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Left Without Protection? The Legal and Policy Gaps in the European Union's Approach to Climate-Displaced Children's Right to Education

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From the very beginning, I felt I was in the right place, somewhere I could truly be myself. I clearly remember the challenges of those first weeks: a new environment, a different language, and my own sense of insecurity. Yet each of you, with genuine sincerity, made me feel safe and accepted, walking beside me throughout this incredible journey. I tried my best to do the same. Thank you, my friends, for all that you have given me. Thank you for everything we shared-study, laughter, and so much more. Thank you EMA, you truly changed my life. I will always carry this beautiful journey with me. Good luck, my friends! See you around.

Abstract

Climate-induced displacement is a growing global concern, yet children affected by this phenomenon remain largely invisible in European legal and policy frameworks. This research investigates the extent to which the European Union (EU) protects the right to education of climate-displaced children from third countries, whose rights are not protected by current asylum and migration systems, and who therefore face exceptional vulnerability. The study addresses three core questions: the effectiveness of current EU normative protections, the implications of lacking a legal definition of "climate refugee," and the necessity and impact of formal recognition to guarantee the right to education. The research uses qualitative methodology based on a child-rights-based approach to analyze EU primary and secondary law together with relevant jurisprudence and international human rights instruments. The research shows major normative and implementation gaps which become worse because of the lack of legal recognition that prevents consistent education access across Member States. The analysis shows that legal recognition, which is normatively binding, must be accompanied by parallel policy reform to operationalise children's rights on the ground. The research develops a reform strategy which unites legal frameworks with administrative tools to resolve identified gaps. protecting their educational rights in the management of migration in the EU. The research establishes a framework that connects legal status to policy access to protect EU child rights from climate vulnerabilities.

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1 Introduction

1.1 Context and Significance of the Research

1.1.1 The growing phenomenon of climate-induced displacement

Climate change stands as a major global challenge of the 21st century because it produces extensive environmental effects together with economic impacts and social consequences. The Intergovernmental Panel on Climate Change (IPCC) has documented a steady rise in global temperatures, more frequent and intense extreme weather events and slow-onset environmental changes such as desertification, rising sea levels, and prolonged droughts (Bettini 2014, 180-195). The current climatic changes affect ecosystems and reduce agricultural production while creating resource scarcity issues most severely in South Asian and Sub-Saharan African regions and Pacific Islands (McAdam and Saul 2010, 158–160). The growing intensity of environmental stressors leads to increased human impact which drives millions to migrate for safety and food. The relationship between climate change and migration has emerged as a critical topic for both academic research and policy development. Climate change has emerged as a leading cause of displacement in various regions while traditional economic and political factors continue to influence migration patterns. Environmental deterioration enhances existing social and political weaknesses which produces both rapid climate-related relocations from natural disasters and gradual population movements because of desertification and increasing ocean levels (Campbell 2014, 325). Displacement caused by these events produces significant effects which impact both migrating people and the communities that accept climate-displaced persons. The United Nations High Commissioner for Refugees (UNHCR) reported that 32 million people needed to relocate because of climate-related disasters during 2022 which showed a substantial rise from earlier years (UNHCR 2022). This trend is projected to accelerate as climate change intensifies, disproportionately affecting populations in vulnerable regions such as South Asia, Sub-Saharan Africa, and island nations in the Pacific.

A major portion of climate change-driven population displacement stays inside national borders thus generating more internally displaced persons rather than cross-border refugees. The Internal Displacement Monitoring Centre reported 7.7 million IDPs in 2023 due to disasters while the total displaced population reached 75.9 million (IDMC 2023). These statistics underscore the complex interplay between environmental factors and displacement, wherein climate change exacerbates existing socio-economic and political vulnerabilities, leading to more frequent and prolonged displacement scenarios

Climate-induced migration remains mainly internal but certain populations face such severe conditions that they must cross international borders, challenging existing legal frameworks designed for displacement caused by conflict and persecution. The European Union Agency for Asylum (EUAA) reports that more than 70 per cent of refugees and displaced persons worldwide originate from countries which are highly susceptible to climate change impacts such as Afghanistan, Syria and the Democratic Republic of the Congo (EUAA 2023). The relationship between climate vulnerability as a driver of forced migration becomes evident from this data which requires immediate action through national and international policy changes.

Governments need to base their effective governance responses on the understanding that climate change acts as a trigger for forced migration. However, UNHCR emphasizes that climate migrants currently lack a formal legal status under international refugee law, as the 1951 Refugee Convention does not include environmental factors themselves as grounds for protection (UNHCR 2023).The absence of legal recognition creates a challenge for establishing permanent solutions which prevents many climate-displaced persons from obtaining clear legal pathways for resettlement or asylum.

Climate-induced displacement creates extensive effects that reach far beyond the need for legal protection and humanitarian support. The effects of climate-induced displacement negatively affect economic stability as well as food security and public health especially within fragile states. The UNHCR warns that insufficient mitigation and adaptation efforts will lead to escalating climate-induced displacement which will stress national and regional infrastructure systems and worsen current inequalities (UNHCR 2023). Knowledge about the extent of climate-related population shifts serves as a critical basis for creating policies that fulfill both immediate humanitarian needs and establish sustainable resilience programs.

The rapid growth of climate-induced population movements creates major humanitarian problems and complex legal challenges and significant socio-economic consequences at the worldwide level. While millions are already affected, the absence of a comprehensive legal framework to address their protection remains a significant challenge. The changing patterns of global migration due to climate change require immediate action to create adaptable and inclusive policies which protect the rights and dignity of displaced populations.

1.1.2 Vulnerabilities of children in climate change scenarios

Children are uniquely vulnerable to the impacts of climate change due to their physiological, developmental, and socio-economic status. The World Health Organization (WHO) underscores that climate-related environmental hazards, such as rising temperatures, extreme weather events, air pollution, and water scarcity, disproportionately affect children, increasing their risk of illness, malnutrition, and displacement (WHO 2011). Children face greater risk from respiratory diseases, vector-borne illnesses and waterborne infections because their developing immune systems make them more vulnerable than adults (Sheffield and Landrigan 2011, 291–292).

One of the most pressing health-related risks is climate-induced malnutrition. Climate change threatens worldwide food security because it diminishes agricultural output while elevating food costs thus disproportionately affecting children in low-income communities (Helldén et al. 2021, e167–e168). Limited food availability together with poor dietary conditions damages children's physical and cognitive development while producing long-term health problems. The intensified effects of climate change have led to both prolonged droughts and flooding which diminish nutritious food availability, exacerbating hunger and malnutrition, particularly in regions already struggling with food insecurity (UNICEF 2023).

Beyond physical health, climate change also has profound implications for children's mental well-being. The destructive power of hurricanes and wildfires and floods along with their resulting displacement leads children to experience displacement which create psychological distress, anxiety, and post-traumatic stress disorder (UNICEF

2023). Children who endure repeated climate disasters face education interruptions, family separation and instability, all of which hinder their emotional development (IPCC 2022). Furthermore, children who reside in locations that face severe climate risks including Pacific Islands and sub-Saharan African territories risk losing their ancestral homes and cultural heritage because of rising ocean levels and desertification (Campbell 2014, 325). The lack of adequate social protection systems further exacerbates these vulnerabilities, making it difficult for displaced children to access education, healthcare, and other essential services.

The distribution of climate change effects is not uniform throughout all children. Children from disadvantaged backgrounds along with Indigenous populations and children from conflict-prone regions, face increased risks due to their limited access to healthcare, clean water and safe living conditions (UNICEF 2023). Gender disparities also play a role, as girls in many parts of the world are more likely to be withdrawn from school to assist with household responsibilities when climate-induced economic hardships arise, as stated by the Geneva Global Hub for Education in Emergencies.

The accumulation of risks requires immediate implementation of climate-resilient policies that address the distinct needs of children. The accelerated effects of climate change will produce a generation of children who experience multiple disadvantages in health and economy and social stability unless their unique situation receives attention. Without immediate interventions, the impacts of climate change on children will not only persist but will intensify.

Therefore, children who migrate due to climate change face a unique set of vulnerabilities that extend beyond those experienced by adult migrants. The process of displacement exacerbates their exposure to physical harm, psychological distress, and legal uncertainties. UNICEF explains that children who migrate due to climate change frequently find themselves in dangerous situations where their access to healthcare, education and legal assistance becomes highly restricted (UNICEF 2023). The children who migrate because of these factors experience the greatest risks from unsafe travel routes and trafficking as well as insufficient living accommodations in their destination countries (IOM and UNICEF 2021).

One of the primary challenges for climate-displaced children in Europe is the lack of legal recognition under existing asylum frameworks. Unlike those fleeing armed conflicts or persecution, the 1951 Refugee Convention excludes children who flee because of climate-related disasters from receiving refugee status therefore leaving them without legal protection and international safeguards (McAdam and Saul 2010, 160–162). The lack of legal protection creates conditions for these children to become irregular migrants who face detention and deportation alongside the risk of exploitation. Furthermore, many European nations lack comprehensive policies to integrate these children into national education systems, leading to prolonged educational disruptions and difficulties in social adaptation (UNICEF 2023). In addition to legal barriers, climate displaced children in Europe encounter significant social and economic barriers. According to UNICEF (2023) family separation is a common outcome of displacement and unaccompanied minors experience psychological trauma and social isolation. These compounded vulnerabilities underline the urgent need for policy frameworks that specifically address the integration and protection of climate-displaced children in Europe, ensuring their access to rights and opportunities equivalent to those of other migrant

and refugee groups.

1.1.3 Why the right to education matters

The right to education is universally recognized as a fundamental human right and is enshrined in several core international treaties. The Universal Declaration of Human Rights (UDHR), adopted in 1948, in Article 26 guarantees everyone access to education without cost while requiring its compulsory attendance at the elementary level (UN General Assembly 1948). This foundational principle was further reinforced by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in Article 13 mandates that states ensure the right to education without discrimination, including for migrant and displaced children (UN General Assembly 1966). The Convention on the Rights of the Child (CRC), the most recognized human rights instrument since its adoption, clearly states in Articles 28 and 29 that states must provide free primary education to all children regardless of migration status (UN General Assembly 1989).

The right to education finds equal protection under European law through various legal instruments. The European Convention on Human Rights (ECHR) via Protocol 1 Article 2 confirms that "no person shall be denied the right to education," establishing a binding obligation on European states to provide access to education, including for migrant children (Council of Europe 1952). Article 14 of the European Union (EU) Charter of Fundamental Rights expands this right by demanding member states to provide education access across all educational levels to both nationals and non-nationals (European Union 2000). In addition, the Reception Conditions Directive (2013/33/EU) provides a specific legal framework for the right to education of asylum-seeking children in the EU, mandating that education be granted to minor applicants "under conditions similar to those enjoyed by nationals of the host Member State" (European Parliament and Council 2013).

EU member states demonstrate varying degrees of success in implementing the educational obligations specified by legal frameworks. Migrant and displaced children cannot fully exercise their right to education because of insufficient standardized enforcement procedures and national administrative hurdles (UNESCO 2023). Addressing these challenges requires stronger legal harmonization at the EU level, ensuring that international and regional commitments translate into effective educational access for migrant children across Europe.

The power of education serves as a dual-purpose tool which helps people gain personal strength and creates pathways to improve their standing in society and establish long-term development. UNESCO declares that education stands as a legal right and simultaneously functions as a vital tool to build dignity alongside equality and promote societal involvement (UNESCO 2022). UNICEF emphasizes that access to education is particularly critical for marginalized populations, such as migrant and displaced children, as it provides them with stability, protection, and the opportunity to build a better future (UNICEF 2023).

For children affected by climate-induced displacement, education plays an even greater role in mitigating the adverse effects of forced migration. Migrant children face heightened vulnerabilities, including social exclusion, economic hardship, and limited access to fundamental services (UNICEF 2023). The right to education for migrant

children represents an essential legal requirement that enables their integration and leads to sustained social cohesion (UNESCO 2023).

Education functions as a driving force to develop both economic structures and social systems in society. Research evidence demonstrates that educational investments generate economic security while reducing social gaps (McCowan 2010, 313–314). This is particularly relevant in migration contexts, where access to quality education can significantly impact the social integration of displaced children and their ability to contribute actively to their host communities. The skills gained through education prepare them to enter the workforce so they do not need to rely on welfare programs for an extended period and avoid falling into cycles of poverty (Beiter 2005, 92–93).

Furthermore, education acts as a protective mechanism, reducing the likelihood of exploitation, child labor, and trafficking among vulnerable migrant populations (UNICEF 2023). A lack of educational access often forces displaced children into informal labor markets, increasing their exposure to hazardous working conditions and exploitation (UNESCO 2023). The role of education in child protection is further underscored by UNICEF and the International Organization for Migration (IOM), which stress that education provides a sense of normalcy and psychological stability for displaced children, shielding them from the long-term effects of trauma and forced migration (UNICEF and IOM 2021).

Despite its undeniable importance, access to education remains highly unequal, especially for migrant children in Europe. Legal and structural barriers, including restrictive migration policies, socioeconomic inequalities, and discrimination, prevent many displaced children from fully exercising their right to education. Universal access to education requires complete policy reforms which establish inclusive educational systems and language support services and equal educational rights for all students regardless of immigration status (UNESCO 2023).

The fundamental right to education stands as a cornerstone of human rights and social justice. For climate-displaced children, it is not only a means of academic and professional development but also a vital tool for protection, integration, and empowerment. Universal access to education specifically for migrant populations creates essential foundations for building stable, equitable and resilient societies.

1.2 Research Gap and Rationale

1.2.1 Limited academic focus on educational access for climate-displaced children within the EU

Despite the increasing urgency of climate-induced displacement, the academic literature emains largely fragmented regarding the educational rights of climate-displaced children within the European Union (EU). Climate displacement introduces distinct challenges that remain insufficiently addressed in current research and policy discussions. The relationship between climate change and migration patterns has received substantial research attention but the field lacks sufficient studies about how climate-displaced children receive educational services in host countries especially within EU legal and policy framework.

