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The Multi-dimensional Emergence of Climate-induced Migrants in Rights-based Litigation in the Global South

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Abstract

This article evidences the extent to which rights-based climate litigation is applied as a strategy to enhance the recognition and protection of climate-induced migrants. It builds upon the premise that human mobility has gradually been acknowledged in rights-based climate litigation. As such, recommendations addressing climate-induced migration are increasingly emerging under International Human Rights Law (IHRL), including the growing application of the right to a safe climate – as a substantive element of the right to a healthy environment – and climate justice. The study highlights the duties under IHRL of both States and private actors in tackling the emerging climate crisis. We present an analysis of litigation linked to climate-induced migration that were filed before distinct international, regional, and national jurisdictions and in doing so propose a chronology of cases – structured in three generations that complement each other – of how population movements as a result of climate change have been discussed by judicial means. The first generation relates to cases that consider the issue from the perspective of protection in national, regional, and international jurisdictions, with a focus on the migration and refuge agendas, without addressing climate issues. The second generation emerges within general climate litigation claims, involving commitments linked to addressing climate change, raising (forced) population movements as one of the expected impacts of climate change. Such cases frequently call upon a rights-based approach. The third generation encompasses rights-based cases centered on

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climate-induced migrants per se. We conclude that litigation remains a blunt but not unpromising instrument in response to climate-induced migration.

KEYWORDS: 1. Climate Crisis; 2. Climate-induced Migration; 3. Climate Justice; 4. Climate Litigation; 5. Human Rights.

1. Introduction

This study explores rights-based climate litigation as a strategy to enhance the recognition and protection of so-called *climate-induced migrants*, connoting individuals or groups of people who move internally or across national borders, in a voluntary or forced manner, and on a temporary or permanent basis in view of the impacts of climate change on their usual place of residence.[4] According to Borràs (2020: 29), climate-induced migrants are designated as *climate innocents* who have contributed the least to the current climate crisis and, on the other hand, who suffer its consequences the most. They live in a scenario of *climate injustice* (Benjamin and Thomas 2022; Sultana 2021; Baxi 2016) and *climate apartheid* (UNHCR 2019), in which a small portion of the world's population holds the resources needed to cope with climate impacts, whilst also being its source. In the meantime, entire communities face (im)mobility situations whilst aspiring to live with dignity, especially in the Global South. In the first instance, the study establishes the nexus between migration, climate change, and human rights. Existing arguments from International Human Rights Law (IHRL) that can inform rights-based climate litigation and promote the protection of climate-induced migrants are identified. We verify how this governance sphere integrates climate-induced migration within its provisions, and provide examples of how both State and private sector duties can be argued in climate litigation related to the topic. In particular, specific rights-based litigation concerning climate-induced migration are analysed. We then

[4] Importantly, the term *climate-induced migration* encompasses different forms of population movements: (i) voluntary migration processes, forced human displacement, as well as the planned relocation of entire communities to safer locations. The United Nations Framework Convention on Climate Change (UNFCCC) has recommended the use of the expression *human mobility*, understood as an umbrella term that refers to all aspects of the movement of people. Human mobility is understood to encompass involuntary internal and cross-border displacement of populations, voluntary internal and cross-border migration and planned and consented relocation (Advisory Group on Climate Change and Human Mobility 2015).

propose a categorisation of claims divided into three generations that complement each other, according to the arguments raised in litigation and the extent to which the phenomenon is considered – either as a marginal element or as the main subject of the case.

The analysis is built upon a literature review identifying (i) the linkages between human rights, migration, and climate change, with a special focus on the rights that can be applied to climate-induced migrants; and (ii) rights-based climate litigation related to the topic. The cases examined were mapped from specialised databases, enabling the identification of case profiles and their classification according to four criteria:[5] (i) litigation that discusses human rights violations within protection frameworks related to asylum and refugee status; (ii) litigation that, despite not raising climate-induced migration as a core argument, outlines the phenomenon as a possible climate risk or impact, having also implications for the enjoyment of human rights; (iii) rights-based litigation in which climate-induced migration is central; and (iv) litigation submitted by individuals or communities from the Global South, also considering individuals and communities from the Global North that share similar characteristics in terms of exclusion, exposure, and vulnerabilities to the adverse effects of climate change. Based on these criteria, we observed that climate litigation touching on the topic in the Global South often corresponds with cases in which the battle against the current climate crisis is considered from a marginal or peripheral perspective, giving voice to those who move in such contexts.

Even if rights-based climate litigation has not yet addressed comprehensively situations of climate-induced migration, the cases examined in this study demonstrate that litigation has the potential to adopt and adapt provisions from IHRL and policies and legal frameworks linked to climate change, as well as international (complementary) protection mechanisms for and to this group of individuals' specific needs. We highlight an apparent evolution in cases addressing the topic from an international protection perspective (i.e. focused on asylum and refugee status) to cases that present population

[5] Rights-based climate cases were identified in three main databases: (i) Global Climate Change Litigation database from the Sabin Center for Climate Change Law (Columbia University, available at: http://climatecasechart.com/non-us-climate-change-litigation/); (ii) Litigation Cases – Climate Change Laws of the World (LSE Grantham Research Institute on Climate Change and the Environment, available at: https://climate-laws.org/litigation_cases); and (iii) the Latin America and the Caribbean Climate Litigation Platform, project led by the Interamerican Association for Environmental Defense (*Asociación Interamericana para la Defensa del Ambiente* – AIDA, available at: https://litigioclimatico.com/es). Given the scope of the research, the article concentrated on databases maintained in both Global North and South regions.

movements broadly as one of many possible impacts of climate change and, more recently, cases that have climate-induced migration as the main subject. There is a trend, therefore, towards increased rights-based climate litigation emphasising the protection and other needs of this group of people, especially in the Global South, facilitating the development of effective legal responses. Finally, our categorisation of cases into generations should not be viewed as suggesting that first or second-generation cases are no longer being brought. Rather, we demonstrate how legal strategies are shifting in response to climate-induced migration, and the value of such shifts.

