the United Nations Guiding Principles on Internal Displacement*, 16 Afr. Hum. Rts. Law J. 83 (2016) [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1996-20962016000100005](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962016000100005).

Universal Declaration of Human Rights recognizes that “[e]veryone has the right to freedom of movement and residence within the borders of each State.”<sup>75</sup> Similarly, the International Covenant on Civil and Political Rights (ICCPR) safeguards freedom of movement and the right to choose where one lives.<sup>76</sup>

Furthermore, the ICCPR’s prohibition against discrimination on the basis of sex, race, religion, political opinion, or national origin is relevant to the treatment of internally-displaced persons (IDPs), who are often members of marginalized groups.<sup>77</sup> In the same vein, the International Convention on the Elimination of All Forms of Racial Discrimination asserts that States must provide equality before the law for all without distinction to race, color, or national or ethnic origin, notably in the enjoyment of the right to freedom of movement.<sup>78</sup> These instruments underscore the right to stay by affirming the principles of freedom of movement, non-discrimination, and the right to remain in one’s country of origin.<sup>79</sup>

## **2. The guiding principles on internal displacement**

Often, IDPs are in a vulnerable situation because they “have had to weigh up the threats they face against limited resettlement options, in an ongoing context of marginalisation”<sup>80</sup> and often experience a “lack of access to basic services, family separation, sexual and gender-based violence, trafficking, discrimination, and harassment.”<sup>81</sup>

The Guiding Principles on Internal Displacement (hereinafter the “Guiding Principles”), though nonbinding, consolidate the applicable existing international law on internal

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<sup>75</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), art. 13.

<sup>76</sup> G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 19, 1956), 999 U.N.T.S. 171, art. 12.

<sup>77</sup> *Id.*, art. 2.

<sup>78</sup> G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965), 660 U.N.T.S. 195, art. 5(d)(i).

<sup>79</sup> See generally Rosalyn Higgins, *The Right in International Law of an Individual to Enter, Stay In and Leave a Country*, 49 Intl. Affairs 341 (1973) <https://www.jstor.org/stable/2616836>.

<sup>80</sup> Roger Few, Viviana Ramírez, Maria Teresa Armijos, et al., *Moving with risk: Forced displacement and vulnerability to hazards in Colombia*, 144 World Dev. 1, 2 (2021), <https://www.sciencedirect.com/science/article/pii/S0305750X21000942> (noting that “the humanitarian category of ‘internally displaced person’ labels and stigmatises people, fixing them in particular social positions that can undermine their dignity, restrict their possibilities and continue to produce uncertain futures”); see also Ayesha Siddiqi, Katie Peters, & Julia Zulver, *‘Doble afectación’: living with disasters and conflict in Colombia*, Overseas Development Institute (2019), <https://cdn.odi.org/media/documents/12881.pdf>.

<sup>81</sup> UNHCR, IDP DEFINITION, <https://emergency.unhcr.org/protection/legal-framework/idp-definition> (last visited Nov. 16, 2023).

displacement and provide some of the only internationally recognized standards for the protection and assistance of internally displaced individuals in need of refuge, settlement, and reintegration.<sup>82</sup> Significantly, the Guiding Principles recognize displacement in the context of disasters.<sup>83</sup> They also articulate how States must take all measures available to minimize displacement in the first place.<sup>84</sup>

Legal experts interpret the Guiding Principles and existing international law to impose on States (1) the duty to respect the right not to be displaced by refraining from carrying out arbitrary displacement, and (2) the duty to protect the right not to be displaced from being threatened by disasters.<sup>85</sup>

The international community has embraced the Guiding Principles,<sup>86</sup> with several States incorporating them into national law.<sup>87</sup> Scholars observe that “the right not to be displaced has on various occasions been recognised as a universally applicable human right, and can therefore be considered an emerging right in international law.”<sup>88</sup>

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<sup>82</sup> U.N. Guiding Principles on Internal Displacement, U.N. Secretary-General, U.N. Doc. E/CN.4/1998/53/Ad.2 (1998), <https://www.unhcr.org/us/sites/en-us/files/legacy-pdf/43ce1cff2.pdf>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* The Guiding Principles emphasize that States have a responsibility to safeguard the well-being of citizens and residents under their jurisdiction. Principle 5 articulates that States “shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.” Principle 6 articulates the “right [of every human being] to be protected against being arbitrarily displaced from his or her home or place of habitual residence”, while Principle 14 recognizes that “[e]very internally displaced person has the right to liberty of movement and freedom to choose his or her residence.” Furthermore, Principle 28 recognizes that the authorities “have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.

<sup>85</sup> See Morel et al., *supra* note 74, at 5.

<sup>86</sup> G.A. Res. 58/177, at 1-3 (Dec. 22, 2013), <https://www.refworld.org/docid/415c24844.html>.

<sup>87</sup> OHCHR, *States Must Incorporate Guiding Principles into Domestic Laws and Policy Affecting Internally Displaced* (Apr. 17, 2023), <https://www.ohchr.org/en/press-releases/2023/04/states-must-incorporate-guiding-principles-domestic-laws-and-policy> (“The Guiding Principles. . . are recognized in the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention) and have inspired 46 countries to develop laws, policies, strategies or action plans on internal displacement.”).

<sup>88</sup> See Morel et al., *supra* note 74, at 5.

### 3. Other guidance and soft law instruments

Other relevant soft law instruments include the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles),<sup>89</sup> the Operational Guidelines on Human Rights and Natural Disasters from the UN Inter-Agency Standing Committee, the Framework on Durable Solutions for Internally Displaced Persons,<sup>90</sup> as well as Human Rights Council Resolutions 7/23,<sup>91</sup> 10/4,<sup>92</sup> and 18/22<sup>93</sup> addressing human rights and climate change, among others.<sup>94</sup>

Relatedly, the United Nations Framework Convention on Climate Change's (UNFCCC) Executive Committee established a Task Force on Displacement, which recommends the publication of standards and tools to guide authorities, as well as increased capacity building and technical support to avert, minimize, and address cross-border and internal displacement.<sup>95</sup>

Collectively, these instruments and initiatives promote a human rights-based approach and recognize the right to stay by prioritizing the protection and well-being of communities before and in the aftermath of displacement. States must provide support, resources, and solutions that enable people to remain in their homes and adapt to the challenges posed by environmental disruption. States should also integrate relevant international law frameworks to develop and implement enduring strategies designed to enhance the protection of communities in the context of both sudden and slow-onset disasters.

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<sup>89</sup> U.N. Sub-Comm'n on the Promotion & Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles)*, U.N. Doc. E/CN.4/Sub.2/2005/17 (2005), <https://www.unhcr.org/us/sites/en-us/files/legacy-pdf/50f94d849.pdf>.

<sup>90</sup> Inter-Agency Standing Committee, *Framework on Durable Solutions for Internally Displaced Persons*, United Nations Office for the Coordination of Humanitarian Affairs (Apr. 5, 2010), <https://interagencystandingcommittee.org/other/iasc-framework-durable-solutions-internally-displaced-persons>.

<sup>91</sup> Human Rights Council Res. 7/23, U.N. Doc. A/HRC/RES/7/23 (Mar. 28, 2008), [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/7/23](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/7/23).

<sup>92</sup> Human Rights Council Res. 10/4, U.N. Doc. A/HRC/RES/10/4 (Mar. 26, 2009), [https://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_10\\_4.pdf](https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf).

<sup>93</sup> Human Rights Council Res. 18/22, U.N. Doc. A/HRC/RES/18/22 (Oct. 12, 2011), <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/A.HRC.RES.18.22.pdf>.

<sup>94</sup> Maxine Burkett, *Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice*, 53 *Harvard Civ. Rts.-Civ. Lib. L. Rev.* 445, 470-71 (2018) <https://journals.law.harvard.edu/crcil/wp-content/uploads/sites/80/2018/11/Burkett.pdf>.

<sup>95</sup> See e.g., U.N. Framework Convention on Climate Change (UNFCCC) Executive Committee of the Warsaw International Mechanism for Loss and Damage, *MIGRATION, DISPLACEMENT, AND MOBILITY*, <https://unfccc.int/wim-excom/areas-of-work/migration-displacement-and-human-mobility> (last visited Sept. 7, 2023).