The distinction between conflict-induced displacement and climate-induced displacement is often overlooked in education-related policies which results in insufficient legal protection for children who move because of environ-

mental changes (UNESCO 2023). Children who experience climate displacement do not qualify for international refugee protection so their educational opportunities depend on the differing national migration policies of EU Member States (UNICEF 2023). These children face multiple barriers, they frequently encounter bureaucratic obstacles, limited enrollment opportunities, and systemic exclusion from formal education systems. EU directives and frameworks which guide education for migrant children do not include provisions for climate-related displacement which results in inconsistent policy responses among Member States (UNESCO 2023).

1.2.2 Existing legal vacuums and definitional challenges

The lack of defined legal provisions regarding climate-displaced children in international and European Union (EU) law hinders their educational opportunities and social inclusion. The 1951 Refugee Convention excludes climate-displaced persons from protection because it defines refugees only as those who fear persecution based on race, religion, nationality, social group or political opinion (UN General Assembly 1951). The absence of explicit asylum protections for climate change victims places them outside the protection of international refugee law (McAdam and Saul 2010, 161).

The Reception Conditions Directive (2013/33/EU) of the EU protects migrant children's educational access but fails to provide explicit provisions for climate migrants (European Parliament and Council 2013). The directive does not extend its provisions to climate migrants so national governments must develop their own policies which result in inconsistent practices (UNESCO 2023). As a result, some EU Member States grant education to climate-displaced children under general migrant integration policies, while others exclude them from formal schooling due to lack of legal status (UNICEF 2023). The inconsistent policies create systematic barriers and bureaucratic challenges and legal ambiguity which restrict educational possibilities for climate-displaced children.

The lack of clear definitions about "climate refugee" and climate-displaced children worsens these problems. The absence of an accepted definition of "climate refugee" creates policy inconsistencies which generate political opposition to providing legal status to these individuals (Beiter 2005). The absence of legal clarity causes climate-displaced children to enter irregular migration status which blocks their access to education and social services and residency rights. The EU must establish legal harmonization to provide displaced children with enforceable educational rights through consistent EU-level provisions.

1.3 Research Questions and Objectives

This thesis aims to explore the legal and policy frameworks, of the European Union, governing the right to education for children displaced because of climate change, addressing key gaps and challenges in existing legislation. To achieve this, the research is guided by the following main research question, and two sub questions:

1. To what extent does the EU's normative framework protect the right to education for climate-displaced children from third countries, and what gaps hinder its effective implementation?

2. How does the absence of a legal definition of 'climate refugee' affect recognition and access to fundamental rights?

3. Is formal recognition of climate refugees necessary in the EU, and what legal and policy implications would follow?

These research questions serve as the foundation for this study, shaping its primary objectives, which can be outlined as follows:

1. Assess the existing EU legal framework governing the right to education for migrant children, with a specific focus on whether these provisions adequately cover children displaced due to climate change.

2. Examine the impact of the lack of legal recognition for climate-displaced individuals under international and EU law. This includes assessing how the absence of a formal legal status affects their access to education and other fundamental rights.

3. Critically evaluate the necessity and feasibility of granting formal recognition to climate refugees within the EU legal system.

4. Contribute to legal and policy discussions by proposing potential reforms to strengthen the importance of education for climate-displaced children in Europe.

1.4 Research Methodology

1.4.1 Research Approach

This thesis applies qualitative human rights-based research approaches that combine legal and policy analysis with child-centered human rights perspectives. This research investigates how European Union legal and political frameworks safeguard the right to education of children who have been displaced by climate change but it avoids standard doctrinal legal research approaches. The research examines legal instruments, policies, and institutional practices through the lens of international and regional children's rights standards instead. This approach allows for an analysis that is both normatively grounded and consistent with the broader values and methodologies of human rights research. The legal and policy frameworks are examined in terms of their impact on children's rights, with particular attention to the principles of non-discrimination, best interests of the child, and the right to education as enshrined in the Convention on the Rights of the Child (CRC) and related EU instruments. This methodological orientation is aligned with the research objectives of human rights scholarship, which often focuses on the practical implications of legal norms and their implementation, especially for vulnerable populations such as displaced children. The research uses international human rights instruments and EU law and child protection policies together with secondary sources including institutional reports academic literature and civil society publications. Rather than seeking to interpret legal norms in the abstract, the analysis examines legal and policy frameworks to determine their role in protecting or neglecting education access for children moved by climate changes. A critical analysis of structural barriers which affect rights access guides this research approach. Human rights instruments protect children who have been displaced by climate change even though they do not receive formal recognition under refugee or asylum law. The research focuses on a rights-based interpretation of EU law and policy development to evaluate their practical implementation of human rights standards especially for children. This research strategy

enables a multidimensional analysis which aims to capture the lived implications of law and policy on children's rights.

1.4.2 Data Sources

The research relies on a number of primary and secondary sources which are relevant to the issue of protection of children's rights in the context of climate change induced migration. In line with the human rights-based methodological approach described above, the study mainly relies on international and regional legal instruments that define and specify the right to education and the protection of children, including those who are displaced. The analysis is based on the main human rights instruments, including the Convention on the Rights of the Child (CRC), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) that establish the normative basis for the right to education and the principles of non-discrimination and the best interests of the child. These texts are not examined from a strictly legal-doctrinal perspective, but rather in terms of their practical implications and interpretive potential when applied to the case of climate-displaced children.

At the European level, the study includes legal sources related to the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights (ECHR) and specific legal instruments in relation to migration and asylum, such as the Reception Conditions Directive (2013/33/EU). These texts are used to see how EU policy and legal instruments relate to, or do not relate to, the particular educational needs of children displaced by climate change.

In addition to these legal sources, the thesis draws on a wide range of secondary materials, including reports by international and regional institutions, such as UNICEF, UNESCO, the International Organization for Migration (IOM), and the European Union Agency for Asylum (EUAA), academic literature, and publications of civil society organizations. These reports give important information on the concrete difficulties that climate-displaced children encounter in obtaining education and how administrative barriers, socio-economic exclusion, and differences in national implementation of EU directives contribute to the problem and why this gap must be addressed for this vulnerable group. The institutional reports and academic analyses are useful to understand how legal frameworks are understood in practice and where they lack in protecting the rights of this group.

This research uses its data sources to develop a critical, rights-based assessment of how the EU ensures the right to education for children who have been displaced due to climate change. The focus is on the real world effects of laws and policies, and their compliance or non-compliance with international children's rights standards. This approach enables the research to be rigorous and grounded in the broader field of human rights and democratization.

1.4.3 Limitations of the Study

As with any research project, the research project contains various limitations which need to be recognized. The research does not follow a doctrinal legal approach, due both to the researcher's academic background and to the conceptual framing of the study within the field of human rights. The research focuses on practical effects of legal

and policy frameworks on children's rights which may lead to less emphasis on certain formal legal debates or theoretical constructs than traditional legal analyses would emphasize.

The study faces limitations due to scarce data about children who became displaced because of climate change. Climate-induced displacement remains an underdeveloped field in academic studies and policy creation because the absence of legal definitions for 'climate refugees' or climate-displaced persons results in limited statistical information and policy documents that focus on this specific population. The scarcity of specific data that tracks current implementation across EU Member States reduces the accuracy of assessment results.

The research study does not include fieldwork observations or direct interactions with populations who have been affected. The research has been defined to desk-based analysis because of time restrictions and access limitations and because the thesis focuses on legal and policy and academic sources. While this allows for a wide-reaching review of norms and practices, it also limits the extent to which the study can reflect the lived experiences of climate-displaced children or assess the on-the-ground realities of educational access in different national contexts.

The research takes place in a dynamic policy environment which needs proper recognition. Certain policy interventions analyzed in this thesis may evolve after the research period ends. The research contributes to current discussions by delivering a human rights focused analysis of the current state of legal and policy responses which reveals existing protection shortcomings and future improvement possibilities.

1.5 Thesis Overview

The thesis examines the extent to which the European Union's normative framework protects the right to education for climate-displaced children from third countries, identifying key legal and policy gaps and proposing actionable reforms. Through a child-rights-based analysis of EU law, international human rights instruments, and policy practice, it responds to the three central research questions concerning protection scope, the implications of definitional absence, and the necessity of legal recognition. Chapter 2 examine the literature and frames the debate. Chapter 3 evaluate how lacking legal recognition hinders access to rights. Then chapter 4 explores legal reform options, while Chapter 5 outlines recommendations for policy solutions for inclusive educational access and general conclusion.

2 Literature Review

2.1 Evolving Terminology and Uncertain Legal Frameworks

The last few decades have witnessed climate change become a major driver of human migration which has intensified the worries of government officials, legal experts, and human rights defenders. Although there is now broad awareness of the connection between environmental degradation and migration, there continues to be little agreement on what terms should be used to describe those affected who move as a result of climate-related impacts. The notion of climate migrant, 'climate refugee', and environmentally displaced person recurs frequently in the academic literature yet each has its own legal, political and normative dimensions (Gemenne 2011, S42–S43; Fluzin 2024, 52–54). Lack of agreement about terminology is not merely a matter of semantics since it has practical effects on state reactions to such movements and the rights and protections to which displaced individuals are entitled, including education.

According to academic and institutional sources, the legal framework does not provide sufficient clarity regarding the definition of those who become displaced due to environmental stressors. This lack of clarity poses specific problems for the rights-based framework since terminology directly impacts recognition and protection as well as accountability. The international community faces challenges in creating unified legal or policy solutions because of its inability to use common language. According to Baldwin (2014, 1-12) and McAdam (2011, 11), the terminology is not only analytical but also often determined by broader political and strategic factors, especially concerning state responsibilities under international law. When terminology development occurs it serves to establish who deserves legal protection and under which circumstances.

The scholarly discussion regarding terminology in climate-induced migration reveals fundamental conceptual conflicts and political sensitivities. The term 'climate refugee' stands out as the most well-known yet disputed expression that appeared from the 1980s before becoming a popular concept in advocacy work and public discourse (Docherty and Giannini 2009, 357–359). Within academic and legal communities the term remains disputed because it lacks a legal foundation and fails to align with the refugee definition specified in the 1951 Refugee Convention. McAdam (2011, 31-34) clarifies that the refugee definition in the Convention centers on persecution of a person because of race, religion, nationality, social group or political opinion which fails to include environmental or climatic criteria. The use of the term climate refugee can lead to wrong assumptions about refugee status under the international refugee law that can be problematic for both the displaced people and the host countries.

To address this legal inconsistency scholars and institutions have recommended using terms such as climate migrant, environmentally induced migrant or environmentally displaced person (Kälin 2008; Ionesco, Mokhnacheva, and Gemenne 2016, 52–54). These terms reflect the understanding that displacement linked to climate change often involving a mix of push and pull factors, making it difficult to clearly distinguish between voluntary and forced movement. The International Organization for Migration (IOM) supports flexible language that can encompass the multiple causes of migration while excluding the rigid refugee status criteria. Kälin (2008), in particular, emphasizes that the law should recognize this complexity without necessarily importing legal consequences from refugee law,

which may not be appropriate or effective in this context.

Although various attempts have been made to abandon the term 'climate refugee' it remains widely employed sometimes intentionally. Baldwin (2014, 1-12) points out that the persistence of the term reflects the power dynamics that exist in the global discussion of displacement and responsibility. The term evokes a moral imperative and frames climate-induced mobility as a matter of justice, particularly in the context of global inequalities and the disproportionate impact of climate change on low-emitting, high-risk regions. Although it lacks legal precision the term serves as a political instrument to make affected populations' situations more visible and to enforce historical accountability of responsible states. On the other hand, Fluzin (2024) points out that the use of inconsistent and emotionally charged terms can hinder the achievement of coherent legal and policy responses. He contends that it is essential to create terminology that is both normatively correct and practically useful, a terminology that can assist institutions without employing contentious legal analogies. The debate about words transforms into a fundamental disagreement about how to classify and respond to human mobility because of climate change which does not fit into current legal categories. These terminological disputes have important implications for recognition, resource allocation, and the design of protective frameworks. The ambiguity of terminology regarding displaced children places them at a higher risk of being neglected from systems because these frameworks fail to detect their unique vulnerabilities.

To address this legal vacuum the UNHCR and IOM use flexible but non-binding terminology to describe people displaced by disasters and climate change (UNHCR 2021; Ionesco, Mokhnacheva, and Gemenne 2016, 18–21). The terminology represents climate-related mobility complexities yet provides no legal protections that can be enforced. International definitions that are legally binding are absent which leads to the condition of "legal invisibility" where persons displaced in these situations lack entitlement and protection under migration and protection systems.

The unclear nature of terminology leads to problems with policy coherence. States interpret and react to climate-induced displacement independently because there is no international agreement on how to handle this issue based on their political agendas and institutional resources. National responses to this issue vary extensively between complete exclusion and limited inclusion because different jurisdictions use different labels to describe displaced persons as migrants or disaster victims or other categories. The absence of a specific legal classification provides flexibility but enables inconsistent practices mainly in migration control and basic service delivery according to Gemenne et al. (2021, 106–107).

The uncertainty surrounding these terms creates direct impacts on the rights of displaced persons. Legal recognition absence leads to unstable access to asylum procedures as well as healthcare and education services and documentation. Children face a critical situation because of they need special protection. Children who experience climate impact displacement face high risks of missing out on child protection services because administrative systems categorize them in ways that fail to recognize their displacement status.

Most research about climate-related population displacement concentrates on adults while ignoring how climate change affects children specifically and their rights in such situations. The absence of legal classification becomes most apparent when analyzing how climate-displaced children lack protection under migration policies and child wel-

fare frameworks (UNICEF 2023; UNESCO 2020). McAdam (2011, 31-34) describes the situation faced by children who experience climate-related mobility as a "legal vacuum" because they receive humanitarian acknowledgment without obtaining enforceable rights.

This invisibility has direct consequences on the right to education which is basic for the protection in the short run and the development in the long run. UNICEF (2023) also noted that in such a situation, children face legal and administrative problems in school registration, especially if they are not officially recognized or registered. In the EU context, where access to education is a function of legal status and national discretion, the absence of a recognized category of climate displaced children results in a patchwork and often discriminatory approach. UNESCO (2020) also stated that children in the context of displacement may be completely excluded from education or enrolled in temporary and separate systems that are of poor quality and do not lead to mainstream schooling.