2. Human mobility in the context of climate change from a rights-based perspective

That climate change impacts mobility patterns cannot be doubted, with quantitative analysis pointing to significant people movements related to anthropogenic global warming in the coming decades (e.g., Clement et al. 2021; Hoffmann et al. 2021; Niva et al. 2021; Piguet 2021; KNOMAD 2016). The mechanisms through which climate and other environmental changes influence mobility decisions are complex and usually non-linear (Oakes et al. 2019; McLeman 2017; Hastrup and Olwig 2012). Besides changes in physical aspects, a combination of social, political, economic, and demographic factors also shapes people's decision to move or stay in a particular location. Such decisions are triggered by complex factors that vary across spatial and temporal scales (HRC 2018; McLeman 2017; Ionesco et al. 2017; Mayer 2016).

As such, human mobility is driven by the interaction of multiple aspects that cannot be isolated from one another (Cournil 2017). As a result, existing mobility patterns are modified and exacerbated by the impacts of climate change, rather than exclusively caused by them (IDMC 2018). Even though mobility can be a strategy to cope with climatic impacts, when forced, it enhances socioeconomic and environmental fragilities, constraining resources and access to basic services (HRC 2018). This in turn influences the choice to migrate (McAdam 2012; Warner et al. 2012) and even 'traps' people in their place of origin (Oakes et al. 2019; HRC 2018; Ionesco et al. 2017; Clement et al. 2018). Therefore, migration as an adaptation strategy is not a clear-cut concept.

Complexities surrounding such mobility patterns require the reconsideration of existing policy and legal frameworks, as legal gaps may contribute to the escalation of humanitarian crises and political instability (Serraglio et al. 2022; Serraglio et al. 2021; Burrows and Kinney 2020; Cavedon-Capdeville et al. 2019; Hermans and Ide 2019; Mayer 2016; McAdam 2011). This would allow capturing the challenges posed by distinct dimensions of (forced) population movements and effectively responding to climate-induced migration. This section examines current developments in addressing climate-induced migration from within IHRL, identifying rights and related duties that can facilitate the protection of this group of people through judicial means.

2.1 Provisions addressing climate-induced migration from within International Human Rights Law

Despite the evident progress in acknowledging the need to safeguard climate-induced migrants in existing legal and policy frameworks around Africa, Latin America and the Caribbean, as well as the Pacific, specific provisions for addressing the topic are still lacking in most jurisdictions around the globe (e.g. Mokhnacheva 2022; Serraglio 2020; Yonetani 2018). As a result, the provisions of IHRL become particularly relevant, as they lay down obligations that States are bound to respect.

By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect, and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights (OHCHR 2019).

Developments on the topic within this field provide the basis for the formulation of legal arguments that can inform climate litigation addressing (forced) population movements. We first summarise some of the main standards, recommendations, and resolutions on the topic from within IHRL, in particular the Office of the United Nations High Commissioner for Human Rights (OHCHR),

the Human Rights Council (HCR) and its Special Procedures, as well as the United Nations Human Rights Treaty Bodies.[6]

In short, the norms so far pronounced by IHRL actors address the topic as a cross-cutting issue that underpins the full enjoyment of human rights in the face of the current climate crisis. For instance, the HRC has underlined that the increased incidence of climate-related disasters triggers (forced) population movements and, ultimately, the deterioration of human rights. Such impacts are mostly felt by vulnerable groups,[7] such as children.[8]

As early as 2009, OHCHR referred to climate-induced migration in its report on climate change and human rights (OHCHR 2009). Later, in 2015, key messages on the link between migration, climate change, and human rights were also pronounced by OHCHR (2015). In short, they outline States' duties regarding the impacts of climate change on mobility patterns. These include: (i) the fulfilment of climate-induced migrants' human rights; (ii) the reduction of (forced) population movements through the implementation of climate adaptation and mitigation measures; (iii) the safeguarding of the human rights of those living in vulnerable situations; (iv) freedom of movement for all persons; (v) the guarantee of durable legal status to those forced to move, including return migration; (vi) informed participation; (vii) the fulfilment of human rights in planned relocation processes; (viii) the access to justice for those affected by climate change; (x) international cooperation to look after migrants' rights (OHCHR 2015).

Under the auspices of the HRC, two reports on the topic were released in 2018. The first, requested by HRC through Resolution n. 35/20, discusses the challenges of safeguarding human rights in the face of cross-border migration due to the impacts of climate change (UNHCR 2018a). The second, in turn, investigates the situation of cross-border migrants and the protection of their human rights due to slow-onset climatic events (UNHCR 2018b). Both reports underscore States' responsibilities

[6] For a detailed description of all standards, recommendations, and resolutions released by the UN Human Rights System, see: Instituto Interamericano de Derechos Humanos (IIDH) 2022. Movilidad Humana en el contexto del cambio climático y desastres en Centroamérica: Una perspectiva de derechos humanos. Instituto Interamericano de Derechos Humanos. San José, Costa Rica: IIDH.

[7] See, for instance, resolutions on the interlinkages between human rights and climate change released in 2016 (A/HRC/RES/32/33) and 2017 (A/HRC/RES/35/20).

[8] See, for instance, Resolution n. 45/30, entitled *Rights of the Child: Realizing the rights of the child through a healthy environment*, adopted by the HRC in 2020 (A/HRC/RES/45/30).

concerning the human rights of those crossing their national borders as a result of climate impacts, as well as their duties regarding the return of individuals to areas where the risk of climate-related disasters endangers the full enjoyment of human rights (UNHCR 2018a and 2018b).

Under the HRC's Special Procedures, the reports published by the Special Rapporteur on the human rights of internally displaced persons (IDPs) and by the Special Rapporteur on the human rights of migrants are relevant to this study. The first has increasingly addressed (forced) population movements in the context of climate change in their scope of work: In 2009, for instance, a specific report on the topic highlighted that climate impacts deteriorate the full enjoyment of human rights, ultimately leading to human displacement. As a result, protection measures to be established should consider all phases of the displacement cycle (HRC 2009). Furthermore, two studies focused on climate change as a driver of human displacement were conducted by this Special Procedure (human rights of IDPs): (i) 'Climate change and internal displacement' (2011), which recommends a rights-based approach when dealing with the topic (UNGA 2011); and (ii) 'Human rights of internally displaced persons in the context of slow-onset adverse effects of climate change' (2020), which outlines the duties of States, the private sector, and the international community, respectively, regarding (forced) population movements caused by gradual climatic processes (i.e. sea-level rise) and lists recommendations in this regard (UNGA 2020).