## **B. The American Convention protects both the rights of individuals to remain in place and the rights of internally displaced persons**

The American Convention addresses freedom of movement and residence, providing that “[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”<sup>96</sup>

Through resolution 3/19, the Inter-American Commission on Human Rights has recognized that the climate emergency can trigger protections under the Inter-American System on Human Rights.<sup>97</sup> The Commission has noted that in the aftermath of disasters, freedom of movement and residence is not only limited, but various human rights are also impinged upon, including the rights to life, health, food, property, housing, and work. The impact of such events disproportionately affect society’s most vulnerable—women, children, the elderly, the disabled, and those living in poverty—who are also the least equipped to cope with the ensuing challenges.<sup>98</sup>

In the past, the Commission has expressed concern regarding the rights of IDPs in the aftermath of environmental disasters.<sup>99</sup> This has been particularly salient for communities facing racial discrimination and socioeconomic exclusion.<sup>100</sup> In 2017, after a wave of disasters, the Commission called on States in the Americas to implement shared responsibility and collective action mechanisms to support individuals affected by displacement.<sup>101</sup> According to the Commission, these mechanisms should include the establishment of measures to provide humanitarian aid and facilitate the restoration of, or compensation for, lost property and possessions, as indicated in the Guiding Principles on

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<sup>96</sup> Organization of American States (OAS), American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, art. 22(1).

<sup>97</sup> Inter-Am Comm’n on Human Rights (IACHR), *Principios sobre Políticas Públicas de Memoria en las Américas* (Nov. 9, 2019), <https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-3-19-es.pdf>.

<sup>98</sup> IACHR, *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System*, ¶ 65 (2015); IACHR, *Human Mobility Inter-American Standards*, OEA/Ser.L/V/II. (Dec. 31, 2015), <http://www.oas.org/en/iachr/reports/pdfs/humanmobility.pdf>.

<sup>99</sup> See e.g., IACHR, *IACHR Expresses Concern Over Situation In Camps for Displaced Persons in Haiti*, OAS (Nov. 5, 2010), <https://www.cidh.oas.org/Comunicados/English/2010/115-10eng.htm>.

<sup>100</sup> See e.g., Chris Kromm & Sue Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement: A Global Perspective on a National Disaster*, Institute for Southern Studies (Jan. 2008), 13, [https://www.brookings.edu/wp-content/uploads/2012/04/0114\\_ISSKatrina.pdf](https://www.brookings.edu/wp-content/uploads/2012/04/0114_ISSKatrina.pdf).

<sup>101</sup> See IACHR, *IACHR Expresses Solidarity with People Affected by Earthquakes and Hurricanes in Countries of the Region and Urges States and the International Community to Take Steps to Address the Situation of Those Affected*, OAS (Sept. 12, 2017), [https://www.oas.org/en/iachr/media\\_center/PReleases/2017/139.asp](https://www.oas.org/en/iachr/media_center/PReleases/2017/139.asp).



Internal Displacement. The Commission emphasized that, in light of the increasing severity of the climate emergency, such measures should also enhance the long-term preparedness and resilience of States and communities.<sup>102</sup>

This Court has articulated States' human rights obligations with respect to IDPs. Although the Court's jurisprudence has been developed primarily in the context of forced displacement due to civil disruption, violence, and conflict, these protection standards are applicable in the context of environmental or climate displacement.

In *Masacre de Mapiripán vs. Colombia* (2005), this Court emphasized that States have an obligation under the American Convention not only to prevent displacement, but also to ensure suitable conditions for individuals to return home safely.<sup>103</sup> This case underscored that the right to stay involves more than protection from forced displacement, but also the obligation of States to provide an environment where people can live with dignity and security.<sup>104</sup> The Court further articulated these obligations in *Ituango vs. Colombia* (2006), observing that States' obligations to respect individuals' right to stay and freedom of movement requires both refraining from violating these rights directly and taking proactive steps to ensure an environment where these rights can be fully realized.<sup>105</sup> The *Ituango* decision emphasized the importance of implementing policy mechanisms to assist IDPs and guaranteeing the safe return and resettlement of those facing internal displacement.<sup>106</sup>

Both cases articulate the scope of protection under the American Convention and reinforce that human rights are not isolated concepts but rather a complex web of interrelated protections. The violation of one right, such as the freedom of movement or right to stay, can lead to violations of other fundamental rights, such as the right to life.<sup>107</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> Case of the "Mapiripán Massacre" v. Colombia, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 122, ¶¶175, 291 (Sept. 15, 2005), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_134\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf) (The Court found Colombia had violated plaintiff's rights under Article 22(1) of the American Convention which relates to freedom of movement and the right to choose one's residence).

<sup>104</sup> *Id.* at 113 ("To comply with said obligations, States must abstain from carrying out actions that in any way, directly or indirectly, create situations of de jure or de facto discrimination, and they must also take positive steps to revert or change existing discriminatory situations in their societies, to the detriment of a given group of persons.").

<sup>105</sup> Case of the Ituango Massacres vs. Colombia, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148 (July 1, 2006) [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_148\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_148_ing.pdf).

<sup>106</sup> *Id.*

<sup>107</sup> See *Mapiripán Massacre*, *supra* note 103, ¶ 186; and *Ituango*, *supra* note 105, ¶ 234 (In both cases, the Court concluded that the situation of displacement endured by the victims also implicated other rights, including the right of the next of kin of the victims to a decent life).

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In line with State obligations under international human rights law and the American Convention we request the Court to affirm that States have a duty to protect populations displaced or at risk of displacement due to the adverse effects of the climate emergency, and to uphold the rights of communities to remain in their homes and return when feasible. In line with these obligations, States in the Americas should, at the very least: (1) recognize internal climate displacement and its implications for the rights protected under the American Convention; (2) respect, protect, and fulfill populations' right to stay in place by implementing climate change adaptation measures that increase resilience and limit the vulnerability of populations to climate and environmental risks; (3) promote and implement stronger coordination between relevant government agencies working on disaster risk management and climate change adaptation; and (4) integrate a human rights approach to climate-related human mobility that centers the needs and experiences of affected populations in line with the Guiding Principles on Internal Displacement and other relevant guidance.

## **V. STATES MUST MAKE USE OF EXISTING LEGAL FRAMEWORKS TO PROTECT INDIVIDUALS DISPLACED ACROSS BORDERS IN THE CONTEXT OF THE CLIMATE EMERGENCY**

While there is a lack of comprehensive data focusing specifically on cross-border displacement in the context of the climate emergency, individuals displaced due to climate-related factors—like others seeking safety in the region—encounter policies that restrict their mobility and access to territory.<sup>108</sup> These policies—coupled with extremely limited

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<sup>108</sup> See CGRS, Haiti Justice Partnership, Haitian Bridge Alliance, *Making a Mockery of Asylum: The Proposed Asylum Ban, Relying on the CBP One for Access to Ports of Entry, Will Separate Families and Deny Protection* (Mar. 2023), <https://cgrs.uclawsf.edu/our-work/publications/making-mockery-asylum-proposed-asylum-ban-relying-cbp-one-app-access-ports>; IRAP, Human Security Initiative (HUMSI), U.S. Committee for Refugees and Immigrants (USCRI), *Climate of Coercion, Environmental and Other Drivers of Cross-Border Displacement in Central America and Mexico* (Mar. 2023) at 7, <https://refugeerights.org/wp-content/uploads/2023/03/Climate-of-Coercion-Report.pdf>; University of Pennsylvania Carey Law School, CGRS et al., *Submission for Report of the Special Rapporteur on the human rights of migrants: Human rights violations at international borders: trends, prevention, and accountability* (Feb. 2022), [https://cgrs.uclawsf.edu/sites/default/files/2022.02.28\\_OHCHR%20Submission\\_SR%20on%20Migrant%20re%20US-MX%20border.pdf](https://cgrs.uclawsf.edu/sites/default/files/2022.02.28_OHCHR%20Submission_SR%20on%20Migrant%20re%20US-MX%20border.pdf); CGRS et al., *Memo: Impact of U.S. and Mexican migration enforcement on migrant and refugee rights in Mexico* (Sept. 2021),

complementary pathways, including for family reunification and labor migration—expose migrants and asylum seekers to violence and human rights violations, including sexual violence, extortion, forced disappearances, and murder.<sup>109</sup> Such policies force migrants into dangerous migration routes where they are further endangered by climate hazards and other forms of violence. For instance, the increasing number of asylum seekers and migrants forced to cross the perilous Darién Gap face a multitude of dangers, including treacherous terrain marked by landslides, extreme heat and humidity, and rushing rivers.<sup>110</sup> Moreover, rising temperatures and changing weather patterns have contributed to making the U.S.-Mexico border the deadliest border in the world.<sup>111</sup>

This already challenging situation is compounded for climate-displaced individuals who lack a dedicated legal framework designed to address their specific protection needs.<sup>112</sup> In response, States must work on solutions “based on the principles of equity, justice, cooperation, sustainability, with a human rights approach.”<sup>113</sup>

As detailed in this section, existing international refugee and human rights law already provides avenues of protection applicable to many climate-displaced individuals and should be applied accordingly to respond to cross-border climate displacement effectively and humanely. In addition, recognizing the intricate link between climate action and human rights, alongside the obligation to protect those displaced by climate-related disasters, States must emphasize international cooperation to uphold their human rights commitments.