The consequences go further and include documentation, identity, health care, and family reunification which all depend on the legal status of the child. Since legal systems work through categories, the absence of definition and recognition of climate-displaced children means that they have no institutional foothold. This is particularly problematic as climate displacement is projected to rise substantially in the coming years, particularly in regions of the Global South with large child populations and limited adaptive capacity (Gemenne et al. 2021, 104; UNICEF 2023).

A child rights-based approach shows that these exclusions are in violation of several fundamental principles of international human rights law, including non-discrimination, the best interests of the child, and the right to development enshrined in the CRC. Without a recognized legal status, these children are still outside of the institutional frameworks that would otherwise secure their access to rights, including safe, continuous, and inclusive education.

The academic literature, therefore, reveals a structural contradiction: although children's rights are recognized in normative terms, the lack of legal recognition of climate displaced children makes it impossible to realize these rights in practice. This thesis, through a child rights-based approach, directly addresses this contradiction by examining whether current EU legal and policy frameworks are consistent with children's rights standards, and whether the current lack of conceptual and legal clarity is helping to perpetuate protection gaps rather than solve them.

2.2 Core Human Rights Instruments Relevant to Migrant Children

The normative framework for child protection in all migration settings is provided by international and regional human rights law. These instruments function as legal obligations for states and establish consistent principles, as universality, non-discrimination, that apply to all children no matter their nationality or migration status or reason for displacement. The Convention on the Rights of the Child (CRC) stands as the most extensive and most accepted instrument in this legal framework. The CRC establishes in its Article 2 that all children under state jurisdiction enjoy its protections, meaning that migrant, asylum-seeking, and undocumented children are all equally entitled to its protections (UN General Assembly 1989).

The CRC guarantees migrant children essential provisions through Article 28 (education rights) Article 29 (educational objectives) and Article 22 (protection for refugees and asylum seekers). Every child-related decision must give precedence to their well-being under the best interests of the child principle which applies as a general interpretive standard according to Article 3. These principles are central to rights-based approaches in migration contexts and have been reaffirmed in the Committee on the Rights of the Child's General Comment No. 6, which specifies that separated and unaccompanied children should be granted access to the same rights as nationals, particularly in education (CRC Committee 2005). The CRC provides both an operational framework and a normative framework to assess state performance in upholding children's rights, including protection for children displaced by climate change regardless of their status under migration law.

Thus, the right to education applies to all children without exception according to various global human rights instruments beyond the CRC. The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines Article 13 which establishes the educational rights of all people while the Universal Declaration of Human Rights (UDHR) upholds Article 26 which requires education to be both free and compulsory for at least elementary levels. These instruments extend their broad protections to cover claims about inclusion and access for all displacement situations regardless of legal immigration status. United Nations bodies together with NGOs and advocates use these treaties to establish legal grounds when holding states responsible for denying educational access to migrant and displaced children (UNESCO 2020; UNICEF 2023).

Migrant children in Europe have additional rights protections through regional instruments but their execution differs between member states. The Charter of Fundamental Rights of the European Union, which is legally binding on EU institutions and Member States when implementing EU law, reaffirms the right to education (Art. 14) and recognises children's rights broadly in Article 24, which reaffirms the respect of the best interest of the child. Similarly, the European Convention on Human Rights (ECHR) protects the right to education under Protocol 1, Article 2, as interpreted by the European Court of Human Rights. EU secondary legislation strengthens these rights through the Reception Conditions Directive (2013/33/EU) which requires asylum-seeking minors to receive education under the same terms as EU nationals (European Parliament and Council 2013). However, the Reception Conditions Directive fails to protect children with unclear immigration status including those moved by environmental changes because it only applies to those whose status falls under the asylum regime.

The gap between theoretical protections and practical implementation of these frameworks remains a persistent concern according to both scholars and institutions when it comes to migrant and displaced children. The European Union Agency for Fundamental Rights (FRA) showed how, while the normative principles of international and European law affirm the right to education for all children, in practice these rights are not consistently upheld (FRA 2017). This is especially concerning in light of the increasing number of children affected by climate displacement, a group for whom there is no dedicated legal status and no harmonised EU response. McAdam (2011, 79) points out that these human rights instruments have universal jurisdiction yet their enforcement depends on state choices and often lacks sufficient corrective action for violations. The lack of legal protection becomes especially problematic for children who moved due to climate change since they lack status under current refugee or migration law and

consequently receive minimal protection from national and regional frameworks. The absence of specific legal status for climate-displaced children who face growing numbers is particularly worrisome because there exists no standardized EU response to their needs. These children's rights claims maintain their urgent nature and legitimacy even without an explicit legal category according to UNICEF (2023) and UNESCO (2020). The situation requires a more active and comprehensive application of existing human rights instruments.

This thesis builds upon this normative foundation to assess how EU legal and policy frameworks interpret, implement, or neglect these core human rights guarantees in practice.

2.3 Forced vs. Voluntary Displacement Debates

The academic literature on climate-induced migration increasingly challenges the binary distinction between "voluntary" and "forced" displacement, arguing instead for a more nuanced conceptual framework that reflects the complexity of environmental migration. Research conducted by scholars emphasize that most movements linked to climate change are shaped by a combination of environmental stressors and socio-economic vulnerabilities, making it difficult to categorically define such migration as either entirely forced or entirely voluntary (Gemenne 2011, 319; Ionesco, Mokhnacheva, and Gemenne 2016, 35). The International Organization for Migration (IOM) supports this view through their research which suggests that climate-induced movement exists as occurring along a continuum, with varying degrees of compulsion depending on context and timing (Ionesco, Mokhnacheva, and Gemenne 2016, 18–21).

Gemenne (2011, 319) explains that migration decisions because of environmental degradation are never caused by a single factor. The people who migrate from regions hit by desertification or salinization leave to maintain their livelihoods but their movement occurs because of insufficient public infrastructure combined with political abandonment and economic disadvantage. People experience "voluntary" migration under extreme pressure because they lack better alternatives. Similarly, Kälin (2008) points out that although some slow-onset climate events permit anticipatory movement, many such displacements remain reactive due to institutional delays, lack of early warning systems, or limited mobility options among poorer populations. Migration decisions rarely occur under completely free conditions because of the multiple factors involved so they need assessment through a constrained choice framework (Gemenne 2011, 320). In these situations, the element of choice is more than illusory.

The literature also highlights that sudden-onset disasters like floods, hurricanes, or wildfires are more likely to trigger displacement perceived more "forced" due to the immediacy of risk and the absence of alternatives (Gemenne et al. 2021, 102–103; UNHCR 2021). However, even in these cases, the responses to these situations differ based on local governance structures and risk perception as well as social cohesion among the affected population. Baldwin (2014, 1-12) explains that environmental migration requires analysis beyond material factors because it exists within broader discourses of vulnerability, securitization, and development.

The definitions given to displacement depend on political power dynamics which determine which groups receive protection. Furthermore, the classification of climate-related migration as "voluntary" often serves administrative or political purposes. Fluzin (2024) reveals how policymakers use the term "voluntary" as a strategic tool to escape

legal responsibility while reducing protection access. Such classifications obscure the structural injustices underlying climate displacement, including the disproportionate exposure of Global South communities to climate impacts caused largely by emissions from the Global North. Such critiques suggest that policy and academic discourse should move away from rigid classifications and toward a more relational and ethically grounded understanding of displacement.

The research documents an essential research deficiency in regard to children. The academic discourse about sudden- and slow-onset displacement lacks sufficient representation of children even though they face increased vulnerability during these scenarios. Despite their heightened vulnerability, children are rarely addressed as a distinct category in academic and policy debates on climate migration. Reports from IOM and UNHCR (2021) highlight that children affected by climate-induced displacement frequently face compounded risks: interrupted education, heightened exposure to exploitation, psychological trauma, and long-term developmental impacts. The failure to incorporate a child-rights perspective into the forced-voluntary debate points to an urgent need for more intersectional approaches in both research and policy.

The academic debate demonstrates that speaking about the distinction of voluntary and forced migration is an inadequate lens through which we have to understand climate-induced migration. Climate change migration results from a combination of environmental pressures along with economic, political and social factors that reduce the ability of people to make choices. Rather than adhering to rigid classifications, scholars increasingly advocate for a spectrum-based understanding of climate mobility that recognizes the interdependence of structural forces and personal constraints.

2.4 The role of education for displaced children

2.4.1 Education for resilience and protection

The human rights framework and humanitarian responses to displacement rely heavily on education as their core foundation. Education is not only an institutional right, education functions as a vital survival tool development support as well as inclusion pathway for children who migrate whether voluntary, forced, or environmentally driven. As stated previously, key human rights instruments like the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), affirm its importance and it is crucial to recognize that it extends to all children, regardless of migration or legal status. Displaced children face numerous legal and financial and logistical barriers which prevent them from accessing education especially when they are in host states that systemically where systemic exclusion persists. The literature strongly supports the idea that education functions as a protective space for migrant and refugee children who face high levels of vulnerability. Researchers describe education as fundamental tool helping them integrate into society and build resilience which becomes essential when climate change leads to displacement.

Education is not only a buffer against the loss of routine and security but also provides tangible protection from exploitation, abuse, and long-term developmental harm (UNESCO 2020; Ialuna 2023, 2–3). As UNICEF

(2023) emphasizes, children in displacement contexts often lack the social and institutional structures that normally safeguard their well-being. Schools create stable environments which provide daily structure and psycho-social care to children while supporting their emotional resilience. Research conducted in multicultural communities with high refugee populations shows children who remain in school experience decreased trauma symptoms and better emotional stability compared to children who do not attend school (Ialuna 2023, 2–3; Dryden-Peterson 2022, 114–117).

Moreovers, studies show that a lack of education leads to increased risks of early marriage as well as child labour and irregular migration among undocumented children and especially among girls (UNESCO 2020). Thus, the access to education protects students from additional dangers of secondary vulnerabilities that worsen the negative effects of displacement while achieving developmental and cognitive objectives. According to the International Organization for Migration (IOM) education functions as a vital "resilience pathway" during extended displacement and environmental crises thereby supporting the idea that that protection and resilience are not merely outcomes of legal status, but of sustained educational access (Ionesco, Mokhnacheva, and Gemenne 2016, 18–21).

2.4.2 Education as a Tool for Integration and Inclusion

In addition to its protective function, education plays a vital role in fostering the social integration of migrant and displaced children into host societies. The educational environment serves as the first contact point between migrant children and local students through which they can learn about host country customs and establish their sense of identity. The OECD (2018) along with other field literature show that education acts as a key instrument for creating social capital as well as language abilities and cultural competencies which are vital elements for successful long-term integration. One of the most significant integrative functions of education is its role in language acquisition and cultural adaptation. Children from migrant and refugee backgrounds who have access to inclusive education institutions that offer language support show better integration results than those attending segregated or excluded schools according to the OECD (2018). Educational institutions can effectively include migrant children when they offer language instruction and multicultural curricula and when they train teachers to understand diversity.

Through academic learning, schools construct fundamental social connections. The formation of friendships among students, educators and mentors enables migrant children to experience a sense of security and mutual recognition in unfamiliar social environments (Ialuna 2023, 4). These peer relationships are fundamental not only for emotional development but also for mitigating the social isolation and marginalization frequently reported among displaced children (Dryden-Peterson 2022, 114–117). Educational settings that emphasize cooperation, intercultural dialogue, and anti-discrimination principles support children's development of trust in institutions, an outcome particularly important for children who may have fled from contexts where state institutions failed or persecuted them.

Inclusive education contributes to the reduction of xenophobia and the strengthening of social cohesion in host communities. Inclusive classrooms that present diversity as standard practice, rather than an exception, lead to better academic results for every student, and not only those from migrant backgrounds (OECD 2019). In this

regard, education is not merely a service provided to newcomers, it becomes a two-way process that facilitates social transformation and community resilience.

Numerous obstacles exist which limit migrant integration despite its potential. Migrant children experience discrimination through admission restrictions and language-based education systems which fail to accommodate their backgrounds or learning needs (Potochnick S. 2014, 337). Legal status can also determine whether children are entitled to public education, especially in the case of undocumented migrants or asylum seekers in procedural limbo. Research shows that educational inclusion standards differ widely between EU Member States even though formal access exists (FRA 2017; UNESCO 2023).

Educators themselves face systemic challenges. Training gaps about intercultural teaching methods combined with institutional prejudice and insufficient multilingual education support lead to poor learning environments. The foundation of successful academic outcomes relies on positive teacher-student connections as Ialuna (2023, 4) emphasizes thus institutions must develop better training and support systems for educators in multicultural settings.

The research reveals education as an essential element that delivers not only knowledge but builds inclusive communities which prepare migrant children to fully participate in social and civic and economic life. Education thus emerges as a critical mediator between displacement and integration, serving both individual and collective resilience.

2.4.3 Education in the Context of Climate-Induced Displacement

While the role of education for children in migration settings has received considerable scholarly attention, its importance in the context of climate-induced displacement remains underexplored. Environmental degradation along with extreme weather events now trigger migration so education stands out as a vital instrument that strengthens individual and community resilience. For children displaced by climate change, whether through sudden-onset disasters like floods or slow-onset processes such as desertification, education plays a multidimensional role: it ensures continuity, amidst disruption, fosters adaptation, and contributes to long-term climate mitigation strategies.

Children who experience climate displacement face immediate educational challenges because their educational routine is interrupted. The unplanned nature of displacement causes schools to shut down while their infrastructure becomes destroyed and families need to move to areas where school enrollment becomes complicated (IDMC 2021). Even in slow-onset displacement scenarios, education is frequently interrupted by instability, poverty, or the lack of state planning. The UNESCO (2020) working paper on climate displacement stresses that failing to ensure educational continuity during displacement leaves children vulnerable to exploitation, psychosocial harm, and permanent exclusion from learning pathways. Moreover, the Internal Displacement Monitoring Centre (2021) documented that displaced children are also at increased risk of becoming "invisible" within host country education systems, particularly when their legal status is unclear.