In turn, the second Special Procedure (human rights of migrants) has also contributed to a better understanding of climate-induced migration. Its 2012 report on the topic addressed terminological aspects, and pinpointed the most affected locations and populations, as well as the shortcoming of existing human rights policy and legal frameworks in dealing with the phenomenon (UNGA 2012). The report suggests the adoption of migration as an adaptation strategy in the context of climate change and lists recommendations for the development of appropriate legal responses (Ibid). This Special Procedure has also given attention to the human rights of vulnerable groups (such as women, children, and indigenous people) exposed to the impacts of climate change and to the risk of displacement (UNGA 2019).

Further on HRC's Special Procedures, attention to climate-induced migration has also originated with the establishment of the Special Rapporteur on the promotion and protection of human

rights in the context of climate change. Their mandate was approved in October 2021, and is to include 'addressing the human rights implications of climate change displacement, including legal protection of people displaced across international borders', as one of its thematic priorities (HRC 2022).

With regards to relevant norms or pronouncements, they have also originated from within regional human rights law mechanisms. For example, in the Global South, the Inter-American Human Rights System has acknowledged climate-induced migration in distinct reports and decisions (IIDH, 2022). With the publication of the Advisory Opinion OC-23/17 Requested by the Republic of Colombia (15 November 2017) 23/17, Inter-American Court of Human Rights ('Advisory Opinion OC-23/17'), the Inter-American Court of Human Rights (I/A Court HR) recognised the vulnerability of those who move due to the impacts of climate change. It also emphasised environmental degradation as a driver of immobility, especially for communities whose livelihoods and subsistence depend on environmental resources (Advisory Opinion OC-23/17). Importantly, Advisory Opinion OC-23/17 defends the establishment of the right not to be forcibly displaced in the context of climate and/or environmental changes, stating that such phenomena often jeopardise the fulfilment of human rights. It also calls attention to the linkages between climate-induced migration and human security, as population movements can motivate conflicts in host communities (Advisory Opinion OC-23/17).

More recently, the Inter-American Commission on Human Rights (IACHR) adopted Resolution n. 3/2021, entitled 'Climate Emergency: Scope of the Inter-American Human Rights Obligations' (IACHR 2021). The resolution characterises climate-induced migrants as a vulnerable and marginalised group that has contributed the least to the disruption of the global climate system. It lists States' obligations regarding the effective protection of those on the move due to climate change: (i) due process during migration status procedures; (ii) application of the *non-refoulement* principle while migration status remains undefined; (iii) access to medical care during and in the aftermath of extreme weather events and/or disasters without discrimination related to nationality; and (iv) access to justice and respective compensation for possible losses and damages (IACHR 2021).

The existence of other regional human rights regimes with considerations about climate-induced migration in the Global South is to be observed, such as the African Human Rights System, which was created under the auspices of the African Union (AU) and its African Charter on Human and

Peoples' Rights as the main instrument. Whilst there are no Asia- and Oceania-wide organisations or conventions to promote or protect human rights, countries in both regions vary widely in their approach to the linkages between human rights and climate-induced migration.

Even though the right to a safe climate has not yet been adequately established by contemporary international law, it can be raised in rights-based climate litigation discussing (forced) population movements (Kahl 2022, Jegede 2020). This right is founded on: (i) the UN Human Rights System declarations that recognise this right as an integral feature of the right to the environment, and (ii) the growing global phenomenon of rights-based climate litigation[9] (UNGA 2022, UNGA 2019). The right to a safe climate aims to prevent harmful interventions in the climate system, ensuring its stability. Hence, breaches of climate commitments would constitute a *prima facie* violation of States' human rights duties. The recognition of this right is an important tool to protect climate-induced migrants, once the prerogative enables them to safeguard their human rights and discuss the climate (in)justice situation in which they find themselves.

We conclude here that distinct instruments and mechanisms of international and regional human rights law recognise rights violations of those who move as a result of environmental factors, also presenting prerogatives that safeguard the rights of climate-induced migrants. IHRL offers the minimum legal protection standards and also provides the legal basis for cross-border protection, enabling the application of the *non-refoulement* principle when faced with climate risks and impacts (Mary Robinson Foundation 2016).

2.2 Duties deriving from International Human Rights Law's provisions and their application in contexts of climate-induced migration

The effectiveness of the right to a safe climate implies States' obligations, such as non-violation and enforcement through the application of climate policy and legal frameworks (McKernan et al. 2020).

[9] See, for instance, (i) *Ali v. Federation of Pakistan* (2016) Petition No. ___/I of 2016, Lahore High Court (Pakistan); (ii) *Maria Khan et al. v. Pakistan et al.* (2019) Writ Petition No. 8960, Lahore High Court (Pakistan); (iii) *Instituto de Estudos Amazônicos v. Brazil* (2022) No. 5048951-39.2020.4.04.7000, Federal District Court of Curitiba (Brazil); and (iv) *PSB and others v. Brazil* (2020) ADPF 760, Federal Supreme Court (Brazil) ('PSB v. Brazil Deforestation Case').

Besides supporting the prevention of (forced) population movements, rights linked to the right to a safe climate include non-discrimination and equity, avoiding setbacks in adaptation and mitigation actions.

The 2018 Framework Principles on Human Rights and the Environment contain 16 principles related to human rights on the environment based on existing work of the UN human rights system (A/HRC/37/59). They indicate that States' human rights duties linked to the enjoyment of a healthy environment – including the right to a safe climate – are threefold: substantive, procedural, and obligations related to vulnerable groups (UNHRSP 2018: 20). As for obligations stemming from procedural rights, for instance, States must provide accessible and intelligible information about the causes and consequences of climate change. In the context of climate-induced migration, this would include: (i) information about climatic risks to which communities are exposed, (ii) reliable evidence of climate and/or other environmental changes, and (iii) possible impacts on livelihoods and human security. The obligations related to vulnerable groups, in turn, include all climate-induced migrants and those individuals inserted in contexts of rights violations (Ibid). The Principles provide that States must (i) act towards the effective application of the right to the environment, having the right to a safe climate as one of its substantive elements; (ii) take additional measures to protect the rights of the most vulnerable, always taking their needs and limited capacities into account (Ibid).