### **A. International and regional refugee and human rights law provides essential obligations and principles for protecting the rights of climate-displaced persons**

Existing international and regional refugee and human rights standards delineate obligations and principles for States to protect persons displaced across borders, including those displaced in the context of the climate emergency.

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<https://cgrs.uclawsf.edu/sites/default/files/NGO-Memo-Impacts-of-Mexican-U.S.-Migration-Enforcement-9.20.21-1-1.pdf>.

<sup>109</sup> See, e.g., Human Rights First, Haitian Bridge Alliance, Al Otro Lado, *Extending Title 42 would escalate dangers, exacerbate disorder, and magnify discrimination* (Apr. 2022), <https://humanrightsfirst.org/library/extending-title-42-would-escalate-dangers-exacerbate-disorder-and-magnify-discrimination/>; IRAP, HUMSI, USCRI, *supra* note 108, at 4.

<sup>110</sup> *Id.* at 8.

<sup>111</sup> *Id.* at 9.

<sup>112</sup> Report of the Office of the United Nations High Commissioner for Human Rights, *supra* note 15.

<sup>113</sup> Request, *supra* note 1, at 1.

## **1. The right to seek and receive asylum applies to climate-displaced individuals and States must interpret their obligations to protect accordingly**

This Court has already determined that both the American Convention and the American Declaration of the Rights and Duties of Man (American Declaration) crystallized the right of all persons to seek and receive asylum where they face persecution on account of their race, religion, nationality, political opinion or membership in a particular social group.<sup>114</sup> Moreover, the Court has recognized that the right to seek asylum has developed into an obligation rooted in customary international law.<sup>115</sup> For the Court, the right to seek asylum is governed by the Refugee Convention and its 1967 Protocol, as well as the Cartagena Declaration with its more expansive refugee definition, all of which hold authoritative provisions for all member States of the Organization of American States (OAS).<sup>116</sup> Therefore, it is crucial to interpret this right in a broad manner that aligns with the realities of the drivers behind displacement,<sup>117</sup> including the need to protect individuals displaced in whole or in part due to climate-related factors.

### **a. Climate displaced individuals may have valid claims under the Refugee Convention and Protocol**

The Refugee Convention and its Protocol form the cornerstone of international refugee law. This Court has recognized both these treaties as within its sphere of competence as they concern the protection of human rights in the Americas.<sup>118</sup> UNHCR advises that “[p]eople fleeing in the context of the adverse effects of climate change may have valid claims for refugee status under the Refugee Convention.”<sup>119</sup> This is especially significant given that 90 percent of refugees originate from the countries most vulnerable to climate change

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<sup>114</sup> The Institution of Asylum and its Recognition as a Human Right in the Inter-American Protection System, Advisory Opinion OC-25/18, Inter-Am. Ct. H.R. (ser. A), ¶ 131 (May 30, 2018) [https://www.corteidh.or.cr/docs/opiniones/seriea\\_25\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_25_ing.pdf).

<sup>115</sup> See, e.g., Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A), ¶¶ 73-74 (Aug. 19, 2014), <https://www.refworld.org/cases,IACRTHR,54129c854.html>; see also Case of the Pacheco Tineo Family v. Plurinational State of Bolivia, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶ 137 (Nov. 25, 2013), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_272\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_272_ing.pdf).

<sup>116</sup> OC-25/18, *supra* note 114, ¶ 30.

<sup>117</sup> *Id.* ¶¶ 131-32 (noting the importance of “going beyond historical understanding”).

<sup>118</sup> *Id.* ¶ 42.

<sup>119</sup> UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, (Oct. 1, 2020), 3, <https://www.refworld.org/docid/5f75f2734.html> (hereinafter UNHCR Legal Considerations).

impacts,<sup>120</sup> which underscores the overlap between persecution and other drivers of displacement. Therefore, the lack of a specific international framework explicitly dedicated to cross-border climate displacement calls for the full use of existing legal frameworks, including refugee law. This approach aligns with the Court’s approach of interpreting legal duties in a manner that maximizes the benefit of individual rights<sup>121</sup> and is consistent with the object and purpose of the Refugee Convention.

Among the situations where the Convention and Protocol may apply include “when the effects of climate change and disasters interact or are connected with conflict or violence or other forms of persecution” on the basis of the enumerated protected grounds.<sup>122</sup> Adverse effects of climate change should not be considered in isolation but rather understood within the context of the other conditions that interact to ultimately force people to flee their homes.<sup>123</sup> Focusing narrowly on individual climatic or disaster events “as solely or primarily natural hazards [...] might fail to recognize the social and political characteristics of the effects of climate change or the impacts of disasters or their interaction with other drivers of displacement.”<sup>124</sup>

Climate change and other drivers of displacement may combine to threaten societal structures and individual enjoyment of fundamental human rights generally.<sup>125</sup> The effects of the climate emergency do not manifest as indiscriminate hazards unconnected to underlying social determinants. Rather, as UNHCR points out,<sup>126</sup> climate impacts occur within a social and political context. A drought, for example, will not necessarily equate to famine if the State provides an adequate response that reaches the population equitably, without excluding certain groups.<sup>127</sup> Recognizing the interconnectedness of different forms

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<sup>120</sup> UN News, *Climate Change Link to Displacement of Most Vulnerable is Clear: UNHCR* (Apr. 22, 2021), <https://news.un.org/en/story/2021/04/1090432>.

<sup>121</sup> See *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-17/02, Inter-Am. Ct. H.R. (ser. A), (Sept. 17, 2002); *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 4 (July 29, 1988).

<sup>122</sup> UNHCR, *Submission by UNHCR: UN Special Rapporteur on Climate Change: Report on addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders*, (Jan. 2023), <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/cfi-hrc-53-session/submissions/submission-climatechange-hrc53-un-unhcr.docx>.

<sup>123</sup> UNHCR Legal Considerations, *supra* note 119, ¶ 5.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*; see also International Law Commission, *Draft articles on the protection of persons in the event of disasters*, article 5 ¶ 8 (2016), [www.refworld.org/docid/5f64dc3c4.html](http://www.refworld.org/docid/5f64dc3c4.html).

<sup>126</sup> UNHCR Legal Considerations, *supra* note 119, ¶ 5.

<sup>127</sup> See, e.g., UNHCR, *supra* note 3, discussing the intertwined relationship of climatic shifts and the catastrophic events they precipitate, and community vulnerabilities and resultant displacements.

of recognized status-based discrimination is therefore critical to save lives, guarantee legal rights, and extend maximum protections to all persons.

For that reason, there is a real risk that decisionmakers may fail to adjudicate refugee claims correctly in cases that implicate the effects of the climate emergency. Due to societal exclusion, individuals discriminated against due to their race, ethnicity, indigeneity, beliefs, or other distinctions disproportionately inhabit fragile geographies and climate-vulnerable areas, such as flood plains. In this context, if adjudicators view climate events as merely indiscriminate “natural” phenomena untethered to State (in)action and fail to consider the larger social context, they risk altogether missing the relevant intersectional elements of climate change and the refugee definition.

This is especially the case where individual asylum seekers, particularly without legal counsel, are unable to articulate all of the underlying societal conditions that have placed them in vulnerable circumstances. In other words, without clear directives decisionmakers risk adopting erroneous interpretations of refugee law as it relates to the effects of climate change. As UNHCR elucidates in its guidance, climate change can directly impact each specific legal element<sup>128</sup> of the refugee definition.<sup>129</sup>

Significantly, the U.S. Government has also acknowledged the impact of the climate emergency on migration and has pointed out the necessity of expanding and developing protection frameworks, most notably in the 2021 White House Report on the Impact of Climate Change on Migration. Additionally, the report calls for an assessment of how climate change may intersect with the existing criteria for refugee status, including claims in which (1) individuals are at risk due to environmental defense or climate change activism; (2) individuals may not have a viable internal relocation alternative because of the impacts of climate change; (3) individuals may experience the withholding or denial of

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<sup>128</sup> UNHCR articulates the refugee definition, as enshrined in the Refugee Convention, to encompass individuals who: (1) have a well-founded fear of (2) persecution due to (3) one or more of the recognized protected grounds (race, religion, nationality, membership in a particular social group, or political opinion); and (4) are outside their country of origin or habitual residence and are either unable or unwilling, owing to that fear, to return or seek protection from that country. *See* UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, (Feb. 2019), <https://www.unhcr.org/us/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