One other relevant point is the stability and structure offered by education which increase children's ability to adapt alongside their communities when dealing with climate-related threats. The availability of education that

includes climate-sensitive information according to UNICEF (2023) helps children develop the skills, knowledge, and critical thinking necessary to handle environmental threats. This includes understanding the science behind climate change, preparing for local environmental risks, and promoting sustainable practices within their communities. The Brookings Institution (2019) similarly argues that resilient education systems can absorb and respond to climate shocks, not only by protecting learners but by empowering them as agents of adaptation.

Through education, communities can perform a vital role in creating long-term climate strategies for societal mitigation. UNICEF (2021) along with the Education in Emergencies Hub (2022) agree that empowering climate-displaced children through education increases their capacity to contribute to low-carbon futures, participate in environmental decision-making, and break cycles of vulnerability. Schools that integrate environmental literacy together with disaster risk reduction and sustainability education into their curricula create a system of broad-based resilience through their educational offerings. These investments are not only crucial for displaced children but are central to broader efforts to build climate-conscious, inclusive, and equitable societies.

However, the current state of climate-responsive education remains limited, especially in contexts of displacement. Most education systems worldwide do not establish adequate institutional support or political will and commitment to enroll displaced children in school while also delivering climate education (UNESCO 2023). Emergency response plans typically do not include education among their priorities thus emergency efforts to restart schools following climate events experience delays and insufficient funding. IDMC (2021) points out that this lack of integration undermines both the right to education and the potential of education to act as a strategic tool in climate adaptation and mitigation.

This disconnect points to a broader challenge: while the academic literature increasingly recognizes the value of education in displacement settings, climate-displaced children remain underrepresented in both policy frameworks and scholarly discussions. These children fail to fit into established refugee categories since they lack formal recognition under conventional disaster response frameworks. Their invisibility and absence from national education planning leads to fragmented efforts which reduce the transformative power of education to build resilience and protection.

3 The absence of a legal definition for 'Climate Refugee' and its consequences

3.1 Introduction

This chapter demonstrates that the absence of a binding international or European Union definition for "climate refugee" represents a fundamental structural problem which enables States to deny consistent protection to environmental displacement persons and thus prevents climate-affected children from accessing their right to education. The current refugee and migration frameworks based on persecution criteria create a grey area that makes climate-related mobility obligations discrectionary, leading to inconsistent permit systems and uneven educational opportunities (UNHCR 2019; UN HRC 2023). The chapter reveals the "invisibility" that climate-affected minors face which expands the discussion to fundamental rights analysis from a child-centered perspective. The chapter begins by showing how legal definitions act as gatekeepers to protection, illustrated through the 1951 Refugee Convention's persecution test. It then contrasts four leading legal approaches that seek to close the climate-mobility gap, proceeds to reveal the protection shortfalls that arise when no definition exists, and concludes by weighing the EU's most recent policy moves in light of these findings.

3.2 The Importance and Function of Legal Definitions

3.2.1 Why Legal Definitions Matter in International and EU Law

Legal definitions play a foundational role in international protection systems by determining who is entitled to rights and protections and who remains outside their reach. Definitions structure access to protection frameworks, assign legal status, and condition the realization of fundamental rights. In the migration context, the act of defining a person's status, whether as a refugee, asylum seeker, or irregular migrant, constitutes the gateway through which eligibility for legal rights is determined. The absence of a legal definition for "climate migrants" disrupts this architecture, creating profound legal uncertainty, undermining access to protection, and exposing particularly vulnerable groups, such as displaced children, to fragmented, discretionary, and often insufficient responses. Under international refugee law, the 1951 Refugee Convention defines a refugee as a person fleeing persecution based on race, religion, nationality, membership of a particular social group, or political opinion. Environmental degradation and climate-induced displacement do not fit within this framework, as they generally do not involve the element of individualized persecution required for refugee status (McAdam 2011, 80–82). As Kälin (2010, 83-85) emphasizes, the scope and precision of this legal definition are what allow states to implement protection measures in a structured and predictable manner. When individuals do not meet the definitional threshold, they are treated as "migrants" outside the scope of binding international obligations, left to the vagaries of discretionary national policies. In this way, legal definitions not only determine inclusion but actively construct exclusion.

This definitional rigidity has far-reaching consequences. The UNHCR (2019) acknowledges that "migrant" remains a broad, non-legal category, encompassing a variety of persons who move for diverse reasons, often beyond persecution or conflict. The absence of binding, universal definitions for groups like climate-displaced persons leads to operational confusion and limits their access to essential services. Without formal recognition, climate-displaced individuals, including children, often fall between existing categories, unable to claim rights under refugee law or migration law, leading to inconsistent treatment across jurisdictions. Particularly for children, whose access to education is frequently mediated by their or their guardians' legal status, the absence of a formal definition creates tangible and compounding barriers (UNICEF 2023). Moreover, the absence of legal definitions allows states to exercise wide discretion in migration governance, often prioritizing border control and security over human rights protections. As Chetail (2014, 3-4) notes, legal definitions function as political tools as much as legal instruments, delineating not just who is protected, but how states construct their humanitarian obligations. The definitional ambiguity surrounding climate migrants thus enables a strategic narrowing of protection spaces, where humanitarian needs are acknowledged rhetorically but met with restrictive legal and administrative practices in reality (Pijnenburg and Rijken 2021, 178–180). Debates within the academic community further reflect the complexity of the definitional challenge. Some scholars, such as Betts (2010, 209–236), advocate for the development of "soft law" instruments that could extend protection without overburdening existing refugee frameworks. Such approaches seek to pragmatically address new protection needs without risking the political backlash that a formal redefinition of the Refugee Convention might provoke. Others, however, caution against creating new non-binding categories that risk becoming second-tier forms of protection without enforceable rights (Gemenne 2011, 320). In this regard, the absence of a legal definition not only affects access to protection but risks normalizing inferior protection regimes for those displaced by climate change, institutionalizing their vulnerability.

An additional conceptual tension concerns the very nature of the migrant subject. While traditional legal instruments emphasize status—defining migrants and refugees by fixed categories—critical scholarship, such as that by Cohen (2010, 808–814), highlights the importance of recognizing migrants as agents with rights rather than mere objects of administrative classification. From this perspective, the lack of a definition for climate migrants is not simply a legal gap but a deeper reflection of how current legal frameworks fail to account for complex, dynamic human mobility patterns. This is particularly relevant for displaced children, whose agency is often doubly obscured: first by migration discourses that frame them as passive victims, and second by legal systems that deny them formal recognition, and thus access to fundamental rights like education.

In the European Union, the absence of a definition exacerbates inconsistencies across Member States, creating a patchwork of protection that depends heavily on national discretion. The Pact on Migration and Asylum (2020) did not create any specific category for climate-displaced persons, nor does it mandate uniform standards of protection for those displaced by environmental causes. As a result, we will see later on this research, child climate migrants may face radically different treatment depending on the Member State in which they arrive, with consequences for their access to education, health care, and legal identity (EPRS 2021).

Critically, the absence of a legal definition not only creates immediate protection gaps but has cumulative long-

term effects. For children, being denied access to structured educational pathways due to an undefined migration status can severely impact their psychosocial development, integration prospects, and economic opportunities. This reinforces intergenerational cycles of marginalization and poverty, undermining the EU's commitments under the CRC and its own Charter of Fundamental Rights (UNICEF 2023; UNESCO 2020).

Thus, the absence of a legal definition for climate migrants operates as a structural barrier to rights realization. It erodes the normative clarity necessary for coherent, rights-based responses, permits states to retreat from their humanitarian obligations, and exposes displaced children to exclusionary practices that compromise their fundamental rights. Addressing this gap is therefore not a technical question of legal drafting, but a central challenge for upholding human rights and ensuring access to protection in the face of climate change.

3.2.2 Case study: 1951 Refugee Convention - scope and limitations

The 1951 Refugee Convention, a foundational instrument of international refugee law isthe cornerstones of legal protection for displaced persons. Codified in Article 1A(2), it defines a refugee as someone who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion," is outside their country of origin and unable or unwilling to return. While the Convention has been instrumental in safeguarding the rights of many forcibly displaced persons, its definitional rigidity has simultaneously created substantial gaps in protection—particularly for individuals displaced by environmental degradation and climate-related disasters. These gaps are not merely theoretical; they have real and far-reaching consequences for individuals, especially children, whose rights to protection, education, and identity are contingent upon their legal classification. As this paragraph argues, the Convention's limited scope and the exclusion of environmental causes from its definition result in a legal void that critically impairs the recognition and rights access of climate-displaced children.

The exclusion of climate-related causes from the 1951 definition is rooted in the Convention's historical and political origins. Drafted in the aftermath of World War II and expanded by the 1967 Protocol, the Convention was primarily designed to respond to political persecution and conflict in Europe. Environmental factors, which were neither understood as displacement triggers nor widely politicized at the time, were not contemplated in its scope. Unlike persecution, which implies deliberate harm by human actors, environmental degradation is typically viewed as non-intentional or diffuse in origin—making it difficult to attribute to a specific persecutor, as required under the Convention (McAdam 2011, 55–58; Kälin 2010, 85-87). For instance, while children forced to flee due to drought, sea-level rise, or flooding may experience profound insecurity and loss of livelihood, they do not meet the Convention's criteria unless they can show that these conditions are linked to persecution on one of the five protected grounds. This legal distinction has become a focal point of growing scholarly critique. On one hand—the so-called expansionist approach—advocates for a reinterpretation of the Convention that would extend its scope to include persons fleeing serious harm regardless of its source. The Convention's humanitarian ethos should accommodate evolving forms of vulnerability, including those induced by climate change. This view often aligns with broader human rights interpretations, suggesting that states' obligations under the Convention should evolve in tandem

with their responsibilities under instruments like the CRC and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Given that children constitute a disproportionate share of the displaced and are more severely affected by disruptions to education, health, and housing, failing to adapt refugee law to current displacement realities undermines the normative coherence of the international protection regime (UNICEF 2023; UNESCO 2020).

By contrast, the protectionist perspective warns against "stretching" the Refugee Convention beyond its original parameters. Scholars aligned with this view contend that expanding the definition risks political backlash, legal incoherence, and dilution of the Convention's protective force for those it was originally designed to protect—namely, victims of targeted, human-driven persecution (Goodwin-Gill 2014, 44–45). From this standpoint, the appropriate response to climate-induced displacement lies not in modifying refugee law but in developing new, complementary frameworks. This point of view led to the idea of the creation of regional agreements or "soft law" instruments to address climate mobility while maintaining the legal integrity of the Refugee Convention. These alternative solutions, often non-binding, unevenly applied, and insufficient in ensuring consistent rights access across jurisdictions specifically in the long-term.

The limitations of the 1951 Refugee Convention are further complicated by its global legal influence. Despite its narrow scope, the Convention remains a primary point of reference in both international and regional asylum systems, including in the European Union. The EU's Common European Asylum System, for instance, uses the Refugee Convention as a baseline, which in turn filters who qualifies for protection and who does not. As such, the Convention's exclusion of climate-related displacement cascades into EU law, reinforcing a system that systematically omits children displaced by environmental factors from legal recognition and its accompanying rights. These children, often arriving irregularly or with undocumented status, face immediate challenges in accessing schooling, residency, and health care—rights that are otherwise guaranteed to refugee children under both EU law and international human rights treaties (FRA 2017; EPRS 2021). Furthermore, while regional instruments such as the OAU Convention and the Cartagena Declaration have adopted broader definitions of refugee status—including persons fleeing events that "seriously disturb public order"—these instruments are not binding internationally and have limited geographical scope. They nonetheless demonstrate that more expansive and context-sensitive interpretations of forced displacement are both possible and necessary. However, the absence of any equivalent expansion within EU or broader international law means that children displaced by climate events remain in a legal limbo: neither categorized as refugees nor provided an alternative framework through which their rights can be claimed and enforced.

This gap is particularly problematic from a human rights perspective. Legal definitions do not merely reflect classifications; they structure the operational reality of who receives protection and how. As Chetail (2014, 3–4) and Cohen (2010, 808, 811–814) note, the act of defining a migrant is both legal and political: it constructs boundaries between those whom states must protect and those whom they may exclude. For children, this classification can be determinative of whether they can access school, obtain legal identity documents, or live in safety. In the case of climate-displaced children, the absence of a legal category thus results in a structural denial of their

human rights—not due to a lack of need, but due to their non-recognition within legal frameworks. The 1951 Refugee Convention, while pivotal in establishing a durable framework for the protection of certain displaced populations, fails to address the realities of climate-induced displacement—particularly for children. The exclusion of environmental causes from its definitional scope leaves climate-displaced children legally invisible, unable to access the protections and rights they would otherwise be entitled to. This legal void not only contravenes the spirit of international human rights law but also perpetuates systemic inequality by making access to education, identity, and security contingent upon formal recognition under outdated criteria. As subsequent sections of this chapter will explore, bridging this gap requires more than humanitarian concern—it necessitates legal and policy reform that reflects contemporary displacement dynamics and affirms the rights of all children, regardless of the causes of their flight.

3.3 Contested Categories and Pragmatic Pathways: Rethinking Legal Responses to Climate-Induced Displacement

3.3.1 Fragmented Protection: Legal Gaps, Interpretive Strategies, and Judicial Limits

The absence of a legal definition for "climate refugees" has generated intense debate across academic, legal, and policy domains. The controversy goes beyond being a matter of terminology because it results in severe and profound consequences for recognition, protection, and access to rights for people displaced by environmental and climatic changes. The question has been debated among scholars regarding the appropriateness of using current international protection protocols for climate-displaced people as well as whether new legal definitions need to be established to capture the multifaceted effects of climate migration or what is the best solution to fill this legal gap. This paragraph provides a critical and comparative overview of the dominant institutional and academic positions, highlighting both the conceptual and practical implications of the vacuum.

The UNHCR supports a contextual interpretation of the 1951 Refugee Convention that establishes climate-displaced persons can obtain refugee status only when environmental degradation combines with one of the five protected grounds such as the fear of being persecuted because of ethnicity gender or political opinion (UNHCR 2020). According to the agency, specific circumstances where individuals displaced due to the adverse effects of climate change may fall within the protection provided by the 1951 Convention, are met only when the necessary linkages to persecution and other Convention grounds exist (UNHCR 2020).