States must ensure equitable, inclusive, and gender-sensitive approaches to public participation on climate-related topics, with special attention to the empowerment of the most affected groups (UNGA 2011 and 2020). Access to justice for all climate-induced migrants must also be guaranteed, facilitating States' accountability for failing to meet their commitments, their contributions to climate change, as well as subsequent rights violations (Ibid). Within national policy and legal frameworks, States must assess the impacts of their contributions to climate change on human rights, bearing in mind that adaptation and mitigation measures can also lead to (forced) population movements (Ibid). Policy and legal instruments related to the topic must reflect the highest level of ambition possible, enhancing resilience to climate risks and ensuring that programs are coherent with the reduction of emissions and vulnerabilities (Ibid).

Five human rights treaty bodies have taken a position on States' duties related to climate-induced migration.[10] The positioning underlines that States must address climate and/or other environmental changes as drivers of (forced) population movements in a way that they do not hamper the fulfilment of human rights. According to the five human rights treaty bodies, complementary and/or temporary protection mechanisms preventing the deportation of climate-induced migrants who cannot return to their countries of origin should be implemented. Importantly, individuals at risk of cross-border movements due to climate change usually come from the Global South, from countries and regions where the high exposure to climate risks overlaps with pre-existing socio-economic vulnerabilities. On the other hand, a large part of the resulting obligations falls on Global North countries, which are often the primary destination of such population flows.

In this context, the extraterritoriality of States' obligations arising from human rights treaties is another key aspect in building arguments for rights-based litigation linked to climate-induced migration (Bellinkx et al. 2022). OHCHR recommends that States' commitments extend not only to rights holders but also to risks and damages occurring both within and outside their territory (OHCHR 2015). Therefore, States shall be responsible for their contributions to climate change, regardless of the location of emissions or damages, including the private sector under their jurisdiction that accelerates the climate crisis. This extraterritoriality argument becomes relevant as climate-induced migration tends to emerge in regions from the Global South, in places that have contributed the least to the climate crisis.

The extraterritoriality of human rights duties associated with climate change has also been addressed by the I/A Court HR and the IACHR (I/A Court HR 2017; IACHR 2021). Both Advisory Opinion OC-23/17 and Resolution n. 3/2021 list the following human rights duties resulting from extraterritoriality: (i) countries shall avoid transboundary losses and damages as a result of their emissions; (ii) countries shall hamper activities that impair the balance of the climate system and jeopardise the fulfilment of human rights under their jurisdiction; (iii) in the case of transboundary damage, individuals outside their jurisdiction who have had their rights affected are considered to be

[10] These are: (i) Committee on the Elimination of Discrimination Against Women (CEDAW); (ii) Committee on Economic, Social and Cultural Rights (CESCR); (iii) Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW); (iv) Committee on the Rights of the Child (CRC); and (v) Committee on the Rights of Persons with Disabilities (CRPD).

under the jurisdiction of the State of origin; and (iv) work with a view to avoiding a global temperature that can endanger human life (I/A Court HR 2017; IACHR 2021).

With regard to the private sector's responsibilities in tackling the climate crisis, the application of the Guiding Principles on Business and Human Rights – endorsed by the HRC (OHCHR 2011) and interpreted through the lenses of climate change by OHCHR (OHCHR 2020) – stands out. In short, the private sector must uphold its duty of due diligence in terms of climate impacts and take positive actions to identify, prevent, and mitigate the impacts resulting from their activities while avoiding human rights violations. Moreover, liability would be imposed when there are insufficient climate commitments at the domestic level or a lack of state responsibilities to respect, protect and fulfill such prerogatives (OHCHR 2011 and 2020). These measures are critical to avoiding climate-induced migration as a result of the private sector's activities that affect climate stability. Also, these measures could lead to private sector liability through rights-based climate litigation cases.

Having outlined the evolving IHRL provisions and recommendations related to climate-induced migration amidst the current climate crisis, in the next section we consider the role of litigation in addressing the topic, including how the IHRL is increasingly playing a role before international, regional, and national jurisdictions.

3. Litigation and climate-induced migration: Current developments and future prospects

It is uncontroversial that the impacts of anthropogenic climate change are likely to increase (forced) population movements, as well as immobility. Coupled with structural adversities that compromise the fulfilment of human rights and enhance socio-economic vulnerabilities, global warming undermines habitability and affects individuals and communities alike, not least in many parts of the Global South (e.g. IPCC 2022). In this context, it is unsurprising that litigation addressing climate-induced migration is emerging as a pathway that sheds light particularly on States' duties linked to the mobility of people and their human rights through judicial means (UNEP 2020: 6). This section presents a categorisation of litigation as three generations that mutually complement each other, allowing a better understanding of the different approaches to the topic through judicial means, as well as its evolution. It also facilitates

the prognosis of future legal development as to how to promote enhanced protection of those on the move because of climatic impacts.

3.1 First generation: Looking at climate-induced migration through the lens of international refugee and asylum-seeker protection

Climate-induced migration was initially viewed from a transboundary perspective; normatively primarily through mechanisms established under international refugee law frameworks (Atapattu 2018). That is to say, the emphasis was on forced population movements (e.g., McAdam 2012a), leading to refugee-like populations ('climate refugees', stateless protection seekers, etc.) requiring transboundary protection (also McAdam 2012b). Whilst climate-related impacts were raised as cross-cutting issues and also mentioned as drivers of (forced) population movements, provisions from global climate policies and legal frameworks were not directly invoked by plaintiffs and courts.

Geographically, litigation in this generation was first pursued in particular by petitioners from highly vulnerable (see, e.g., IPCC 2022) Small Island Development States (SIDS), especially from the Pacific Islands region in New Zealand and Australian judicial institutions (e.g., McAdam 2015; Scott 2016; Atapattu 2018). The 1951 United Nations Convention Relating to the Status of Refugees defines refugee as follows: 'someone who is unable or unwilling to return to their country of origin owing to a *well-founded fear of being persecuted* for reasons of race, religion, nationality, membership of a particular social group, or political opinion' (UNHCR 1951 or Refugee Convention) (our emphasis). As the recognition of climate and other environmental changes as agents of persecution – a prerequisite for the concession of refugee status – proved to be difficult, such cases did not generally result in favourable outcomes (Behrman and Kent 2018; Cournil 2017; Corendea 2016). Nevertheless, the litigation bolstered the legal debates surrounding climate-induced migration, brought visibility to the topic, and encouraged the filing of new lawsuits.