<sup>129</sup> UNHCR Legal Considerations, *supra* note 119, at ¶ 6; *see also Id.* at page 3, n.15, referencing *Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 at ¶ 13, NZ Sup. Ct. [www.refworld.org/cases,NZL\\_SC,55c8675d4.html](http://www.refworld.org/cases,NZL_SC,55c8675d4.html), dicta at ¶ 13, citing earlier decisions and underscoring the possibility of establishing a claim for protection under the Refugee Convention in the context of climate change, environmental degradation, and attendant disasters.

relief from climate change impacts based on a shared protected characteristic, such as race or ethnicity; and (4) climate change may impact the State's willingness or ability to protect individuals fleeing persecution.<sup>130</sup>

Amicus Center for Gender & Refugee Studies maintains a database of U.S. asylum claims presenting a wide range of scenarios, including individuals fleeing for climate-related reasons. As documented in the Center's recent advisory on analyzing such claims, these cases are often multidimensional, implicate different elements of the asylum definition, and have resulted in positive determinations.<sup>131</sup>

Indeed, climate events must be understood largely as social phenomena<sup>132</sup>—to be integrated into a holistic assessment of refugee claims. But a singular focus on individuals fleeing in the wake of a disaster as solely a status-neutral climate-driven event could result in States misapplying their *non-refoulement* obligations. Given the inextricable interconnectedness of multiple forms of discrimination, climate-related displacement calls for attentive examination of cases on an individualized basis.

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We therefore ask the Court to (1) remind States in the Americas that have not yet ratified the Refugee Convention and Protocol to consider doing so as a matter of urgency, (2) urge all States in the Americas to make the fullest possible use of existing international refugee law as reflected in UNHCR's guidance, and (3) incorporate this guidance in their own

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<sup>130</sup> The White House, *Report on the Impact of Climate Change on Migration*, (Oct. 2021), 30-31, <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>.

<sup>131</sup> CGRS, *Analyzing Asylum Claims for Individuals Fleeing Climate Change or Environmental Disasters* (Feb. 22, 2023). CGRS maintains a database of asylum cases collected from advocates across the United States. For more information on the CGRS Database and case collection, visit: <https://cgrs.uclawsf.edu/about-technical-assistance-program>. While these grant determinations in the U.S. are often the result of skilled attorneys detailing and presenting complex claims, structural differences mean this is not the case in many parts of the world, making guidance in recognizing these intersections all the more important to ensure protection needs are met.

<sup>132</sup> See, e.g., *Norma Portillo Cáceres et al. v. Paraguay*, Communication No. 2751/2016, Views of 20 September 2019 (CCPR/C/126/D/2751/2016) (Human Rights Comm.), [https://ccprcentre.org/files/decisions/Norma\\_Portillo\\_C%C3%A1ceres\\_and\\_others\\_v\\_Paraguay.pdf](https://ccprcentre.org/files/decisions/Norma_Portillo_C%C3%A1ceres_and_others_v_Paraguay.pdf) (clearly recognizing the abuse of agrochemicals and monocultures in the absence of action to protect those affected as serious violations of the right to health attributable to the State); and *Case of Kaliña & Lokono Peoples v. Suriname*, Judgment, Inter-Am. Ct. H.R. (ser. C), 53, (Nov. 25, 2015), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_309\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf) (recognizing that the grant of mining and logging concessions without proper consultation, can lead to environmental degradation, which in turn can have direct and indirect health consequences for the communities in the affected areas); see also *Id.* ¶ 214; page 53, n.237.

domestic law and policy in accordance with the principles and attendant obligations of international law.

**b. The Cartagena Declaration protects individuals and communities affected by cross-border climate displacement**

The 1984 Cartagena Declaration recommended expansion of the definition of refugee to include persons who have fled their countries because their life, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order. While fifteen States in Central and South America, as well as Mexico, have integrated a broader refugee definition based on the Cartagena Declaration into their national laws, this Court’s endorsement of the right to seek and receive asylum as articulated by the Cartagena Declaration underscores its authoritative significance for all OAS members.<sup>133</sup>

Further, this Court—noting the progressive development of international law—has recognized the refugee definition must meet the “challenges of protection derived from other displacement patterns” currently taking place.<sup>134</sup> For its part, UNHCR has stressed the key role of this Court in advancing the development of the law by noting that interpretation of the Cartagena definition should be “informed by international and regional law, especially the standards of the 1948 American Declaration of the Rights and Duties of Man, the 1969 American Convention on Human Rights, and the evolving case law of the Inter-American human rights bodies.”<sup>135</sup>

We therefore urge the Court to take this opportunity to affirm that people displaced across borders in the context of the climate emergency may come within the Cartagena definition, either because of massive violation of human rights or due to circumstances which have seriously disturbed public order. Indeed, climate disasters may similarly entail or intensify massive violations of human rights including chiefly the right to life. And the adverse effects

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<sup>133</sup> See, e.g., OC-21/14, *supra* note 115, ¶¶ 77- 79; see also OC-25/18, *supra* note 114, ¶¶ 131-132.

<sup>134</sup> *Id.*, ¶ 79.

<sup>135</sup> UNHCR, *International Protection Considerations with Regard to People Fleeing Colombia*, 79, (Aug. 2023), <https://www.refworld.org/docid/64cb691c4.html>; see also Centro por La Justicia y el Derecho Internacional (CEJIL), *Input to UN Special Rapporteur on Climate Change*, (Nov. 15, 2022), <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/cfi-hrc-53-session/submissions/2022-11-28/CEJIL.docx>; see also UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, ¶ 76 (Dec. 2, 2016), <https://www.refworld.org/docid/583595ff4.html> (“reference to the jurisprudence of the IACrHR is particularly relevant”).



of climate change can generate or amplify serious disruptions to the public order such as the failure of the State to exercise basic safety and security functions, as in the aftermath of the 2010 earthquake in Haiti.<sup>136</sup> Such threats put at risk the life, security, or freedom of individuals, which in turn forces them to flee their homes.

### **1. Massive violation of human rights**

According to the jurisprudence of the Court, “massive” relates to the magnitude of the human rights violation, regardless of duration, and can result from a single event or a series of events.<sup>137</sup> “Where the effects of human rights violations go beyond the actual or direct victims to affect large segments of the population, or even the society as a whole, the situation may also be classified as a ‘massive violation of human rights.’”<sup>138</sup> As discussed above in Part II, human rights violations in the context of the climate emergency are of paramount concern and the two issues are in many ways inextricably interrelated.

### **2. Circumstances which have seriously disturbed public order**

The element of “other circumstances which have seriously disturbed public order” should include disasters, displacement events, and hazards linked to the climate emergency. Individuals who flee because their lives, safety or freedom are threatened by climate change should therefore qualify as refugees under the Cartagena definition. While the Court has not yet issued authoritative guidance on this prong of the analysis, an extension of its jurisprudence at this moment would be especially timely.

UNHCR has recently examined the scope of this ground for protection in particular detail in an analysis of similar language in the 1969 Organization of African Unity (OAU) Convention.<sup>139</sup> UNHCR’s views are essential to understanding the Cartagena definition

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<sup>136</sup> See, e.g., IACHR, *Precautionary Measure No. 340-10, Women and girls residing in 22 Camps for internally displaced persons in Port-au-Prince, Haiti* (Dec. 22, 2010), <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/caribe/cps/pm.asp>.

<sup>137</sup> Case of the “Las Dos Erres” Massacre v. Guatemala, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶¶ 73, 79, 152, (Nov. 24, 2009), <http://www.refworld.org/docid/564ed31a4.html>.

<sup>138</sup> Case of González et al. (“Cotton Field”) v. Mexico, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶ 236, (Nov/ 19, 2009), <http://www.refworld.org/docid/564ed5234.html>.

<sup>139</sup> Cleo Hansen-Lohrey, *Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change*, UNHCR (Sept. 27, 2023), <https://www.refworld.org/docid/651422634.html>. (Note, in particular, at PDF p. 6, that the paper sets out by articulating practical guidance for determining when a “disturbance” should be considered an “event seriously disturbing public order (ESPDO).” This metric, referred to as “ESDPO indicia,” is the combination of (1) “indicators of a disturbance to public order,” and (2) “criteria for assessing when that disturbance can be characterized as ‘serious.’”

because the Cartagena Declaration's "serious disturbance to public order" ground is based on the OAU Convention's Article I(2) definition.<sup>140</sup>

The aim of "public order" must be understood as a State's obligation to protect "the rights to life, physical integrity and liberty of people within the society."<sup>141</sup> In fact, UNHCR guidance stresses that "the rights to life, physical security and liberty are *inherent* in the concept of public order."<sup>142</sup> With regard to the OAU Convention—and the Cartagena Declaration—to adopt "a narrow interpretation of the rights to life, physical integrity and liberty would be contrary to the Convention's protection-oriented object and purpose."<sup>143</sup>

Consider the massive upheavals in Venezuela, attributed to hyperinflation, essential scarcities, and political challenges, which have been recognized by scholars as events that "seriously disturb the public order."<sup>144</sup> In a parallel vein, climate-induced adversities—ranging from intensifying natural disasters to shifts in agriculture—can yield similar large-scale displacements and societal disturbances profoundly impacting human rights.