This cautious strategy reflects a concern with preserving the legal and political integrity of the Convention in a global context where states are often reluctant to broaden asylum obligations. From this perspective, a contextual interpretation offers a flexible and politically viable mechanism for protection without destabilizing the existing refugee framework. However, this approach can be subject to considerable criticism. It can be argued that the Convention's persecution-based approach creates a high threshold for proof which makes it difficult for claimants to qualify for protection especially when they have been displaced involuntarily and their rights are at risk. Particularly for children who have been forced to move because of the gradual effects of environmental changes such

as drought or sea-level rise it is almost always impossible to establish the required human agency which the 1951 Convention requires for its persecution-based definition. Such an approach could led to a systematic exclusion of highly vulnerable individuals from international protection regimes, with serious consequences for rights realization, thus, including access to education, legal identity, and family stability.

Extending the 1951 Refugee Convention to embrace climate-displaced persons risks fragmenting its consensus structure and state-level resistance to asylum responsibilities which could subsequently reduce protective measures for all refugees. The UNHCR employs case-by-case interpretive flexibility to handle, for instance, situations where climate change led to structural discrimination against indigenous groups or women who experience gender-based persecution. This approach maintains legal stability by choosing specific cases while excluding others and prevents political and legal uncertainties that a complete definitional extension would create. Nonetheless, the lack of an official legal definition for "climate refugee" creates legal and operational uncertainty when different perspectives are considered. The UNHCR's approach has two benefits: it prevents harmful treaty reforms and it allows for targeted inclusion within present legal frameworks. At the same time, this approach fails to offer a consistent, enforceable rights framework for those, especially vulnerable groups, like children, whose displacement is driven by environmental factors but does not meet the political criteria for refugee status. This ambiguity thus remains at the heart of the protection gap for climate-displaced persons, directly undermining their access to core rights and services under international law.

It can be identified a complementary protection under the principle of non-refoulement, art. 33(1) (1951 Refugee Convention), as a form of international protection that could provide climate-displaced persons with a safeguard (UNHCR 2020). Individuals may be entitled to protection where returning them to their country of origin would expose them to "a real risk of irreparable harm," even if they do not qualify as refugees under Article 1A(2) (UNHCR 2020). While this principle reflects important human rights obligations under international and regional law, its application, especially on that matter, remains highly discretionary among jurisdictions. States retain wide latitude in determining the threshold for harm and the causal link to state responsibility, which is often difficult to establish in cases of climate-induced displacement. As such, this mechanism cannot substitute formal refugee status or a dedicated legal category. The use inconsistent forms of complementary protection particularly affects displaced children, whose access to education, health care, and documentation often hinges on legal status, thus leaving them in an enduring state of legal and social precarity.

Two recent legal decisions demonstrate that environmental factors can, in exceptional cases, influence protection outcomes. The case of Ioane Teitiota v. New Zealand represents a crucial moment at the intersection between climate change and international human rights law, particularly concerning the principle of non-refoulement and the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). New Zealand faced an asylum application from Teitiota, a citizen of Kiribati, who argued that climate change-caused sea-level rise and freshwater scarcity and land disputes threatened his life if he were returned to Kiribati. After exhausting all available domestic legal channels, his case was brought before the UN Human Rights Committee (UN Human Rights Committee 2020). In its 2020 decision, the UN Human Rights Committee affirmed, for the first time, that

environmental degradation and climate change can led to serious threats to the enjoyment of the right to life, and that states are obliged not to deport individuals when there is a risk of irreparable harm due to such conditions (UN Human Rights Committee 2020). However, the Committee concluded that, in Teitiota's specific case, the risk was not imminent or personal enough to constitute a violation of Article 6. The Committee agreed that Kiribati faces extreme environmental issues yet the state maintains 10 to 15 years to implement defensive measures for its population with potential international cooperation (UN Human Rights Committee 2020). The decision establishes a significant precedent because it acknowledges that extreme climate change situations might establish non-refoulement obligations in international human rights law. These cases show why countries need to evaluate environmental dangers when making deportation risk assessments. The high standard set by the UN Human Rights Committee for establishing claims makes it difficult for people to obtain protection from climate change's long-term consequences. This case demonstrates the requirement for developing broader instruments which would address climate-induced migration and protect rights of those affected.

Another landmark decision can be seen in the case of a Bangladeshi man, suffering from asthma, received protection from deportation. The Bordeaux Court of Appeal in France recognized that returning him to his country would expose him to life-threatening conditions because of the air pollution (Willsher 2021). The court found that the man's asthma condition would worsen in Bangladesh because the nation has the worst air quality globally and exceeds World Health Organization standards for fine particulate matter. France established a legal precedent by permitting environmental conditions from the country of origin to influence deportation decisions through this case. The court evaluated both the insufficient medical care and insufficient equipment for his illness in Bangladesh. This ruling established a new standard in French legal practice which demonstrates both environmental elements' increasing use in asylum and deportation judgments and evolving international acceptance of environmental health dangers in human rights and migration frameworks (Willsher 2021).

The legal and symbolic value of these rulings demonstrates the challenges that emerge when decisions rely on individual cases without a specific definition for climate migrants. The Committee failed to accept Teitiota's claim because they determined that the threat to his life did not reach an immediate level despite setting a challenging standard for climate-displaced people to meet. The decision contained within the judgment establishes a framework which focuses on personal harm and immediate threats yet disregards the gradual and system-wide effects of environmental migration. The Bordeaux decision established itself as a landmark decision through its environmental health argument yet it relied exclusively on medical aspects and Bangladeshi air pollution measurements. Climate-displaced persons along with child migrants do not receive any universal legal standing from this decision because their medical vulnerabilities cannot be easily measured. These rulings illustrate how contemporary legal approaches to climate displacement operate through fragmented decision-making systems which heavily rely on domestic courts and medical evidence while applying restricted interpretations of extended human rights violation exposure. The chapter demonstrates through these examples that progressive judicial decisions about climate migrants cannot establish comprehensive protection frameworks when there is no established legal definition for climate migrants.

3.3.2 Bridging Legal Gaps Through Justice and Shared Responsibility

There is growing attention to the displacement of populations caused by slow-onset processes such as sea level rise, desertification, and salinization, alongside sudden-onset events like hurricanes and floods. Without legal recognition, these populations fall through the cracks of existing international legal instruments and are left without enforceable rights (Williams 2008, 506–507). Advocates of a new definition, suggest that the 1951 Refugee Convention is structurally ill-equipped to accommodate environmental drivers, and that a new protocol or convention could fill this normative gap (Docherty and Giannini 2009, 357–359).

Proponents of a new legal category, have therefore proposed the creation of a dedicated climate displacement treaty that would adapt the structural logic of the 1951 Refugee Convention while responding to the distinct features of climate-induced displacement (Docherty and Giannini 2009, 357–359). Central to their proposal is the assertion that environmental displacement is not only legally under-recognized but structurally different: it often involves slow-onset processes like sea-level rise, desertification, and drought and disproportionately affects populations in vulnerable countries. Their proposed definition places particular emphasis on urgency, exposure to climate hazards, and collective vulnerability, moving away from individualized assessments of persecution toward a broader human security paradigm.

According to that view, international law must evolve in line with new categories of injustice, especially those driven by historical patterns of global inequality. A treaty would not only fill a legal vacuum but also signal a moral and political commitment to responsibility-sharing by high-emission countries. In this sense, the proposal is as much about climate justice as it is about legal protection. Therefore, a treaty could also establish positive obligations, such as planned relocation, access to education, and development support, creating an enforceable and coherent framework for rights protection.

However, it is a very challenging goal. The feasibility of negotiating such a treaty in the current geopolitical climate, the normative ambition behind a new treaty proposal reflects a belief in progressive legal innovation—one that acknowledges the failure of existing systems to protect those already displaced by the slow violence of climate change. These proposals often rest on the principle that new legal tools are required to match emerging human rights challenges, a logic rooted in legal adaptivism and progressive norm development. To support this argument we can think about the idea that terms like "climate refugee," serve as powerful instruments of advocacy and public mobilization. The abandonment of the term in favor of more neutral, technical designations, such as "environmentally displaced persons" has contributed to a depoliticization of climate-induced displacement, stripping it of its normative urgency and concealing the structural injustices at its core (Gemenne 2011, 319). This position is especially compelling in its insistence on reclaiming the term "refugee" not only as a legal category but as a symbol of global moral responsibility. It can be argued that not labelling these individuals as refugees effectively obscures the historical accountability of industrialized nations whose emissions have disproportionately harmed the poorest and most vulnerable communities. Moreover, climate migration constitutes a form of structural persecution, particularly when displacement is the outcome of long-term, systemic neglect and environmental degradation driven by global inequality.

From this perspective, rejecting the refugee label on formalistic grounds may in fact reinforce legal invisibility, denying displaced individuals the political recognition they need to claim protection. There is a clear tendency of international law to treat climate displacement as an apolitical phenomenon, when in fact it is deeply embedded in relations of power, exploitation, and colonial legacy (Gemenne 2011, S42–S43). Moreover, the use of the term "climate refugee" is not only about legal precision but about ensuring that climate justice remains a political imperative.

Consequently, rather than only debating the legal adequacy of existing refugee categories or the strategic use of advocacy labels, it is also important to interrogate the structural foundations of climate vulnerability and mobility. Thus, the approach draws attention to how entrenched economic and environmental inequalities—rooted in colonial extraction, debt-driven development, and racialized global governance—have rendered the Global South both disproportionately vulnerable to climate harms and systematically marginalized within legal and policy responses.

From this perspective, the invisibility of climate-displaced persons in international law is not accidental but symptomatic of deeper asymmetries in power and responsibility. This led to advocate also for reparative and redistributive justice, calling for policies that treat migration as a form of adaptation and climate-displaced persons as rights-holders, rather than passive victims in need of charity. In this framing, protecting the rights of climate-displaced children cannot be separated from interrogating the global economic order that continues to externalize the costs of climate change onto the most vulnerable. From this climate justice lens the solution lies not only in better categorizing displaced persons, but in dismantling the conditions that make certain populations disposable in the first place. This offers an urgent corrective to frameworks that obscure accountability and reinforces the need to ground legal and policy reforms in the principles of historical responsibility, equity, and human dignity. This analysis from a climate justice perspective, also valuable for reframing the problem, especially in contexts like the European Union where legal obligations govern access to education and protection that states can adopt in the short term, will led to actionable strategies which will be discussed later in this paragraph.

3.3.3 Pragmatic Pathways and the Human Rights Based Approach

The causes behind climate-induced displacement tend to involve multiple factors instead of a single source. Environmental degradation combines with poverty along with weak governance and infrastructural vulnerability to create conditions which legal frameworks struggle to define clearly. A human rights based approach (HRBA) rooted around policy tools that can be implemented regionally or bilaterally is needed. These include regional, bilateral, or policy-based solutions rooted in adaptation, planned migration, and development cooperation. These measures allow governments to manage displacement patterns effectively while upholding the rights and dignity of displaced people. These frameworks allow developers to create protection frameworks which place vulnerable people such as children at the forefront because they usually encounter substantial challenges in accessing education and healthcare and establishing stable homes when they lack legal status. Although legal recognition is crucial in the long-term, addressing these obstacles through flexible and inclusive policy mechanisms may be the correct short-term solution.

It is important to clarify that this short-term solutions do not imply that legal recognition lacks importance. On the contrary, the symbolic and normative power of legal status plays a vital role in affirming that climate-displaced persons are entitled to protection as a matter of justice, not charity. However, in the current legal and political context, overly focusing on treaty reform may lead to paralysis. The excessive pursuit of official legal categories might neglect policy solutions which properly funded and properly designed could generate substantial protective measures. The solution requires a proper balance between employing flexible rights-based instruments to ensure protection rights and maintaining efforts to challenge normative frameworks that block state accountability and durable solutions (McAdam 2011, 210–212).

A HRBA offers a pragmatic and morally compelling pathway to addressing the legal invisibility and vulnerability of children displaced by climate change. The UNICEF Guiding Principles make a strong case for centering children's rights in policy and legal responses, advocating that climate-induced child mobility must be seen through the dual lens of child protection and climate justice. By emphasizing the primacy of the CRC and other international human rights instruments, the Guiding Principles argue that children on the move — regardless of legal status — retain their inalienable rights, including the right to education, protection, and participation (UNICEF 2022). This perspective challenges the traditional, state-centric and status-based paradigms of international protection, proposing instead a child-focused, needs-driven approach that transcends rigid migration categories.

Crucially, HRBA recognizes the agency of children while addressing structural inequalities. For climate-displaced children, this means policy frameworks should not merely react to displacement but proactively build resilience and ensure continuity of education, identity, and development. The Guiding Principles advocate for anticipatory action — integrating child-specific concerns into climate adaptation and disaster risk reduction strategies (UNICEF 2022). This forward-looking logic aligns with the EU's broader commitments under the Charter of Fundamental Rights of the EU and the European Pillar of Social Rights, both of which stress the right to education and protection for all children, irrespective of origin or residence status. Yet, in practice, EU mechanisms often falter due to the absence of a legal category for "climate refugees", leaving children outside protection frameworks and education systems (UNICEF 2022). What makes HRBA particularly pragmatic is its ability to navigate existing legal gaps without the need for full treaty reform or controversial redefinitions. The Guiding Principles, for instance, do not insist on creating a new legal category but recommend interpreting existing frameworks — such as child rights, refugee law, and environmental law — in ways that better account for climate displacement (UNICEF 2022). This interpretative flexibility is critical within the EU context, where consensus on legal recognition of climate refugees remains elusive. By adopting HRBA as a normative baseline, the EU can advance protection measures (such as access to education) through secondary legislation, soft law instruments, and coordinated national policies, without awaiting formal legal recognition of climate-induced displacement.

Moreover, HRBA resonates with the EU's values-driven foreign and internal policies. The focus on children as rights-holders, rather than passive victims, promotes inclusive, equitable, and sustainable policy responses. It also provides a normative compass for evaluating and reforming existing directives, such as the Reception Conditions Directive, to address the specific vulnerabilities of displaced children. By embracing this approach, the EU not

only mitigates immediate harm but also strengthens its legitimacy as a global leader in human rights and climate governance.