Cases lodged by Pacific Islanders are particularly revealing. These include: (i) Case 0907346 RRTA 1168 (2009), Refugee Review Tribunal (Australia), in which an Australian tribunal denied the granting of refugee status to a national from Kiribati who claimed to be threatened by sea-level rise in his country of origin; and (ii) *Ioane Teitiota v. The Chief Executive of the Ministry of Business,*

Innovation, and Employment (2015) NZSC 107, New Zealand High Court (New Zealand) ('*Teitiota*'), which also originated in the New Zealand tribunal system and later found its way into the UN Human Rights Treaty System (*Ioane Teitiota v. New Zealand* (7 January 2020) UN Doc CCPR/C/127/D/2728/2016, UN Human Rights Committee). Each case proceeded on slightly different grounds.

Case 0907346 RRTA 1168 demonstrates the difficulties faced by applicants in relation to establishing that climate change causes and impacts give rise to 'persecution' (para 51):

> the Tribunal does not believe that the element of an attitude or motivation can be identified, such that the conduct feared can be properly considered persecution for reasons of a Convention characteristic as required. It has been submitted that the continued production of carbon emissions from Australia, or indeed other high-emitting countries, in the face of evidence of the harm that it brings about, is sufficient to meet this requirement. In the Tribunal's view, however, this is not the case.

In the case concerning Ioane Teitiota, originally from Kiribati, a complaint was ultimately lodged with the Human Rights Committee, which oversees state compliance with the 1966 International Covenant on Civil and Political rights, a binding treaty, against New Zealand in 2015. After his request for refugee status or complementary protection (human rights provision-based protection for those who do not qualify as a refugee per se) was dismissed, the petitioner argued that New Zealand's government violated his and his family's right to life by ordering their deportation back to Kiribati, where they fear the impacts of climate change.

In *Teitiota*, New Zealand's national tribunal had found no evidence that Teitiota and his family were under threat in the context of the right to life at the time. Regarding the violation of rights due to Kiribati's present environmental conditions, the New Zealand court declared that the family's situation did not differ from that of other citizens of the island nation, therefore rejecting the petitioner's allegations. The claim was then submitted to the UN Human Rights Committee (HRC), which reaffirmed New Zealand's national court decision. However, the HRC's decision can be considered a breakthrough for the protection of climate-induced migrants. The HRC acknowledged that the impacts of climate change on countries of origin can result in human rights violations – if not currently, then in

the future. This is because the living conditions in such places would become incompatible with the right to live with dignity. As a result, it recalls the *non-refoulement* obligation of the countries in which individuals threatened by the impacts of climate change seek protection (Odriozola and Santo 2020). The ruling does not expressly prohibit the return of a person seeking protection due to the impacts of climate change in his/her country of origin, but it emphasises that countries can run afoul of their legal obligations where they deport people whose right to life is threatened, especially if they do not cooperate in tackling the current climate crisis. The HRC explained that the principle of *non-refoulement* can also be breached when countries do not consider the potential climatic risks in the country of origin (Odriozola and Santo 2020; Serraglio et al. 2020).

By ruling about the return of individuals to places where they would be exposed to climate impacts and risks, the HRC facilitated the rise of favorable decisions for climate-induced migrants (McAdam 2020). Until then, national courts had dismissed cases for the following reasons: (i) the complexities in characterising climate and/or environmental changes as agents of persecution according to International Refugee Law; (ii) the lack of concrete or substantial impacts to the petitioners; and (iii) insufficient evidence on losses and damages caused by climate change (McAdam 2020; Atapattu 2018; Mayer 2016).

Subsequent cases filed before national jurisdictions in Europe (Germany, France, Austria, and others) have addressed the protection needs of individuals from the Global South in contexts of environmental changes, including those related to climate change. These reaffirm the application of the *non-refoulement* principle in situations where climate and/or other environmental changes may lead to human rights violations in the country of origin, thus engaging States' protection obligations.

VGH Baden-Württemberg (2020) A11S 2042/20, German Higher Administrative Court (Germany), decided in December 2020, relates to the prohibition of the deportation of an Afghan national on the basis of Germany's Immigration Law, as well as other human rights treaties. Besides acknowledging that climate and/or other environmental changes intensify the current humanitarian crisis in Afghanistan, the Court ruled that the deportation of the Afghan national in such a context would be characterised as inhuman or degrading treatment. The decision was grounded in Article 3 of the European Convention on Human Rights (§ 25). A similar decision was issued in *M.A v. France* (2020)

No. 20BX02193/20BX02195, Administrative Court of Bordeaux (France), overturning a deportation order against a Bangladeshi on the grounds that his health conditions would be aggravated by air pollution in his country of origin (§ 04). The case deals with the return of an individual to his country of origin amidst the impacts of environmental degradation (rather than climate issues *per se*), and serves as an example for future climate litigation addressing (forced) population movements. Finally, in the Austrian judicial system, there have been a series of cases involving Somali applicants fearing violation of their rights in disaster contexts, including those arising from climate change, in which subsidiary protection (also applied where granting of refugee status is not possible) was facilitated on the basis of the Austrian Asylum Law, *The European Convention of Human Rights* and *the EU Charter of Fundamental Rights and Freedoms* (Ammer et al. 2022).

In conclusion, this first generation of litigation dealing with climate-induced migration has been mostly focused on addressing rights violations and protection issues of individuals coming from the Global South in cross-border contexts. We infer that the Refugee Convention has proven resistant to successful claims; however, complementary and subsidiary protection provisions and regimes have begun to prove more useful in charting at least some protection norms in some contexts for affected individuals. The norms as outlined so far provide grounds for enhanced application as climate change impacts increase.

3.2 Second generation: The recognition of climate-induced migration as one of the risks and of adverse effects of climate change with human rights implications

A second generation of relevant litigation is linked to global climate change policies and legal frameworks more generally and focuses on drawing attention to the increased incidence of (forced) population movements in the context of climate change more broadly, which leads to rights violations. Such climate litigation calls attention to the increased incidence of climate-induced migration patterns, both as a risk and the already present impacts of climate change. Besides facilitating the incorporation of vulnerable groups' perspectives, litigation in this generation of cases enables the progressive development of rights and the effective implementation of adaptation and mitigation measures. This pathway has the potential to promote, thus, structural changes in policy and legal frameworks related

to the phenomenon. Building on earlier cases in which national courts of the Global South legitimised human rights violations due to the impacts of climate change,[11] rights-based climate litigation has consolidated itself as a trend (Calderón 2023; Savarezi and Auz 2019; Peel and Osofsky 2017; Moreira et al., this collection; Murcott and Vinti, this collection). In addition to enforcing domestic policy and legal frameworks, these decisions impact the premises of the global climate agenda and reinforce the role of human rights in such contexts (Knox and Voigt 2020).