UNHCR has clarified that "whether a disturbance to public order stems from human or other causes is not determinative for concluding a serious disturbance of public order; the central concern is the *effect* of a given situation."<sup>145</sup> Therefore, a "serious disturbance of public order" can be the result of many cumulative disturbances or it may be due to a single event.<sup>146</sup>

Given increasing recognition that the Refugee Convention definition applies to people displaced in the context of the adverse effects of climate change, environmental

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The paper highlights these indicia can be used by decisionmakers to assess whether there has been a serious disturbance to public order, whether in the context of climate change or not. These indicators are thus not exclusive to climate change and may be applied to all drivers of displacement.).

<sup>140</sup> *Id.* at page 1, n.11.

<sup>141</sup> *Id.* at 46.

<sup>142</sup> *Id.* at 46 (emphasis added).

<sup>143</sup> *Id.* at 47.

<sup>144</sup> See, e.g., Luisa Feline Freier, Isabel Berganza & Cécile Blouin, *The Cartagena Definition and Venezuelan Displacement in Latin America*, 60 *Int'l Migr.* 19, 25 (2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/imig.12791>.

<sup>145</sup> UNHCR Legal Considerations, *supra* note 119, ¶ 16 (internal citations omitted) (emphasis added).

<sup>146</sup> Cleo Hansen-Lohrey, *supra* note 139, at PDF 6. "In some cases, the severity of a single indicators may be sufficient to qualify. In others, it may be the cumulative effect of numerous indicators that brings the disturbance within the scope of ESDPO. Thus, an assessment of whether a particular disturbance does (or does not) qualify as ESDPO can only be made on a case-by-case basis, taking into account all the relevant evidence and circumstances."

degradation and the impacts of disasters,<sup>147</sup> a State's response, or lack thereof, in the face of climate-driven effects, including displacement, is relevant in determining refugee status. For example, in Guatemala, drought and storms have led to significant displacement and the government has done almost nothing to ensure the rights of the displaced, especially those who do not own property. Years after hurricane and storms, many of the displaced still lack adequate shelter and food.<sup>148</sup>

Lastly, it is important to note that a "serious disturbance to public order" in no way hinges on an official declaration of a public emergency. While possibly illustrative, such a declaration is not a prerequisite to finding a public disturbance.<sup>149</sup> Denying protection to vulnerable communities in the absence of a State's recognition of its own incapacity would serve only to further exacerbate the precarity of those individuals in need of protection.<sup>150</sup>

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We ask the Court to remind States to (1) incorporate the Cartagena Declaration into their domestic legal orders. We also urge the Court to recognize that (2) people may be forced to flee because of massive violation of human rights arising from the adverse effects of climate change or disasters, including the human right to a healthy environment;<sup>151</sup> and we similarly urge the Court to explicitly acknowledge that (3) individuals may be forced to flee due to serious disturbances to the public order as a consequence of climate change, and should be protected without regard to any declaration of public emergency.

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<sup>147</sup>UNHCR Legal Considerations, *supra* note 119; *see also* IOM et. al., *Research Agenda For Advancing Law and Policy Responses to Displacement and Migration in the Context of Disasters and Climate Change in Africa*, (Nov. 2021), <https://environmentalmigration.iom.int/sites/g/files/tmzbdl1411/files/documents/Research%20Agenda%20-%20Africa%20-%20EN%20-%202021.pdf>; Tamara Wood & Cleo Hansen-Lohrey, Disasters, Climate Change and Public Order: A Principled Application of Regional Refugee Definitions, RLI Blog on Refugee Law and Forced Migration (May 24 2021), <https://rli.blogs.sas.ac.uk/2021/05/24/disasters-climate-change-and-public-order/>.

<sup>148</sup> Rachel Schmidtke & Kayly Ober, *Two Years after Eta and Iota: Displaced and Forgotten in Guatemala*, Refugees International (Feb. 17, 2023), <https://www.refugeesinternational.org/reports-briefs/two-years-after-eta-and-iota-displaced-and-forgotten-in-guatemala/>.

<sup>149</sup> UNHCR Guidelines, *supra* note 139, ¶ 79.

<sup>150</sup> *See* Sanjula Weerasinghe, *In Harm's Way: International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change*, UNHCR, 81-82, (Dec. 2018), <https://www.refworld.org/docid/5c2f54fe4.html>.

<sup>151</sup> OC-23/17, *supra* note 4.

## **2. The principle of *non-refoulement* protects the rights of climate-displaced individuals whether or not they meet the refugee definitions**

The American Convention includes a *non-refoulement* obligation in Article 22(8), while the American Declaration references the obligation in Article XXVII. This Court has recognized this right is not limited to refugees or asylees but extends to anyone whose life, integrity, or freedom is at risk.<sup>152</sup>

Indeed, the Court has noted that the *non-refoulement* obligation is conditioned by the obligations derived from international refugee law and human rights law, including the prohibition against torture. This human rights-based prohibition against return offers an additional legal basis for protection for those who are not asylees or refugees under the Refugee Convention and Protocol.<sup>153</sup>

Relatedly, the Court has also recognized the link between the right to life, physical and moral integrity, and health care in the context of *refoulement*. “[T]he rights to life and personal integrity are directly and closely linked with human health care.”<sup>154</sup> If the return of a person leads to a serious deterioration of health or causes death, this may constitute a *refoulement* in violation of international human rights law.<sup>155</sup> The Human Rights Committee and the IACHR have also taken this approach.<sup>156</sup>

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<sup>152</sup> Pacheco Tineo Family v. Bolivia, *supra* note 115, ¶ 135 (“it may be considered that, under the Inter American system, the right of any alien, and not only refugees or asylees, to *non-refoulement* is recognized, when his life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation in the country where he is.”).

<sup>153</sup> OC-21/14, *supra* note 115, ¶ 234, (“the competence of national authorities to decide who may remain on its territory and, consequently, the power to return a person to his country of origin or to a third country is conditioned by the obligations derived from international law and, in particular, refugee law, international human rights law, the prohibition of torture and Article 22(8) of the American Convention. Indeed, the principle of *non-refoulement* is an integral part of these different branches of international law in which it has been developed and codified”).

<sup>154</sup> Case of Vera Vera v Ecuador, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶ 43 (May 19, 2011), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_226\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_226_ing.pdf)

<sup>155</sup> OC-21/14, *supra* note 115, ¶ 229 (“this Court has already emphasized the direct and immediate connection that exists between the rights to life and to personal integrity in the area of human health care. Thus, it could be considered that the expulsion or return of a person violates international obligations, depending on the particular circumstances of the specific person, such as in cases in which these measures would result in harming or a serious deterioration in the person’s health or, even, when it could lead to her or his death”).

<sup>156</sup> IACHR, Report No. 63/08, Case No. 12.534, *Andrea Mortlock v. United States* ¶ 94, (July 25, 2008), [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session9/US/IACHR\\_Inter-AmericanCommission\\_Annex1.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session9/US/IACHR_Inter-AmericanCommission_Annex1.pdf),

The Human Rights Committee has long recognized the *non-refoulement* obligation in the ICCPR, which similarly extends States' duties.<sup>157</sup> The ICCPR entails "an obligation not to extradite, deport, expel or otherwise remove a person" to any country in which there are substantial grounds for believing that person may be at risk of suffering irreparable harm that constitutes torture or a risk to life.<sup>158</sup>

This broad understanding of State *non-refoulement* obligations<sup>159</sup>—added to the Court's recognition of the human right to a healthy environment in its 2017 Advisory Opinion—should encourage the Court to align its interpretation with the Human Rights Committee's interpretation of the obligation in the context of climate change. In *Teitiota v. New Zealand*, the Committee determined that the prohibition of *refoulement* may encompass irreparable harms to the right to life and the prohibition against torture and cruel, inhuman, or degrading treatment within the context of climate change.<sup>160</sup> This decision is

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("Under these circumstances, the Commission finds that knowingly sending Ms. Mortlock to Jamaica with the knowledge of her current health care regime and the country's sub-standard access to similar health for those with HIV/AIDS would violate Ms. Mortlock's rights, and would constitute a de facto sentence to protracted suffering and unnecessarily premature death"); *C. v. Australia*, UN Human Rights Committee (HRC), CCPR/C/76/D/900/1999, ¶8.5 (Nov. 13, 2002), <https://www.refworld.org/cases,HRC,3f588ef00.html>, ("In circumstances where the State party has recognized a protection obligation towards the author, the Committee considers that deportation of the author to a country where it is unlikely that he would receive the treatment necessary for the illness caused, in whole or in part, because of the State party's violation of the author's rights would amount to a violation of Article 7 of the Covenant.").