The Guiding Principles offer a strategic blueprint for reconciling legal ambiguity with practical protection. A human-rights-based approach is not only ethically imperative but also legally feasible and politically adaptable — making it an essential tool in rethinking legal responses to climate-induced displacement in a way that centers and safeguards the rights of children.

3.4 Consequences of the Definitional Void

The absence of a universally recognized legal definition for 'climate migrants' has significant repercussions for the protection of children displaced across borders due to climate change. Without a formal status, these children remain in legal limbo, often excluded from the protection mechanisms provided under the 1951 Refugee Convention and its 1967 Protocol. As noted by the UN Special Rapporteur on Human Rights and Climate Change, the lack of legal recognition for climate-displaced persons, who move across international borders, particularly women and children, can led to many human rights violations such as abuse and discrimination and are prevented from enjoying fundamental rights such as admission, lawful stay, and protection from refoulement (UN HRC 2023, para. 64). This normative vacuum results in children "falling through the cracks" of existing international frameworks (UN HRC 2023, para. 64), exposing them to heightened risks of abuse, trafficking, and exclusion from basic services. Complementary and discretionary protections, such as humanitarian visas or temporary stay, are often suggested as interim solutions. However, these mechanisms are inconsistently applied, lack binding force, and are subject to the political discretion of host states (UN HRC 2023, para. 46). The absence of harmonized practices across jurisdictions leads to fragmented responses, severely undermining the full respect of their rights. Italy and Sweden illustrate this uneven and discretionary landscape. In Italy, protection may be granted under Article 5(6) of Legislative Decree 286/1998, which allows the issuance of a temporary residence permit on humanitarian grounds in exceptional circumstances. This has included natural disasters in countries of origin. Similarly, Sweden's Aliens Act allows for residence permits in "exceptionally distressing circumstances," including environmental degradation. However, these cases are rare, inconsistently applied, and ultimately rely on national discretion rather than enforceable rights (UN HRC 2023, para. 40).

While some countries have adopted limited national provisions for environmentally displaced persons, these remain mostly temporary protection provisions and are the exceptions rather than the rule (UN HRC 2023, para. 39–44). From a human rights perspective, this discretionary framework is deeply problematic. First, it reinforces the notion that protection from climate-induced displacement is a matter of charity rather than obligation, subject to shifting political will. Second, it undermines the principle of equal treatment by creating geographic and legal inequalities between states that recognize such needs and those that do not. Most importantly, for displaced children, this legal patchwork exposes them to uncertainty and prolonged precarity, as their ability to access essential services, thus including education, is often contingent upon their host country's policy stance. A system that places the recognition of rights at the mercy of national interpretation lacks the normative coherence necessary for consistent,

child-sensitive protection. These national exceptions should be seen not as evidence of progress, but as a symptom of the broader absence of binding international and specifically, to the concern of this thesis, EU-level standards that recognize and respond to climate-related displacement.

UNICEF and IOM emphasize that climate-displaced children face intersecting vulnerabilities, including the compounded effects of displacement, poverty, and marginalization. Legal invisibility exacerbates these risks, preventing children from accessing education, healthcare, and psychosocial support (UNICEF & IOM 2022, Principle 5). In the absence of legal recognition, states are less likely to prioritize the integration of displaced children into national education or protection systems.

This definitional void is not merely a technical gap but a structural barrier to rights realization. It undermines accountability and hampers international cooperation, as states remain uncertain of their obligations. A formal legal framework that explicitly includes children displaced by climate change is essential to shift from reactive, ad hoc responses to proactive, rights-affirming protection systems.

3.5 The European Union's Response: Between Migration Control and Rights Protection

3.5.1 The Legal and Policy Void in EU Protection of Climate-Displaced Persons

Despite the European Union's growing engagement in global climate governance and environmental protection, its internal legal framework remains profoundly inadequate in addressing the needs of individuals displaced by environmental or climate-related factors. According to the comprehensive study commissioned by the European Parliament's LIBE Committee (European Parliament 2020, 71–85), there is currently no explicit or dedicated protection status for climate migrants under EU law, and the existing tools provide, at best, limited and inconsistent forms of complementary protection. This legal lacuna poses substantial risks for the enjoyment of fundamental rights by environmentally displaced persons—particularly children—who often find themselves in legal limbo.

At the core of the EU's asylum system, the Qualification Directive (Directive 2011/95/EU) defines the criteria for obtaining refugee status and subsidiary protection. However, both frameworks are ill-suited to encompass the unique realities of climate displacement. The refugee definition, grounded in the 1951 Geneva Convention, requires a well-founded fear of persecution and environmental degradation or climate-induced disasters are not among the recognised grounds for refugee status, nor are they currently interpreted to be analogous. The study emphasizes: "Environmental reasons, including environmental disasters, do not in themselves meet the requirements for refugee status under the Refugee Convention" (European Parliament 2020, 71–85).

While the 'subsidiary protection' regime could, in theory, offer a pathway for protection, its application to climate-related cases remains highly restricted. The Directive defines "serious harm" narrowly, covering only (a) the death penalty or execution, (b) torture or inhuman or degrading treatment, or (c) indiscriminate violence in situations of armed conflict. Nowhere does the Directive explicitly mention environmental harm or climate-related threats. The study clearly states that "the subsidiary protection status... does not explicitly address

environmentally displaced persons, and relevant case law has so far not supported its application to environmental disasters" (European Parliament 2020, 71–85).

While the ECHR is not an EU instrument per se, it remains highly relevant in the EU context. All EU Member States are parties to the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union explicitly reaffirms rights protected by the ECHR. Furthermore, EU secondary law—including the Return Directive—refers directly to ECHR principles, particularly the absolute prohibition of refoulement under Article 3. As such, jurisprudence from the European Court of Human Rights remains an influential source for interpreting EU-level obligations, especially in cases where EU law lacks explicit protections.

The Return Directive (2008/115/EC), which governs the procedures and standards for returning illegally staying third-country nationals, contains a clear prohibition of refoulement under Article 5, requiring that no individual be removed in violation of the principle enshrined in Article 3 of the European Convention on Human Rights (ECHR). Article 3 declares that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment," a provision that is absolute and non-derogable, regardless of context, including public emergencies or security concerns (ECtHR 1978, Ireland v. UK).

In this framework, Article 3 is highly significant for the potential protection of climate-displaced persons—particularly in the absence of formal refugee recognition or subsidiary protection—because it offers a last-resort safeguard against return to life-threatening conditions. Indeed, as the European Parliament study underlines, it is one of the few legal avenues under EU law through which environmental harm could be indirectly acknowledged as a protection trigger (European Parliament 2020, 73). Yet, the actual application of Article 3 to environmentally induced harm remains exceptionally limited due to the stringency of its evidentiary and legal thresholds.

Critically, for environmental degradation to fall under the scope of Article 3, it must result in conditions so severe that returning an individual would expose them to a real risk of suffering inhuman or degrading treatment. This threshold has rarely been met, even in cases involving extreme poverty or collapsing public services. In Sufi and Elmi v. the United Kingdom (2011), the ECtHR held that applicants could not be returned to Somalia due to the generalized violence and humanitarian crisis, establishing that Article 3 could extend to socio-economic contexts when a person is "entirely dependent on external support and has no access to the most basic needs of subsistence" (para. 283). However, the case involved a nexus with armed conflict and extreme instability—elements typically absent in slow-onset climate displacement scenarios. Therefore, while Article 3 theoretically opens the door for protection in environmental cases, its application is practically limited to catastrophic and immediate conditions, leaving the vast majority of climate-displaced persons unprotected under its scope (Costello 2016, 281–284).

The jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) further illustrates the difficulty of invoking Article 3 in environmental displacement claims. Notably, the ECtHR has developed a substantial body of case law concerning medical conditions and return, where individuals have argued that expulsion to countries lacking adequate healthcare would violate their rights under Article 3. For example, in Paposhvili v. Belgium (2016), the Grand Chamber expanded the scope of Article 3 to cover cases where the removal of a person suffering from a serious illness would expose them to a "real risk of a serious, rapid

and irreversible decline in his or her state of health resulting in intense suffering" or a "significant reduction in life expectancy" (para. 183). This landmark judgment was seen as broadening Article 3 protections beyond immediate death risk.

Nonetheless, environmental claims have not yet succeeded under the same logic. The ECtHR's cautious and individualized approach requiring applicants to provide detailed, concrete, and personal evidence has so far made it extremely difficult for climate-displaced persons to prove that returning them would result in inhuman or degrading treatment attributable to environmental factors alone. The Court has not yet adjudicated a case directly involving climate-induced displacement, and therefore, no jurisprudential precedent has been established.

The only partial evolution in this space comes, as noted previously in this study, from UN treaty bodies, particularly the UN Human Rights Committee's 2020 decision in Teitiota v. New Zealand, where the Committee found that environmental degradation linked to climate change could, under certain conditions, violate the principle of non-refoulement. While this decision is not binding in the EU context, it sets a persuasive precedent, suggesting that international human rights law is increasingly recognizing the relevance of environmental factors to protection obligations (UN HRC 2020, para. 9-11).

In conclusion, Article 3 ECHR remains a crucial but insufficient legal anchor for climate-displaced persons. Its absolute nature provides a potential last-resort safeguard, but its strict application by the ECtHR and its underdevelopment in CJEU jurisprudence severely limit its utility in practice. The current lack of clear and accessible legal pathways under EU law leaves environmentally displaced individuals—particularly children—exposed to protection gaps and inconsistent national responses. These deficiencies highlight the urgent need for a more coherent, climate-responsive EU legal framework that reflects the evolving nature of forced displacement in the context of global environmental change.

At the national level, the fragmentation is equally troubling. While some Member States, such as Sweden and Finland, once offered protection on humanitarian grounds for persons affected by natural disasters, these policies were suspended after 2015 due to increased migratory pressures. Italy has offered limited protection under a humanitarian clause, but these cases remain rare and discretionary. The study underscores that "most existing tools and practices are voluntary, non-binding, or limited to short-term humanitarian responses" (European Parliament 2020, 71–85).

In terms of external action, EU development and humanitarian aid mechanisms have included some attention to disaster resilience and risk reduction. However, these tools primarily aim at preventing displacement in third countries, rather than providing protection once displacement has occurred. The study refers to this as an "adaptation-based" approach rather than a protection-based one (European Parliament 2020, 71–85). As such, displaced individuals who arrive in the EU territory are left without any formal channel or legal status that acknowledges the environmental nature of their migration.

The combination of legal invisibility, high protection thresholds, and lack of harmonisation across Member States results in a de facto denial of rights for climate-displaced persons. Particularly affected are children, who face compounded vulnerabilities and are often denied access to stable education, healthcare, and housing due to

the absence of a legal status that recognizes their predicament. The EU asylum and migration framework is currently structurally unfit to address the emerging phenomenon of climate-induced displacement. While certain indirect mechanisms such as non-refoulement and humanitarian statuses may offer limited, temporary relief, they are applied inconsistently, lack legal certainty, and fail to account for the distinct and increasingly frequent forms of displacement driven by environmental degradation and climate change.

3.5.2 The New Pact on Migration and Asylum

The European Union's 2024 New Pact on Migration and Asylum, slated to come into effect in June 2026, represents a substantial recalibration of the Union's approach to migration and asylum. While its stated objectives include streamlining procedures and fostering solidarity among Member States, a critical examination reveals substantial shortcomings in the Pact's ability to address the specific needs of children displaced by climate change—especially concerning their right to education. These shortcomings reflect a broader systemic gap in the EU's normative framework, one that persists despite the Union's commitment to human rights and child protection as enshrined in the Charter of Fundamental Rights of the European Union, particularly Article 14, which guarantees the right to education (European Union 2012). Again, the absence of legal recognition for climate-displaced persons within the Pact constitutes a foundational obstacle to their access to protection mechanisms. Unlike categories such as refugees and subsidiary protection beneficiaries, individuals displaced by climate-related events are not afforded an autonomous legal status. This omission is not merely a technical oversight but reflects the EU's continued reluctance to incorporate climate-induced displacement into its legal paradigms, despite mounting evidence of its relevance and urgency (Kälin 2020, 47). The result is a normative vacuum wherein climate-displaced children from third countries fall outside the conventional eligibility criteria for asylum, thereby undermining their ability to claim rights—education being foremost among them—that are otherwise safeguarded under EU law.

This absence of recognition has cascading implications. In particular, the denial of a distinct legal category for climate migrants leads to significant barriers in accessing procedural guarantees and socio-economic rights, such as education, under EU and national asylum systems. In the European Union context, research underscores that legal status is often the gateway to accessing public services (Betts and Collier 2017), and the ambiguity surrounding the protection needs of climate-displaced children frequently leaves them unrecognized by host countries' bureaucratic apparatuses. As a result, these children may not be enrolled in school, may face legal or administrative hurdles to registration, or may be placed in segregated and substandard educational environments (UNICEF 2021). The European Commission has attempted to mitigate these gaps by promoting integration measures and inclusive education strategies under broader frameworks such as the Action Plan on Integration and Inclusion (2021–2027), but these are not legally binding. This gap between soft policy and hard law illustrates the EU's tendency to rely on non-binding initiatives in lieu of structural reform, particularly when political consensus on migration remains elusive (Carrera and Geddes 2021, 5–6; 14–15).

A related concern is the potential for indirect discrimination inherent in the Pact's current design. By failing to acknowledge the climate dimension of forced migration, the New Pact arguably produces disparate outcomes

for children displaced by climate-related events, even if it does not intend to do so. Under EU anti-discrimination law, including the Racial Equality Directive 2000/43/EC and Charter Articles 21 and 24, both direct and indirect discrimination are prohibited. Yet, in a context where the European Union positions itself as a global leader in the fight against climate change and acknowledges its severe impacts, it becomes crucial to assess the coherence and effectiveness of its related policies and commitments (European Commission 2019). The Pact's categorical omission of climate-displaced individuals introduces a form of de facto discrimination, wherein similarly situated individuals, such as forcibly displaced children, are treated differently based solely on the legal ground underpinning their displacement. Despite its ostensibly neutral legal language, the structural formalism of the European Union's asylum regime risks producing outcomes that are discriminatory in practice. This legal formalism is particularly evident in the New Pact on Migration and Asylum, where protection is granted only to those fitting predefined legal categories, thereby marginalizing individuals whose displacement is caused by emerging and complex drivers, such as climate change. The result is what some scholars describe as functional discrimination: a situation in which ostensibly neutral criteria (such as the basis of one's claim for protection) produce unequal outcomes for similarly situated individuals (Costello 2016, 281–284).