To date, this generation is exemplified by four cases that expressly refer to climate-induced migration, all of them filed before specific human rights protection jurisdictions – one at the national level and three in regional and international institutions. These are: (i) *In Re Greenpeace Southeast Asia and Others* (2015) CHR-NI-2016-0001, Commission on Human Rights (Philippines), a petition submitted to the Philippines' Human Rights Commission ('the *Carbon Majors case*'); (ii) *Daniel Billy and others v Australia* (23 September 2022) CCPR/C/135/D/3624/2019, United Nations Human Rights Committee ('*Torres Strait Islanders Petition*'); (iii) *Chiara Sacchi et al v. Argentina et al* (8 October 2019), UN Committee on the Rights of the Child, CRC/C/88/D/104/2019 ('*Sacchi*'); and (iv) the *Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti* (2021), Inter-American Commission on Human Rights (IACHR) (the '*Cite Soleil Petition*').

The *Carbon Majors* case was submitted by Filipino nationals with the support of non-governmental organizations (NGOs). The petitioners requested liability of a group of the largest companies linked to fossil fuel exploitation, and thus responsible for the emission of greenhouse gases (GHGs) into the atmosphere (so-called *carbon majors*) for threats and human rights violations, including in the context of migration, as a result of the carbon majors' contribution to climate change in the Philippines. After the establishment of a national investigation, the Commission concluded that the carbon majors could be held legally responsible for disregarding Filipinos' human rights (Thornton 2021a), although it did not itself find them liable (Thornton 2021b). The Commission's report is replete

[11] See, for instance, the case *Ashgar Leghari v. Federation of Pakistan* (2015) W.P. No. 25501/2015, Lahore High Court (Pakistan) ('Leghari') and *Future Generations v. Ministry of the Environment et al.* (2018) STC4360-2018, Supreme Court of Colombia (Colombia) ('Future Generations Case'), both with favorable decisions.

with references to climate-induced migration. By contextualizing the forced population movements caused by the tropical cyclone Haiyan in 2013, the report emphasised that climate change will disproportionately affect individuals who are already in vulnerable situations. It also suggests an increased incidence of internal and cross-border migration patterns in this context, which could undermine the fulfillment of human rights at the national level. Therefore, besides linking human rights violations to climate-induced migration, the report supports the liability of companies that contribute to the phenomenon, giving visibility to the climate impacts produced by corporations in the Global North on the livelihoods and living conditions of communities in the Global South. The climate impacts produced by such corporations lead to human rights violations and extraterritorial responsibilities that can be applied to (forced) population movements in the context of climatic impacts.

The *Torres Strait Islanders Petition* comprises a complaint filed before the HRC in 2019 (Client Earth 2022; Hoffman 2020).[12] The petitioners belong to a traditional community in the Torres Strait, Australia, and they argued that the national government had not only failed to implement measures to curb the effects of climate change at the national level, but also neglected the effective protection of coastal areas due to the phenomenon. The increased erosion and degradation of these areas will ultimately cause the relocation of the community to a safer area.

The case discusses the impacts of climate change on traditional peoples' territories, underlining also immaterial losses and damages caused by (forced) population movements. These include the loss of cultural ties, the disappearance of sacred locations, and livelihood deterioration. Hence, it integrates a decolonial environmental approach to climate litigation based on traditional practices that are rooted in elements of nature, both in their material and immaterial dimensions (see also Cavedon-Capdeville et al., this collection). Importantly, despite Australia being categorised as a Global North country, the community affected by climate inaction presents typical features of Global South communities. This is because the division between Global North and Global South is not delimited by geographical boundaries, but by exclusion situations, vulnerabilities, and exposure to risks to which communities

[12] Note also more recent tort-based litigation (focused on duty of care) lodged in the Federal Court of Australia – *Pabai Pabai v. Commonwealth of Australia (2021) VID622/2021, Federal Court of Australia (Australia)*. The case is not predominantly concerned with human rights but is also brought by Torres Strait Islanders in the context of climate change impacts in that region of Australia.

have not contributed (Murcott and Tigre, this collection). As such, the approach to the current climate crisis requires an appreciation of marginal perspectives, bringing those ignored from climate decision-making processes to the centre (Burkett 2018; Cavedon-Capdeville 2017).

The *Torres Strait Islanders Petition* was the first climate case submitted to the UN system that considers the violation of civil and political rights under IHRL as a way to make States responsible for not complying with climate provisions. By seeking amendments to Australia's climate policies and legal frameworks, the case goes beyond the exposure of traditional territories to the impacts of climate change. Besides proposing the effective protection of the Torres Strait islanders, the petition calls for: (i) the establishment of long-term adaptation strategies, (ii) the reduction of GHG emissions at the national level, and (iii) the gradual elimination of fossil fuels in the country (Galloway 2021).

The HRC held the case admissible in 2022 and, among others, it concluded that there is 'more than a theoretical possibility' of rights impairment as alleged by the petitioners, who are 'longstanding inhabitants of traditional lands consisting of small, low-lying islands that presumable often scant opportunities for safe internal relocation', and who are thus 'highly exposed to the adverse climate change impacts' (*Torres Strait Islanders Petition* para 7.10). By acknowledging that the petitioners are likely unable to finance adequate adaptation measures themselves, on the merits, the Committee (i) disputed the sufficiency and timely implementation of Australia's adaptation measures both broadly and in its Torres Strait region in particular, (ii) confirmed that enjoyment of the right to culture in the context of indigenous peoples may be tied to territory and use of its resources, and (iii) underlined that Australia did not dispute the petitioner's arguments that they could not continue with their traditional cultural practice upon relocation (Ibid paras 8 to 10). More importantly, the *Torres Strait Islanders Petition* not only evidences that the IHRL framework is responsive to countering the harms stemming from climate change (including in the context of climate-induced migration), but also for framing harms and human rights obligations that arise in the climate change context as a present (and not merely future) issue or concern (Ibid).