<sup>157</sup> UN HRC, *General Comment No 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 12, (Mar. 29, 2004), <https://digitallibrary.un.org/record/533996?ln=en>.

<sup>158</sup> *Id.*; see also IACHR, *Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, Resolution 04/19*, 6, (Dec. 7, 2019), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf> (adopting in Principle 6 the prohibition on return "without exception when there are substantive reasons to believe that the person would be at risk of torture, or other irreparable damage in the place to which she or he would be transferred or returned" and continuing to note that "States must respect the principle of *non-refoulement*, including the prohibition of refusal at the border and indirect return, with respect to any person seeking asylum or other form of international protection.").

<sup>159</sup> *Case of Guzmán Albarracín et. al. v. Ecuador*, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶ 155, (June 24, 2020), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_405\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_405_ing.pdf) (reinforcing that the right to life should not be interpreted narrowly).

<sup>160</sup> *Ioane Teitiota v. New Zealand*, Communication No. 2728/2016, Views of 17 January 2020 (CCPR/C/127/D/2728/2016) (Human Rights Comm.) (Jan. 7, 2020), ¶ 9.3, <https://www.refworld.org/cases,HRC,5e26f7134.html> (holding that the "obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant may be broader than the scope of *non-refoulement* under international refugee law, since it may also require the protection of [non-citizens] not entitled to refugee status"); see also Jane McAdam, *Protecting People Displaced by the Impacts Of Climate Change: The UN Human Rights Committee and the Principle of Non-*

of critical importance, but further guidance is needed for States to make such determinations effectively and consistently, particularly considering the rapidly multiplying impacts of the climate emergency.

The Court has also recognized that the obligation of *non-refoulement* is not territorial in scope. That is, the duty applies not only within the territory of a State, but also at its border, in international transit zones, and on the high seas. In this way, *non-refoulement* is an “encompassing” concept because it concerns a wide variety of State conduct, including deportation, expulsion, extradition, as well as rejection at the border, non-admission, interception in international waters, and “rendition,”<sup>161</sup> which operates completely without legal process. Recognizing the comprehensive scope of *non-refoulement* is particularly crucial for safeguarding the rights of individuals displaced by climate-related events across borders, ensuring their protection at various stages of their journey.

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We urge the Court to (1) affirm that the State *non-refoulement* obligation applies when individuals face the risk of irreparable harm due to the adverse effects of climate change or disasters. Moreover, we request that the Court (2) urge States to interpret their *non-refoulement* obligations accordingly, and (3) insist that they establish proper procedures, ensuring due process for climate-displaced individuals, thus safeguarding their fundamental rights.

### **B. States must uphold the human rights of cross-border climate-displaced individuals, prioritizing international cooperation**

To address cross-border climate displacement, it is necessary for States to prioritize human rights, guided by established principles of international human rights law, including international cooperation.<sup>162</sup> First, this Court has emphasized the imperative for states to

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Refoulement, 114 Am. J. Int'l L., 708, 720 (2020), <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/protecting-people-displaced-by-the-impacts-of-climate-change-the-un-human-rights-committee-and-the-principle-of-nonrefoulement/4B8E9EBB4FE37ABEB74608742FEAD946> (While the majority did not find that Mr. Teitiota had met a threshold of “substantial grounds to establish that a real risk of irreparable harm [to the right to life],” *Teitiota* is the first explicit recognition that “human rights law prohibits governments from sending people to places where they face a real risk of life-threatening or serious harm from the adverse impacts of climate change”).

<sup>161</sup> OC-25/18, *supra* note 114, ¶ 190, [https://www.corteidh.or.cr/docs/opiniones/seriea\\_25\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_25_ing.pdf).

<sup>162</sup> The International Covenant on Economic, Social and Cultural Rights recognizes the importance of international cooperation in ensuring the realization of human rights, particularly an adequate standard of living for everyone. It emphasizes the essential role of cooperation between states in

ensure the rights of migrants, regardless of their status.<sup>163</sup> Second, the Commission has recognized the obligation of States to protect human rights violated in the context of climate change,<sup>164</sup> a responsibility that should extend to climate-displaced individuals. Moreover, the Paris Agreement explicitly acknowledges climate change as a shared concern and stresses the importance of upholding human rights, particularly for vulnerable populations, in all climate action.<sup>165</sup>

In 2022, the UN General Assembly overwhelmingly recognized the human right to a healthy environment, underscoring the vital role of international cooperation in safeguarding this fundamental right for all.<sup>166</sup> This commitment to collaboration is echoed in the Framework Principles on Human Rights and the Environment, which highlight the need to work together to prevent, reduce, and address transboundary environmental harm.<sup>167</sup>

In the Americas, the 1988 Protocol of San Salvador sets forth the right to a healthy environment and imposes an obligation on States to cooperate for the full observance of

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achieving this goal. See International Covenant on Economic, Social, and Cultural Rights, art. 11, (Jan. 3, 1976), <https://www.ohchr.org/sites/default/files/cescr.pdf>.

<sup>163</sup> Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A), ¶ 6, (Sept. 17, 2003), [https://www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf) (“That the general obligation to respect and guarantee human rights binds States, regardless of any circumstance or consideration, including the migratory status of a person.”)

<sup>164</sup> IACHR Resolution No. 3/2021, *supra* note 73, ¶ 9. (“States must comply with their international obligations to protect and guarantee the enjoyment and exercise of human rights by all persons who, as a result of environmental impacts, including those attributable to climate change, are significantly affected both individually and collectively. In this sense, when fulfilling their obligations, they must try to do so taking into account the interdependence and indivisibility existing between all rights, understood integrally and in a conglobated way, without hierarchy among themselves and enforceable in all cases before those authorities that are competent to do so.”).

<sup>165</sup> Paris Agreement, *supra* note 5, at 2.

<sup>166</sup> See UN, *UN General Assembly recognizes the right to a healthy environment in line with the Escazú Agreement*, (July 28, 2022), [<sup>167</sup> UN HRC, \*Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment\*, U.N. Doc. A/HRC/37/59, ¶ 11, 13 \(Jan. 24, 2018\), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/004/48/PDF/G2200448.pdf?OpenElement>.](https://www.cepal.org/en/notes/un-general-assembly-recognizes-human-right-healthy-environment-line-escazu-agreement#:~:text=It%20is%20resolution%2076%2F300,clean%2C%20healthy%20and%20sustainable%20environment;and G.A. Res. 76/300, The human right to a clean, healthy and sustainable environment, U.N. Doc. A/RES/76/300, art. 4 (July 28, 2022), https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2FL.75&Language=E&DeviceType=Desktop&LangRequested=False.</a></p></div><div data-bbox=)

social, economic, and cultural rights.<sup>168</sup> Similarly, the Escazú Agreement, a landmark treaty aimed at protecting the environmental rights of present and future generations, similarly binds States to collaborate towards its goals.<sup>169</sup> The Court is now presented with a unique opportunity to reinforce States' obligation to protect the rights of cross-border climate-displaced individuals, building on the growing recognition of the intersection between human rights and the environment at both regional and international levels.

States in the Americas have acknowledged the phenomenon of cross-border climate displacement and the need to address it through cooperation. For instance, in marking the 30<sup>th</sup> anniversary of the Cartagena Declaration, the 2014 Brazil Declaration and Plan of Action sets forth guidelines to respond to challenges in international protection and create durable solutions in Latin America and the Caribbean.<sup>170</sup> Adopted by 28 countries and three territories in the region, the Brazil Declaration recognized the "challenges posed by climate change ... as well as by the displacement of persons across borders that these phenomena may cause in the region,"<sup>171</sup> and acknowledged the need to continue to devote greater attention to the intersectional issue. In addition, States committed to "make a collective call to deepen the degree of coordination, complementarity, cooperation and convergence" between regional and subregional mechanisms on issues relating to migration, refugees, displaced and stateless persons.<sup>172</sup>

We strongly urge the Court to call upon States to employ tools and cooperation mechanisms to fulfill their obligations in safeguarding the human rights of individuals displaced across borders due to climate-related factors. A range of such tools already exists within international and regional frameworks.