This critique becomes especially salient in the context of child protection. International human rights law, notably the CRC, emphasizes the principle of non-discrimination and the primacy of the child's best interests (UN 1989, arts. 2 and 3). Yet, under the New Pact's framework, children displaced by climate-induced events are not recognized as refugees or as individuals eligible for subsidiary protection, unless they can establish a link to traditional persecution or generalized violence. This legal requirement inherently disadvantages children fleeing climate disasters, even though their vulnerability, trauma, and need for stability (including access to education) is increasingly important. Despite this, the current legal architecture fails to recognize the functional equivalence of harm, treating climate-displaced children as less deserving of international protection solely because their displacement is not rooted in the classical criteria of persecution or violence.

Moreover, the EU Charter of Fundamental Rights explicitly prohibits both direct and indirect discrimination (Art. 21), yet the implementation of asylum procedures under the New Pact remains blind to the disparate impact that exclusionary definitions have on different groups. Indirect discrimination, in EU law, refers to provisions which, although neutral on their face, place individuals of a particular group at a disadvantage (European Union 2012). By defining eligibility for protection based on cause of flight—rather than actual vulnerability or need—the New Pact introduces precisely this kind of structural bias. Scholars, such as Kälin (2020), have argued that the increasing formalization of eligibility criteria in EU asylum law systematically disadvantages those displaced by climate impacts, even if their needs are comparable to those displaced by more traditional drivers.

The principle of equality before the law, a cornerstone of both EU and international human rights frameworks, is thus compromised by a legal regime that creates tiers of protection based not on need but on definitional conformity. As Betts (2010, 209–236) points out, the international refugee regime—of which the EU's system is an extension—was designed in a very different geopolitical context, and has not evolved adequately to accommodate new forms of displacement. The New Pact's failure to address this evolution not only perpetuates legal inertia but

institutionalizes a form of exclusion that disproportionately affects climate-displaced children.

Another dimension of concern is the Pact's emphasis on accelerated border procedures, especially for applicants from countries with low recognition rates. While intended to increase efficiency and reduce backlog, these procedures carry significant risks for vulnerable groups, notably children displaced by climate change. The 12-week window for making asylum decisions in such cases, combined with limited access to legal assistance and appeals, creates a compressed timeframe that is ill-suited for complex vulnerability assessments (HIAS 2024). The principle of the best interests of the child, codified in Article 24 of the Charter and reiterated in multiple EU directives, requires a thorough and individualized examination of a child's situation before decisions are made. However, accelerated procedures compromise this principle by prioritizing procedural speed over substantive justice. Moreover, these fast-track systems often rely on stereotyped country-of-origin information and fail to consider internal diversity and local climate-related vulnerabilities, which may not be reflected in recognition rate statistics. Consequently, climate-displaced children from third countries may be summarily returned without any meaningful consideration of their protection needs, including their right to education in a stable and safe environment.

This situation is exacerbated by the Crisis and Force Majeure Regulation, one of the ten legislative instruments comprising the New Pact. This regulation permits Member States to derogate from standard procedures during times of "crisis," a term broadly defined to include surges in arrivals or significant challenges to national asylum systems. While the flexibility granted may appear pragmatic, it carries the risk of undermining minimum standards of protection, particularly for children. The invocation of force majeure provisions could lead to widespread suspension of obligations related to reception conditions, which in turn would affect the accessibility of education for climate-displaced children. Given the existing ambiguity surrounding their legal status, any additional procedural erosion disproportionately affects this already vulnerable group. The lack of explicit safeguards for children's rights in such derogation scenarios further reinforces the inadequacy of the Pact in upholding the EU's human rights commitments under international and regional law.

Administrative and legal uncertainty stemming from this complex regulatory architecture creates substantial barriers to education. Unlike recognized refugees or subsidiary protection beneficiaries, climate-displaced children do not benefit from clear entitlements to public education across the EU. The Reception Conditions Directive (2013/33/EU) mandates access to education for asylum-seeking children under similar conditions as nationals, but its applicability presupposes that the children in question fall within the scope of the asylum system. Climate-displaced children whose claims are rejected under the accelerated procedure, or who are precluded from applying in the first place due to inadmissibility rules, may not receive such protections. National education authorities, facing limited guidance on how to deal with non-status or precariously-situated migrant children, often default to exclusionary practices (Picum 2022). In this way, the Pact's silence on climate displacement produces a cascading effect: absence of legal status leads to exclusion from asylum procedures, which in turn blocks access to rights such as education.

Another critical weakness of the Pact lies in the variability of implementation across Member States. The solidarity mechanism allows states to choose between relocating asylum seekers, contributing financially, or offering

operational support. While this arrangement aims to respect national sovereignty and facilitate political compromise, it leads to an inconsistent protection landscape across the Union. For climate-displaced children, this means that their access to education and other rights depends heavily on the country in which they seek asylum. As studies have shown, some Member States—such as Sweden and Portugal—adopt more inclusive and child-friendly asylum practices, while others—such as Hungary or Greece—maintain restrictive regimes with limited access to education for asylum-seeking children (Fundamental Rights Agency 2021). The lack of a centralized enforcement mechanism or binding minimum standards for the treatment of non-traditional displaced groups exacerbates this fragmentation.

Relevant legal and policy instruments within the Pact further illustrate these challenges. The Qualification Regulation, designed to harmonize the criteria for granting international protection, remains anchored in the Geneva Convention and subsidiary protection definitions that do not encompass climate-related harm. Although there have been calls to interpret the persecution and serious harm clauses in light of environmental degradation and disaster displacement, jurisprudence remains inconsistent and conservative. The Pact's revision of the Reception Conditions Directive does little to expand educational entitlements beyond existing obligations, and no explicit provisions address the unique vulnerabilities of children affected by environmental displacement. The emphasis remains on administrative efficiency and border control rather than human rights-based protections. In this context, the absence of climate-sensitive provisions in the Pact amounts to a missed opportunity for the EU to show leadership on one of the most pressing human rights issues of our time.

From a policy critique perspective, the Pact's design appears driven more by the politics of deterrence and compromise than by a coherent rights-based vision. The framing of migration as a security challenge rather than a humanitarian issue shapes its priorities and instruments (Geddes and Scholten 2021, 51–53). While there is rhetorical recognition of the need for "solidarity" and "integration," these principles are undermined by practical arrangements that prioritize exclusion and externalization. The reluctance to address climate migration explicitly stems from fears that doing so would open floodgates for protection claims and strain political consensus among Member States. Yet, this cautious approach is both legally and morally unsustainable. As highlighted previously, the IPCC and multiple UN agencies have warned that climate-induced displacement will rise sharply in the coming decades, affecting millions of people, many of whom will be children (IPCC 2022). By failing to proactively create legal and policy tools to respond to this challenge, the EU risks perpetuating systemic rights violations and reinforcing the marginalization of one of the most vulnerable populations in contemporary migration flows.

In conclusion, the New Pact on Migration and Asylum—despite its ambitions of harmonization and solidarity—falls short in addressing the legal and policy needs of climate-displaced children from third countries, particularly with respect to their right to education. The absence of legal recognition, the risks of indirect discrimination, the procedural hurdles of accelerated asylum processes, and the variability in Member State implementation collectively produce a protection gap that is both structurally embedded and normatively troubling. The Pact's silence on climate displacement is not a neutral omission but a regulatory failure that disproportionately impacts children, undermining both EU and international human rights standards. This analysis underscores the necessity of

reconceptualizing EU migration governance in a manner that integrates climate justice and child rights. The next section of this thesis will explore whether formal legal recognition of climate refugees within the EU framework is both feasible and necessary to address these structural gaps, and what implications such recognition would carry for the protection of fundamental rights.

3.6 Conclusion

The chapter shows how the absence of a legally defined "climate refugee" creates multiple protection gaps which start with legal recognition and end with systematic denial of fundamental rights especially education for displaced children. The analysis through Research Question 1 showed how international and EU asylum law's persecution-based structure allows states to handle climate-induced migration as discretional and put children at risk. In addressing Research Question 2, the chapter looks at two provisional solutions—complementary protection and broader human-rights safeguards. The analysis shows that, because there is still no clear legal label for people displaced by climate change, these mechanisms provide limited relief. Meanwhile, the EU's New Pact on Migration and Asylum accelerates case processing; it does nothing to remove the indirect discrimination that climate-affected children continue to face. The research demonstrates that legal recognition serves as a fundamental requirement for achieving equal educational opportunities. The following chapter assesses treaty-based and legislative and soft-law reforms which could integrate child-rights principles into an upcoming climate-mobility framework (UN HRC 2023).

4 Bridging the Normative Gap: Legal Recognition and Reform Options for Climate-Displaced Children in EU Law

4.1 Framing the challenge

As demonstrated in the previous chapters, the absence of formal recognition for climate-displaced children in European Union law has created a structural void that obstructs the exercise of basic rights—most critically, the right to education. This chapter shifts its focus from analyzing the systemic legal and policy breakdowns of Parts I–II to evaluate practical solutions which can fill the existing normative deficiencies. At the core of the EU's legal architecture, Directive 2011/95/EU (Qualification Directive) does not provide subsidiary protection for climate-related harm. The absence of legal recognition for environmental displacement leaves these children outside refugee and complementary protection statuses thus blocking their access to education-related rights and integration frameworks (European Union, 2011).

This legal exclusion is compounded by policy incoherence. While the EU's external NDICI Regulation provides large funding to enhance climate resilience in partner nations yet lacks domestic support for displaced children who are already displaced across borders and present within the EU (European Union, 2021). The Convention on the Rights of the Child (UNCRC, 1989, arts. 28–29) ensures every child has the right to education despite their migration status yet this fundamental right remains inaccessible to climate-displaced children within the EU, because of the internal legal vacuum. The CRC represents a widely recognized treaty with strong normative foundations but EU secondary law does not include its direct incorporation which limits its enforceability before EU courts. The Reception Conditions Directive contains child-specific provisions but lacks explicit provisions about climate-related displacement so Member States implement these measures at different levels (European Union, 2013).

The fragility of current protections is further exposed in the jurisprudence of the Court of Justice of the European Union. In Abdida case, a Nigerian national with AIDS, the CJEU established vulnerability-based protections within EU law but only in the specific case of medical necessity (CJEU, 2014). The selective vulnerability recognition under existing legal systems demonstrates how protection decisions become discretionary when formal status is absent thus creating an uncertain situation for climate-displaced children regarding their education rights across Member States.

Nonetheless, legal innovation may not be strictly necessary. The existing rights-based instruments under international human rights law could be utilized to provide protection for climate-displaced children even though a new legal category does not exist. The discussion expands to determine if official recognition remains essential for effective protection or if non-status-based supplementary approaches can be enough.

The definitional void creates a persistent structural exclusion that rights-based adaptations fail to address despite providing temporary relief. The following section evaluates the importance of legal recognition for children in relation to EU education access and why it matters.

4.2 Why legal recognition matters

The legal recognition of climate-displaced children stands as an essential requirement for them to claim their rights under both international and European Union law. The absence of legal recognition prevents both normative commitments and practical entitlements especially regarding education from being achieved. While EU institutions have endorsed the rights of the child rhetorically, in practice, access to education is frequently tied to formal legal status, leaving climate-displaced minors in a protection void.

Legal instruments at their core establish that children's rights need to function across all domains. The CRC enshrines the principles of non-discrimination (Art. 2), the best interests of the child (Art. 3), and the right to education (Art. 28) (UNCRC 1989). The EU Charter of Fundamental Rights reinforces these rights by establishing education rights (Art. 14) and child protection provisions (Art. 24). These guarantees lack practical meaning because legal recognition is absent. The rising number of children forced to move because of climate-related disasters makes this problem increasingly severe. The absence of proper legal acknowledgment creates severe consequences for the education system. Legal recognition serves as a necessary entry point to obtain vital public services together with their administrative and financial support networks. Most Member States base their school enrollment and social integration program eligibility and funding decisions on migration status which results in the systematic exclusion of children lacking recognized legal grounds from national and local education systems. Directive 2013/33/EU shows this pattern because it gives educational rights only to children who seek asylum while omitting children displaced by environmental degradation who do not fit conventional protection definitions (European Union 2013). The absence of recognition causes European Union Member States to have fragmented and unpredictable education access systems.

The recent policy commitments have failed to establish strong legal enforceability. The EU Strategy on the Rights of the Child states the importance of protecting at-risk children yet it omits climate displacement protection and lacks enforceable authority (European Commission 2021). Multiple experts have expressed their concerns about placing too much importance on legal categorization. Formal recognition systems create dual protection categories that separate protected individuals from unprotected ones which perpetuates social exclusion according to Bhabha (2014, 29–30).

This thesis demonstrates that in the absence of legal recognition, climate-displaced children face systemic and status-linked barriers that prevent them from accessing education in practice. The normative foundation of this argument lies in recognising that without an appropriate legal status, educational rights remain structurally inaccessible. Legal recognition thus constitutes a necessary precondition for ensuring that climate-displaced children can meaningfully enjoy their fundamental right to education within the European Union.

4.3 Pathways to recognition inside existing EU competences

While current EU law does not formally recognise climate-induced displacement as a distinct ground for international protection, several reform pathways—each grounded in existing legal competences—offer potential legal routes for

extending status-based protections to climate-displaced children. These options vary in legal soundness, political feasibility, administrative cost, and their capacity to deliver child-specific benefits. Critically assessing them helps illuminate both the institutional possibilities and the normative tensions between targeted reform and systemic transformation.