Sacchi comprised a claim filed before the United Nations Committee on the Rights of the Child (OHCHR) in 2019 by 16 children from 12 countries against Argentina, Brazil, France, Germany, and Turkey. The claimants argued that they were directly affected by the impacts of climate change, which

include the disruption of livelihoods, exposure to diseases, loss of traditional territories, as well as the risk of climate-related disasters. Besides pointing out situations of (im)mobility, the children emphasised that States' omissions regarding the phenomenon jeopardise the existence of a sustainable environment for present and future generations. As such, the petition sought the liability of the respective States for not averting GHG emissions to a level capable of safeguarding the population's dignity and well-being.

In particular, the petition called for the interpretation of the 1989 UN *Convention on the Rights of the Child* in light of international environmental law, which encompasses policies and legal frameworks related to climate change. States' duties related to children's climate rights would thus include: (i) the prevention of human rights violations as a result of the climate impacts, (ii) measures to tackle the climate crisis, (iii) intergenerational justice, and (iv) the application of the precautionary principle. The case mainstreamed an intergenerational perspective and expanded the scope of its subjects, meeting the need to revise the temporality in addressing human rights in spite of climate impacts. It also explored the extraterritoriality of human rights duties, stressing that States' inaction regarding climate commitments undermines children's rights in distinct regions of the globe.

Sacchi was dismissed as the petitioners did not exhaust all legal remedies at the national level. Nevertheless, its decision deserves attention for acknowledging States' extraterritorial responsibilities on the prevention of human rights violations as a result of climatic impacts. Whilst underscoring that emitting States must control their emission sources, the decision recognised the causality between States' (in)action and cross-border human rights violations. Moreover, the OHCHR invoked the principle of common but differentiated responsibilities, stating that the transboundary aspect of climate change does not exempt States from their responsibility for national emissions and possible damages to individuals and/or communities, regardless of their location (Harvard Law Review 2022; Wewerinke-Singh 2021). These considerations are critical to States' accountability for the impacts of climate change on the habitability of several regions in the Global South. By not controlling and reducing GHG emissions in their territories, States can accelerate (forced) population movements and jeopardise the fulfillment of human rights in other nations.

Finally, in the Global South the *Cite Soleil Petition* submitted in February 2021 to the IACHR by a group of children against Haiti, raises human rights violations resulting from the incorrect disposal of solid waste in Cité Soleil, a district of Port-au-Prince. Climate change is not the main topic of the claim, but it appears as a cross-cutting issue that multiplies vulnerabilities, hampers the fulfillment of human rights, and weakens existing policies and legal frameworks. All of these triggers climate-induced migration.

The petitioners argue that climate impacts exacerbate the vulnerability faced by the local residents, who already live under unsustainable environmental conditions and are at constant risk of displacement. They allege violations of children's rights to dignity, to live in a healthy environment, and to access legal assistance. They request: (i) the application of the precautionary principle to avert the accumulation of further solid waste in the community, (ii) the establishment of adequate waste management measures, (iii) the provision of medical care for all residents of the community, and (iv) the protection of the community members against acts of violence while pursuing their interests as environmental and human rights activists. The IACHR is examining the petition's admissibility.

With respect to the second generation of cases discussed, we conclude that (forced) population movements are increasingly integrated into litigation as an adverse effect of climate change, one which ultimately leads to human rights violations. These rights-based climate cases enable: (i) the application of environmental rights to situations of (im)mobility; (ii) the adoption of litigation strategies that safeguard the rights of those vulnerable to climate impacts; (iii) the articulation of the climate, disaster risk reduction (DRR), environmental, human rights and migration agendas in a cross-cutting manner – from local to global; (iv) the use of precedent and innovative arguments to defend climate-induced migrants; and (v) the replication of experiences of climate and migration policies judicialisation to revise policy and legal frameworks that do not take the distinct dimensions of population movements into account.

3.3 Third generation: Climate-induced migration as a central axis of rights-based climate litigation

To date, rights-based litigation mostly makes fairly generic references to climate-induced migration or packages amongst a host of other concerns. As noted in relation to the second generation of cases

discussed, the topic tends to appear as secondary, that is, *one* among the many impacts of climate change. Nevertheless, we discuss two rights-based climate cases have addressed (forced) population movements in the context of climate change as a core argument.

The first, *Rights of Indigenous People in Addressing Climate-Forced Displacement* (United Nations Special Rapporteurs, 2020), relates to a petition submitted in 2020 to ten United Nations Special Rapporteurs on Human Rights by indigenous communities in the USA: four in Louisiana, (i) Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Indians of Louisiana; (ii) Pointe-au-Chien Indian Tribe; (iii) Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw Tribe; and (iv) Atakapa-Ishak Chawasha Tribe of the Grand Bayou Indian Village; and one in Alaska, the *Native Village of Kivalina*. They are represented by the Alaska Institute for Justice, a human rights organization dedicated to the rights of climate-induced migrants, among others. The communities argue that the USA government has breached its obligation to safeguard their human rights as they are being forced to relocate due to the impacts of climate change. The human rights argued include: (i) the right to live in freedom; (ii) the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; (iii) the right to participate in decision-making in matters which would affect their rights; among others. They maintain that the principle of self-determination has been disregarded since adaptation strategies (i.e. planned relocation) were instituted without prior consultation and participation. In light of this, they require the characterization of their situation as a human rights crisis (United Nations Special Rapporteurs 2020).

Among others, the communities request: (i) the recognition of the self-determination of indigenous peoples principle; (ii) the implementation of mechanisms that enable the effective consultation and participation of communities involved in decision-making processes; (iii) the provision of financial resources for the rehabilitation of indigenous' territories; (iv) the mainstreaming of human rights principles in planned relocation processes; (v) the protection of indigenous peoples' knowledge and traditions; and (vi) the free access of indigenous communities' members in their respective land when displaced and/or relocated (Ibid).

The petition awaits the opinion of the UN Special Rapporteurs. Again, despite being situated in the Global North, these communities' experiences are similar to those located in the Global South.

They are often excluded from decision-making processes regarding the effect of climate change on their human rights. That results, in turn, in the marginalisation of the whole community, loss of cultural aspects, and livelihoods, hampering their self-determination and leading to (forced) population movements.