### **1. International cooperation mechanisms**

The 2019 Global Compact for Safe, Orderly and Regular Migration (GCM) stands as a notable example. The GCM encourages states to "[h]armonize and develop approaches and

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<sup>168</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), arts. 1, 11, O.A.S.T.S. No. 69 (Nov. 17, 1988) <http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>.

<sup>169</sup> Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), Colloquium on the Environment in Latin America and the Caribbean (Nov. 4, 2018), art. 11, <https://www.cepal.org/en/escazuagreement>.

<sup>170</sup> *Brazil Declaration and Plan of Action, Meeting on Refugees and Statelessness in Latin America* (Dec. 3, 2014), 4, [https://www.acnur.org/fileadmin/Documentos/portugues/eventos/2014/Declaracao\\_e\\_Plano\\_de\\_Acao\\_Brasilia.pdf](https://www.acnur.org/fileadmin/Documentos/portugues/eventos/2014/Declaracao_e_Plano_de_Acao_Brasilia.pdf).

<sup>171</sup> *Id.* at 18.

<sup>172</sup> *Id.*



mechanisms at the subregional and regional levels to address the vulnerabilities of persons affected by [disasters].”<sup>173</sup> Specifically, it aims to ensure that affected individuals have access to humanitarian assistance that meets their essential needs with full respect for their rights, wherever they are. This commitment seeks to promote sustainable outcomes that increase resilience and self-reliance, considering the capacities of all countries involved.

Similarly, the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, established under the UNFCCC,<sup>174</sup> is another space where addressing climate-related displacement should be prioritized. While negotiations for this mechanism are still ongoing, it could provide States in the region with essential resources and technical advice to safeguard the rights of people displaced across in the context of the climate emergency.

## **2. Regional cooperation mechanisms**

At the regional level, migration consultation processes and agreements already in place offer a platform for cooperation for addressing immediate protection needs and fostering durable, long-term solutions. The following sections highlight some of the tools that States can utilize to enhance cooperation in managing cross-border climate displacement while upholding a human rights-centered approach. Through these frameworks, States can prioritize the safeguarding of human rights over enforcement-oriented measures that may restrict access to territory, protection, and services.

### **a. Regional migration consultation processes**

Regional migration processes, such as the Regional Consultative Process on Migration (RCM)<sup>175</sup> and the South American Conference on Migration (SACM)<sup>176</sup> provide platforms for

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<sup>173</sup> G.A. Res. 73/195, Global Compact for Safe, Orderly and Regular Migration, Objective 2, § K, UN Doc. A/RES/73/195 (Dec. 19, 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/451/99/PDF/N1845199.pdf?OpenElement>.

<sup>174</sup> UNFCCC, *Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM)*, (Nov. 2013), <https://unfccc.int/topics/adaptation-and-resilience/workstreams/loss-and-damage/warsaw-international-mechanism>.

<sup>175</sup> RCM, also called the Puebla Process, is “a multilateral mechanism for coordinating policies and actions relating to migration in the eleven member States: Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the United States... Its primary objectives are to exchange information, experiences, and best practices, and promote regional cooperation on migration.” <https://rcmvs.org/en> (last visited Nov. 16, 2023).

<sup>176</sup> “The South American Conference on Migration (SACM) or Lima Process aims to provide a platform for consultations for South American countries in the primary areas of development; diasporas; rights of migrants; integration; information exchange; migration statistics; climate

regional cooperation, dialogue, and the exchange of best practices among participating countries in Mexico, Central, and South America. The Caribbean Migration Consultations (CMC)<sup>177</sup> also has the potential to serve a similar purpose. While these multilateral processes underscore the necessity of upholding human rights principles, the actual actions of Member States often betray a preference for punitive enforcement measures that culminate in human rights violations. This disconnect is glaringly evident in instances such as the treatment of migrants and asylum seekers at the U.S.-Mexico and Mexico-Guatemala borders; the adversities confronted by Venezuelan and Haitian migrants and asylum seekers in several Latin American countries; and the interdictions in the Caribbean. These examples underscore a pronounced failure to consistently uphold human rights.

In theory, consultation processes on migration are meant to facilitate discussions on the protection of displaced persons—which should include those affected by the climate emergency—and the application of international protection principles. Through these processes, countries can develop and implement legal and policy measures that address the specific challenges of cross-border displacement in the context of climate change, and prioritize the human rights of impacted individuals. Each of the three processes has considered climate displacement to some degree.

The RCM commissioned the Nansen Initiative to create a report with guidance “to support the more effective and consistent use of existing law, policy and practice to ensure an appropriate response to the needs of cross border disaster-displaced persons,” seeking to improve the overall humanitarian response to the challenge of displacement in the context of climate disasters.<sup>178</sup> Similarly, SACM published its own “Regional Guidelines on

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change; counter-trafficking and counter-smuggling.” SACM has 12 member States: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela. Mexico is an observer State. <https://www.iom.int/south-american-conference-migration-sacm> (last visited Nov. 16, 2023).

<sup>177</sup> The Caribbean Migration Consultations (CMC) is a regional initiative that fosters dialogue and cooperation on migration issues among its 15 member States in the Caribbean region. Established in 2016 the CMC serves as a platform for governments, civil society organizations, and stakeholders to address challenges such as irregular migration, human trafficking, and migrant rights. <https://www.iom.int/caribbean-migration-consultations-cmc> (last accessed Nov. 16, 2023).

<sup>178</sup> Nansen Initiative, *Protection for persons moving across borders in the context of disasters, A guide to Effective Practices for RCM Member Countries*, 6 (Nov. 2016), <https://environmentalmigration.iom.int/sites/g/files/tmzbd1411/files/PROTECTION-FOR-PERSONS-MOVING-IN-THE-CONTEXT-OF-DISASTERS.pdf> (The resulting Protection Agenda highlights ways in which countries can act to protect individuals displaced by climate and disasters across borders according to existing practices, experiences, and legislations in member countries, while recognizing there is yet “no international or regional legal framework, or set of criteria that specially address the implications of cross-border disaster displacement”); see also, in particular, Id. at 11 (“the legislation

Protection and Assistance for Persons Displaced Across Borders and Migrants in Countries Affected by Disasters of Natural Origin” in 2018 with the goal of improving “the institutional capacity of the humanitarian response to disaster displacement challenges.”<sup>179</sup>

Through the framework of the CMC, in 2019, governments have undertaken discussions regarding the development of a Framework for Regional Cooperation on Human Mobility in the Context of Disasters and the Adverse Effects of Climate Change in the Caribbean, with support from IOM, the Platform on Disaster Displacement and UNHCR.<sup>180</sup> Given the limited existing protection centered avenues to address climate displacement in the Caribbean, the CMC could—among other solutions—further enhance cooperation for positive initiatives, such as strengthened free movement agreements.<sup>181</sup>

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of each RCM Member Country provides for regular migration categories that are used to facilitate the travel, admission and stay of foreigners in their territory for purposes of work, family reunification, tourism, and education. Many RCM Member Countries use these migration categories to provide a response to the humanitarian consequences of a disaster. They may provide foreigners affected by a disaster with a more stable status than exceptional migration categories. At the same time, it helps States to implement their regular migration policies.”).

<sup>179</sup> SACM, *Regional guidelines on the protection and assistance of cross-border displaced persons and migrants in countries affected by disasters*, 14 (2018).

[https://csmigraciones.org/sites/default/files/2022-01/CSM\\_Lineamientos%20Regionales\\_ENG.pdf](https://csmigraciones.org/sites/default/files/2022-01/CSM_Lineamientos%20Regionales_ENG.pdf); see also IOM, *South American Conference on Migration (SACM)*, <https://www.iom.int/south-american-conference-migration-sacm> (last visited Nov. 11, 2023) (similar to its counterpart at the RCM, this guidance uses existing practices, experiences, and laws and regulations in member States to highlight how regular migration legislation, exceptional migration categories, and international and complementary protections derived from refugee and human rights law can combine to protect those fleeing climate-related disasters).

<sup>180</sup> Caribbean Migration Consultations, *Consultation towards a Framework for Regional Cooperation on Human Mobility in the Context of Disasters and the Adverse Effects of Climate Change in the Caribbean*, (June 2019), <https://disasterdisplacement.org/portfolio-item/cmc-report/>.