Raizal Community of Providencia and Santa Catalina v. Colombia (2020) T-8.298.253, Constitutional Court of Colombia (Colombia), is a significant rights-based climate claim filed before a national jurisdiction that features climate-induced migration as a primary topic. It was advocated by an Afro-Caribbean ethnic group from the archipelago of San Andres, Santa Catalina, and Providencia (Colombia) with its own cultural aspects (i.e. specific language) and strong bonds to the territory. [13]

In November 2020, the archipelago was hit by Hurricane Iota, devastating the islands of Providencia and Catalina. In the aftermath of the climate-related disaster, the ethnic group reported the violation of distinct human rights (such as the right to life with dignity, health, housing, consultation, as well as the recognition of traditional lands) as a result of insufficient recovery responses. More importantly, the community was not consulted nor participated in the decision-making process for reconstruction actions (*Raizal Community of Providencia and Santa Catalina v. Colombia*). As such, the human rights violation happened here not only because of the forced movement of individuals from traditional territories but also due to the lack of government support and exclusion and marginalisation in establishing measures to support the affected people.

The ethnic group requests the express recognition and/or declaration of the community's 'climate-disaster displacement' situation, arguing that their culture and ways of living could be lost due to the impossibility of staying in their territory. In addition, the ethnic group asked for the establishment of an emergency plan to tackle disaster displacement, taking transparency and prior consultation in decision-making processes into account (Ibid.).

[13] Another pending third generation case is Legal Advice Centre T/A Kituo cha Sheria & Anor v. Attorney General and 7 Others (2022) 007 of 2022, Environment and Land Court of Iten (Kenya). In short, members of communities living on the shores of Lake Baringo (Kenya) seek an order to compel relevant government officials to rehabilitate, relocate, and restore damaged infrastructure; an order for compensation for climate change damage; as well as for resettlement of flood victims.

The petition was initially dismissed by the first and second instance courts in Colombia; but an appeal was admitted by the Constitutional Court in August 2021. In June 2022, the Constitutional Court ordered a series of precautionary measures. These were aimed at safeguarding the human rights of the ethnical group until the publication of the final decision. The arguments raised offer a unique opportunity for judicial engagement on the climate-migration nexus, consolidating climate litigation as an effective instrument to recognise and protect the rights of those affected.

Pending its final decision, in 2022 the Constitutional Court ordered the implementation of effective protection measures to prevent further damage to Raizal's population in the event of future extreme weather events in Catalina and Providencia. The Constitutional Court stated that the national government failed to comply with previous agreements on how the islands of Catalina and Providencia were to be rebuilt in the aftermath of Hurricane Iota. The Court further indicated that legal remedies should have been adopted, safeguarding fundamental rights such as housing, health, potable water, and sanitation. More importantly, the Court recognised that national authorities in charge of infrastructure reconstruction did not consult the local population. Therefore, the decision instructed national authorities to resume the reconstruction of both islands taking the requirements of Raizal's population into account, as well as the principle of 'Building Back Better'. That would enable the communities to effectively adapt to the adverse effects of climate change (*Raizal Community of Providencia and Santa Catalina v. Colombia*).[14]

Despite its innovative arguments and unique characteristics in addressing climate-induced migration, the case remains largely overlooked and is not listed in any of the climate litigation databases consulted for this study.

4. Conclusion

Rights-based climate litigation as a strategy to prevent and manage climate-induced migration, as well as to safeguard people's rights in situations of immobility, is still at an early stage. Our study tapped into arguments from human rights discourse that could inform rights-based litigation on the topic. These

[14] See Colombia's Constitutional Court decisions: (i) https://www.corteconstitucional.gov.co/relatoria/2017/SU097-17.htm and (ii) https://www.corteconstitucional.gov.co/Relatoria/2022/T-333-22.htm.

arguments are: (i) the acknowledgment of climate-induced migrants' human rights; (ii) the recognition of the right to a safe climate; ensuring the habitability of distinct areas in the globe while reducing (forced) population movements in this context; and (iii) the enforcement of States and private sector's duties that result from climate adaptation and mitigation and related human rights.

Importantly, human rights law offers a range of mechanisms to States and the private sector to tackle the current climate crisis, underlining their responsibilities in adopting rights-based approaches. Given that these actors figure in distinct litigation due to their contributions to climate change and subsequent human rights violations, they can also be responsible for (forced) population movements accentuated by the phenomenon. That is, their climate and rights-based duties could enable the recognition and protection of those on the move in the context of climate change.

Existing climate litigation approaches the topic of climate-induced migration variously as marginal or central, discussed with reference to three generations (or development stages). Climate-induced migration was litigated in the first generation of cases predominantly through protection instruments relevant to transboundary mobility, with petitioners from the Global South filing claims for the concession of resident permits or refugee status in countries from the Global North. Such claims facilitated the application of the *non-refoulement* principle in contexts in which climatic impacts prevail. A second generation of cases have highlighted (forced) population movements as one of many risks or effects of climate change in rights-based litigation that address countries' commitments related to climate change. Courts recognised that inaction and/or omission can lead to human rights violations, including as a result of forced population movements. Finally, climate-induced migration has featured in a third generation of cases as the main topic of rights-based climate litigation. These cases offer opportunities to consolidate litigation pathways as a strategy for the effective protection of climate-induced migrants.

Challenges to the effective use of rights-based climate litigation to address (im)mobility remain, rendering litigation potentially a blunt instrument. These include: (i) the difficulties in establishing causal links between GHG emissions and damages in litigation, (ii) the lack of ambition and/or omissions in the implementation of climate commitments, which litigation alone cannot solve, and (iii) the inadequacy of national adaptation policies focused on climate-induced migration that could be

enforced through litigation. A climate (in)justice issue is that linking the lack of Global North countries' compliance with international climate commitments to impacts on people and communities from the Global South is an extra obstacle. Further, spatial and temporal aspects connected to (in)justice are also worth reiterating: whereas climate impacts are often felt more acutely by populations and regions that contribute the least to the phenomenon, rights-based climate litigation usually focuses on violations that have already occurred – whilst the climate approach is oriented towards future risks and losses and damages.

To date, litigation with generic references to (forced) population movements as an impact of climate change prevail over those whose claims are built upon the phenomenon *per se*. The escalation of the global climate crisis, coupled with the structural problems and vulnerabilities in Global South regions, however, means that the third generation of litigation is bound to grow. The case *Raizal Community of Providencia and Santa Catalina v. Colombia*, for instance, represents an important shift toward the judicialisation of human rights violations as a result of climate-induced migration and thus points to a promising way forward.

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