<sup>181</sup> See, e.g., Cantor (2018), at 22, (While FMAs are temporary measures that should in no way substitute for permanent protection, they are a useful tool in the immediate term. Cantor explains that regional integration processes “have developed agreements that either allow for free movement based on supranational forms of ‘citizenship’ (i.e., erasing national boundaries between member States) or otherwise allow for favorable migration treatment among member States.” They could, as such, be particularly useful in offering a legal basis for international movement by persons affected by climate disasters and help fill the protection gap for displaced persons); see also Ama Francis, *Free-Movement Agreements & Climate-Induced Migration: A Caribbean Case Study*, Sabin Center for Climate Change Law, Columbia Law School (2019), [https://scholarship.law.columbia.edu/sabin\\_climate\\_change/62/](https://scholarship.law.columbia.edu/sabin_climate_change/62/) (while not specifically designed to address climate displacement, FMAs in the Caribbean, embedded within the Caribbean Community (CARICOM) and Organization of Eastern Caribbean States (OECS) have already facilitated migration after sudden-onset disasters, providing benefits such as right of entry, waiver of travel document requirements, and access to foreign labor markets. This model should therefore be understood as

## b. Other regional protection and migration initiatives

In addition to regional consultation processes, there are other protection and migration initiatives in the Americas that should be operationalized to foster temporary and permanent solutions for climate-displaced individuals. For example, the Comprehensive Regional Protection and Solutions Framework (*Marco Integral Regional para la Protección y Soluciones* or MIRPS)<sup>182</sup> is a regional State-led initiative that seeks to “strengthen protection and develop solutions for refugees, asylum-seekers, internally displaced persons, and returnees with international protection needs.”<sup>183</sup>

MIRPS promotes the idea that all countries have a shared responsibility to protect and provide solutions for displaced populations. This includes sharing the burden of hosting and supporting displaced persons, as well as collaborating on policies and programs to address the root causes of displacement.<sup>184</sup> These efforts are laudable and should be explicitly expanded to address the needs of individuals displaced across borders in the context of the climate emergency.

Another example is the 2022 Los Angeles Declaration on Migration and Protection, where 21 States committed to “strengthen national, regional, and hemispheric efforts to create the conditions for safe, orderly, humane, and regular migration and to strengthen frameworks for international protection and cooperation.”<sup>185</sup> Since the signing of the

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relevant to regions well beyond the Caribbean). Notably, the nations within MERCOSUR have established a framework for the free movement of their nationals. (See MERCOSUR, *Acuerdo sobre residencia para nacionales de los Estados Partes del Mercosur, Bolivia y Chile* (Jul. 18, 2018), <https://www.mercosur.int/documento/acuerdo-residencia-nacionales-estados-partes-mercosur-bolivia-chile/>.) The SACM could similarly leverage this mechanism to promote increased mobility and integration efforts across the South American region.

<sup>182</sup> MIRPS is “a regional contribution to the Global Compact on Refugees. MIRPS strengthens regional cooperation and responsibility sharing associated with countries of origin, transit and destination. All States committed to adopt and implement national action plans that are aligned with the specific commitments and priorities in each country.” UNHCR, *What is the MIRPS*, (2020), <https://globalcompactrefugees.org/sites/default/files/2020-07/What%20is%20the%20MIRPS.pdf>.

<sup>183</sup> Comprehensive Regional Protection and Solutions Framework, *MIRPS at a Glance*, (2019), <https://globalcompactrefugees.org/sites/default/files/2019-12/MIRP%20GRF%20Doc%20ENG.pdf>.

<sup>184</sup> *Id.*

<sup>185</sup> Los Angeles Declaration on Migration and Protection, (June 10, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/>.

Declaration, countries in the region have launched some important initiatives, but as UNHCR has noted, much remains to be done.<sup>186</sup>

Nevertheless, Los Angeles Declaration States should affirmatively and explicitly commit to the protection of individuals displaced in the context of the climate emergency. During a ministerial meeting commemorating the second anniversary of the Declaration, the signatory countries were “particularly focused on addressing the impact of climate change on migration and displacement,” and committed to reconvene to “begin a collaborative process to identify actions and implement [...] efforts” to expand lawful pathways for migration and international protection and manage borders in a humane fashion.<sup>187</sup> They should do so as a matter of urgency.

One way in which the Los Angeles Declaration may be operationalized for this purpose in the near term is through the use of Safe Mobility Offices, created by the United States in coordination with governments in the region. One function of these offices is to facilitate the resettlement of refugees to the United States, and in some cases, Canada and Spain. The U.S. government recently announced that it will use the resettlement program as one means of strengthening and expanding protection of refugees in situations of vulnerability affected by climate change.<sup>188</sup> All countries in the region who participate in refugee resettlement should include refugees who are also vulnerable to the effects of climate change, either in conjunction with their underlying persecution or after their flight to a country of first asylum.<sup>189</sup> However, it is essential to underscore that these initiatives, while

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<sup>186</sup> UNHCR, *One year after the Los Angeles Declaration, there has been some progress on migration and protection, but much remains to be done*, (June 24, 2023), <https://www.unhcr.org/us/news/press-releases/one-year-after-los-angeles-declaration-there-has-been-some-progress-migration>.

<sup>187</sup> U.S. Department of State, *Joint Statement on the Los Angeles Declaration on Migration and Protection*, (June 23, 2023), <https://www.state.gov/joint-statement-on-the-los-angeles-declaration-on-migration-and-protection/>.

<sup>188</sup> U.S. Department of State, *The Department of State's Bureau of Population, Refugees and Migration Announces New Approach to Address the Impacts of Climate Change on Migration and Displacement*, (June 21, 2023), <https://www.state.gov/the-department-of-states-bureau-of-population-refugees-and-migration-announces-new-approach-to-address-the-impacts-of-climate-change-on-migration-and-displacement/>.

<sup>189</sup> See Letter from Refugees International, et al., to Joseph R. Biden, Jr., Pres. of the U.S. (Sept. 7, 2023), <https://www.refugeesinternational.org/advocacy-letters/protections-for-climate-affected-refugees-and-other-climate-displaced-populations-dear-president-biden/>; see also IRAP, *U.S. Opportunities to Address Climate Displacement*, 13, (Aug. 2021), <https://refugeerights.org/wp-content/uploads/2021/08/U.S.-Opportunities-to-Address-Climate-Displacement.pdf>.

valuable, should never be viewed as substitutes for allowing individuals to directly seek asylum in their intended destination countries.

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In light of clear international and regional norms that ensure the rights of migrants, irrespective of their status, and the growing recognition of the impact of the climate emergency on human rights, we urge the Court to (1) affirm States' obligations to uphold the human rights of cross-border climate displaced individuals. States are not only duty-bound to protect the rights of those displaced by climate change but also have an obligation to cooperate in this endeavor. Regional cooperation agreements must be leveraged beyond mere *non-refoulement* obligations to proactively ensure human rights are upheld. The Court should encourage States to (2) join, create and/or operationalize cooperative protection and migration frameworks while prioritizing the protection of human rights; (3) gather comprehensive data to better understand the phenomenon and identify gaps;<sup>190</sup> (4) implement and expand free movement agreements; (5) enhance migration pathways under existing<sup>191</sup> or new frameworks, including for family reunification and labor; and (6) implement any other measures to allow climate-displaced individuals to reach safety and find temporary and permanent protection, as well as adequate support and resources.

## VI. CONCLUSION

In conclusion, we urge the Court to affirm that States have an obligation to respect the right of communities and individuals to stay in place, particularly in the context of the climate emergency. The right to seek and receive asylum should be respected in

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<sup>190</sup> For instance, the Nansen Initiative's Protection Agenda, a comprehensive framework developed to address the challenges posed by cross-border displacement due to disasters and climate change endorsed by 109 countries, highlights best practices and the critical importance of data gathering in understanding the scale and specific circumstances of displacement. (See The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, (Dec. 2015), <https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>). The guide produced by the Nansen Initiative for the RCM member countries includes similar information (See The Nansen Initiative, *supra* note 178). Additionally, MIRPS offers a platform that could be operationalized for data gathering efforts specific to climate-induced displacement. Additionally, by leveraging MIRPS' established principles of regional cooperation, protection, and solutions, stakeholders can collaboratively work towards improved data collection methods and analyses tailored to the unique challenges posed by climate displacement.

<sup>191</sup> Including, *e.g.*, the Paris Agreement, *supra* note 5.

accordance with the Refugee Convention and Protocol and the Cartagena Declaration that allow for recognition of claims by individuals displaced by climate-related events.

Moreover, *non-refoulement* obligations should extend to situations where individuals' life and human rights may be at risk if they are returned to their home country, as is often the case in countries vulnerable to the climate emergency.

Finally, to respond effectively to climate displacement, it is imperative for States to proactively engage in cooperation efforts while recognizing and centering human rights protection. Regional protection and migration initiatives could serve as valuable tools in this regard. By upholding these principles and affirming the need for expanded protection, the Court will contribute to a just, pragmatic, humanitarian, and comprehensive response to climate-related displacement in the Americas.

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