The first and most technically straightforward option involves amending the Qualification Directive (Directive 2011/95/EU) to explicitly include "environment-related serious harm" as a basis for subsidiary protection. As it currently stands, the Directive defines subsidiary protection in terms of threats such as torture or indiscriminate violence in armed conflict but does not recognise climate-related harm unless it coincides with existing grounds like persecution or conflict. A targeted amendment to Article 15 could address this gap by recognising environmental degradation or climate disasters as standalone triggers. This would maintain legal continuity, build on the Directive's existing structure, and potentially offer children status-linked entitlements, such as access to mainstream education and child welfare services under the Reception Conditions Directive. However, this option remains confined within the Directive's individualised risk framework, which—according to McAdam (2012, 72–75)—is poorly suited to slow-onset environmental displacement. Moreover, implementation would remain subject to Member State discretion, raising concerns that, as with past reforms, transposition would vary significantly. In some states, access to protection for children could be undermined by narrow procedural thresholds, discretionary assessments, or lack of harmonised criteria, thereby limiting the Directive's capacity to deliver consistent access to education and social services.

A second potential pathway toward enhanced legal recognition of climate-displaced children within existing EU competences involves the creation of a sui generis "climate protecti on status" through standalone secondary legislation. This status could be enacted under the ordinary legislative procedure provided in Articles 78–80 of the Treaty on the Functioning of the European Union (TFEU), which govern asylum, legal migration, and solidarity between Member States. These provisions that support established protection regimes might lead to the development of a novel legal instrument for protection of persons affected by environmental degradation through progressive interpretation. This may support the EU's authority to introduce innovative protective statuses aligned with broader policy objectives, such as climate adaptation and human rights. EU structural instruments could provide funding and integration support and education access to children through a status that specifically addresses their unique vulnerabilities. This status would differ from existing forms of international protection, such as subsidiary protection under Directive 2011/95/EU, by focusing on displacement linked not to persecution or conflict but to climate-related harm. The political and administrative challenges pose significant barriers to progress. The introduction of new legal categories may faces resistance from Member States because these categories might lead to rights expansion and system strain. Any future institutionalization of this status requires continuous intergovernmental collaboration.

A third, more interpretive pathway-legal pathway for extending protection to climate-displaced persons emerges from the European Court of Human Rights' expanding jurisprudence under Article 3 of the European Convention on Human Rights (ECHR). Although the EU Qualification Directive does not explicitly address climate-related risks, its scope has been progressively shaped by ECtHR case law on subsidiary protection. In Paposhvili v.

Belgium and Sufi and Elmi v. United Kingdom, the Court broadened the concept of "inhuman or degrading treatment" to include indirect and systemic risks, such as the lack of access to medical care or generalized violence upon return (ECtHR 2011; ECtHR 2016). While these cases did not directly concern environmental harm, they established a doctrinal foundation for arguing that severe climate-induced degradation, where it leads to the collapse of infrastructure, access to water, or basic services—could similarly trigger non-refoulement obligations under Article 3. Such interpretive expansion offers an immediate solution in the face of political inaction. However, this legal pathway remains reactive rather than preventive: it provides protection only once serious harm is imminent, offering little recourse to climate-displaced children who are denied education and integration support well before such thresholds are met.

The fourth solution would involve formal Treaty reform to extend Article 78 TFEU international protection to embrace "environmental persecution" and climate-based displacement. This method would organize EU asylum law to modern forms of migration and provide the most direct legal foundation for embedding child-related rights into an adaptable system. The EU Charter of Fundamental Rights could benefit from this approach because it aligns with Articles 14 (right to education) and Article 24 (right to protection and care) which enhance the EU's fundamental rights obligations for children. According to McAdam (2012, 215–20), this solution represents the most logical approach to protect environmentally displaced people from protection gaps. This solution faces the most difficulties in achieving feasibility within the short to medium period. Treaty modifications need the approval of all Member States followed by domestic approval processes which sometimes include public votes under present-day migration and asylum controversy. The European Union has a difficult time advancing Treaty reforms because of geopolitical inertia alongside political misalignment and public resistance. The process of redefining international protection grounds might extend the time required for implementing child-centered measures.

The four reform pathways share a common normative problem regarding how to increase visibility together with inclusion while preventing the creation of exclusive or inflexible eligibility criteria. Creating a climate refugee classification might create divisions in international protection systems which would diminish established standards. This concern is especially relevant to children, whose vulnerabilities often do not fit neatly within adult-centric legal categories. A future climate status system with high evidence requirements and narrow definitions could block many displaced children from obtaining school access and integration services. The development of any recognition model needs to achieve a proper balance between precise legal definitions and adaptable child-oriented standards.

Ultimately, any reform must be measured by its ability to secure tangible rights for displaced children, particularly in the field of education. Legal recognition that does not translate into eligibility for school access, funding, and psychosocial support risks becoming symbolic rather than substantive. In this respect, aligning legal reform options with the child-centred provisions of the EU Charter—especially the principles of non-discrimination, best interests of the child, and right to education—offers both a normative benchmark and a strategic guidepost for institutional design. While each of these reform paths carries distinct advantages and trade-offs, their ultimate value must be assessed in terms of how they improve real access to rights—particularly education—for displaced children; the next section examines these anticipated implications in detail.

4.4 Anticipated implications for the right to education

The EU reform pathways leading to legal recognition of climate-displaced children will deeply impact their educational opportunities. Legal frameworks provide essential tools for inclusion through residence-based rights and EU funding eligibility and prompt school enrollment procedures. The practical realization of these rights depends on the accessibility and enforceability along with child-sensitive nature of each legal model during implementation. The implications must be evaluated through both legal precision and delivery efficiency that specifically addresses children displaced by slow-onset climate events who lack typical protection status. Normative guidance from the EU Charter of Fundamental Rights, particularly Articles 14 and 24, underscores that any such reform must prioritise equal access to education and the best interests of the child from the outset.

The immediate advantage of legal recognition helps speed up the process of school enrollment for children. The Reception Conditions Directive (2013/33/EU art. 14) states that minor asylum seekers should get education access within three months after their international protection application and as soon as possible. The execution of these requirements shows significant variation between different regions and these delays affect children who exist outside recognized legal frameworks. A revised Qualification Directive or a separate climate protection status would activate legal and procedural requirements which would reduce administrative freedom while creating standardized enrollment processes for all Member States. Providing school access as a residence-based guaranteed right would decrease administrative delays and support both psychosocial stability and sense of continuity for displaced children.

Legal recognition of climate-displaced children would grant them access to EU funding that supports their education and integration needs. The Common Provisions Regulation (Regulation (EU) 2021/1060) establishes links between recognized legal status and eligibility for the Asylum, Migration and Integration Fund (AMIF) and the European Social Fund Plus (ESF+). Basic services such as school supplies and transportation and language instruction remain unavailable to children without recognized legal status because they remain invisible to funding frameworks. The administrative exclusion process described by UNICEF (2023) blocks educational opportunities and worsens existing risks especially in reception systems that lack sufficient resources within municipalities. According to UNICEF (2023) education functions both as a fundamental legal right and as a fundamental measure to gauge integration effectiveness. Legal frameworks which produce regularized status enable structural funding to support both school access and essential long-term support services including trauma-informed counseling and inclusive classroom design and multilingual instruction for children affected by environmental disruption.

The EU Strategy on the Rights of the Child supports inclusive education for all migrant children according to policy instruments yet lacks legal binding power. According to Bhabha (2014, 53–55) strategies fail to transform into practical child rights activation because they lack recognition. The incorporation of Charter principles into enforceable legal instruments ensures that climate change displaced children receive rights-based treatment instead of being treated as policy exceptions. School access stands alongside the rights of children to maintain educational continuity as well as social integration and proper teaching support.

Legal status serves as an essential component yet it does not resolve all problems. The implementation of deterrence-oriented migration policies in certain areas may lead to ongoing administrative delays and funding

limitations that prevent students from accessing schools. The European Council on Refugees and Exiles (ECRE 2022, 3–4) proved that education access does not act as an attraction for irregular migration while many countries use this myth to justify immigration control measures. Although children possess legal rights to enroll in school their actual access remains restricted by local bureaucratic processes and enrollment quotas and insufficient language assistance. Legal recognition provides better educational access yet the effective implementation depends on how EU standards are applied within national systems so the next section analyzes comparative and soft-law examples to develop a stronger enforceable system.

4.5 Comparative and soft-law lessons

The European Union has not established climate-displaced children as a distinct legal category although valuable lessons can be learned from regional comparative frameworks judicial responses and emerging soft-law instruments. These different legal models create practical and ethical guidance that would support a rights-based and inclusive EU legal system.

Regional legal frameworks from the Global South demonstrate more comprehensive approaches than the EU does through its status-centric framework. The 1969 OAU Convention establishes a refugee status for people who flee from "events seriously disturbing public order" by using a a collective and context-sensitive interpretation of displacement (OAU 1969, art. 1(2)). Similarly, the 1984 Cartagena Declaration functions as a non-binding document that many Latin American states have accepted because it suggests granting protection to persons who face "massive violations of human rights or other circumstances which have seriously disturbed public order" (Cartagena Declaration 1984, art. III(3)). The definitions exceed the restrictive approach of individualized harm that exists in EU asylum law. McAdam (2012, 83–88) states that these frameworks both reduce proof requirements and integrate concepts about regional unity and mutual responsibility. The EU does not possess a public order clause or solidarity-based interpretive framework but these instruments provide a path to establish broader protection standards especially for environmentally displaced children.

Judicial systems worldwide are showing increasing awareness about environmental exposure of vulnerable populations. As noticed in the previous chapter, according to Teitiota v. The UN Human Rights Committee recognized climate-induced conditions could potentially violate Article 6 of the ICCPR and trigger non-refoulement obligations, though the individual claim was ultimately rejected (UN HRC 2020, para. 9.11). Domestic courts may increasingly become key actors in climate protection, especially when legislative inertia prevails.

New soft-law instruments are presently establishing children's rights protections during climate change migration. The UNICEF and IOM Guiding Principles establish a rights-based framework which builds on the CRC principles by including non-discrimination, participation, and the best interests of the child (UNICEF and IOM 2022). The IOM (2021) argue that that such frameworks can bridge normative gaps when formal legal categories lag These principles not only highlight the urgency of proactive responses but also emphasise child agency—for instance, through participatory mechanisms in school placement decisions or the co-design of psychosocial support services.

However, without enforceability or integration into EU legal mechanisms, their implementation depends largely on Member State discretion and voluntary uptake.

The structural differences between these models need recognition when compared to EU legal principles. McAdam (2012, 95–96) explains how the OAU and Cartagena regimes depend on regional solidarity that the EU framework does not utilize because it focuses on individual status-based protection. The comparative and soft-law models should be used as interpretive resources instead of direct templates because they need adaptation to fit EU institutional restrictions.

These comparative and soft-law insights demonstrate that climate-displaced children can be protected through diverse legal and normative channels—but the next section asks whether legal recognition alone can truly overcome the structural barriers they face.

4.6 Critical synthesis: is recognition a silver bullet?

The legal recognition of climate-displaced children serves as an essential tool to establish institutional inclusion and rights activation yet it cannot resolve by itself the structural, political and operational barriers which prevent access to education and protection across the European Union. Recognition may open legal doors, yet its impact depends on the systems built around it.

Normatively, recognition is foundational. Under current law, EU Directive 2011/95/EU indirectly excludes climate-induced harm from the basis for international or subsidiary protection which denies affected children their entitlement to status-linked services including education and healthcare and integration support (European Union 2011). The EU Charter of Fundamental Rights Articles 14 and 24 protect the right to education as well as the best interests of the child. These rights exist only as theoretical concepts because they require status-based entitlements to become operational. Legal recognition establishes protection foundations but needs an institutional framework to become effective according to McAdam (2012, 92–96). Children become both invisible in administrative systems and functionally excluded when they lack such a framework.

Yet status is a gateway, not a guarantee. The European Commission's New Pact on Migration and Asylum (2024) maintains a focus on return operations and deterrence and containment measures which demonstrate institutional opposition to inclusive change. The child's best interests is fundamental during removal procedures yet this protection only applies to those within the asylum framework which demonstrates the current system's structural limitations.

The legal framework should establish the base for developing operational child-sensitive reforms which address the real-life circumstances of displaced minors. The UNICEF and IOM Guiding Principles support these measures by recommending early school access alongside trauma-informed care and child participation (UNICEF and IOM 2022). Bhabha (2014, 60–63) supports this viewpoint because he advocates for flexible child-centered methods which transcend strict status definitions to fulfill developmental requirements of children.

Still, recognition alone may entrench exclusion by reinforcing binary inclusion/exclusion logics, particularly in securitised policy environments. A recognition-based model must therefore be seen as the start of a broader rights

infrastructure, not its endpoint.

The right to education needs recognition and, to truly safeguard this fundamental right it must be accompanied by a suite of child-centred policy reforms—these form the focus of Chapter 5's proposed roadmap.

4.7 Concluding roadmap to Chapter 5

Despite its normative significance and symbolic value, legal recognition alone cannot dismantle the practical, political, and institutional barriers that continue to impede access to education for climate-displaced children across the European Union. While recognition can establish the legal foundation for inclusion, its transformative impact depends on how well it is embedded within operational systems. Currently, Directive 2011/95/EU excludes climate-related harm from the scope of subsidiary protection, rendering children displaced by environmental degradation ineligible for rights tied to international status, including schooling and healthcare (European Union 2011). The EU Charter of Fundamental Rights, especially Articles 14 and 24, affirms children's rights to education and protection, yet their enforcement depends on administrative transposition, political will, and resource allocation at the national level. Recognition may secure a legal foothold, yet it remains insufficient in the absence of systemic conditions—such as accessible enrolment mechanisms, dedicated funding, and child-specific service pathways—that enable these rights to materialise.

Policy incoherence further blunts recognition's utility. Access to AMIF and ESF+ funding under Regulation (EU) 2021/1060 is status-dependent, while the Reception Conditions Directive applies only to asylum-seeking minors and permits delayed school enrolment (European Union 2013; European Union 2021). UNICEF (2023) shows that children often remain excluded from education even when formally recognised and legal status without infrastructure risks rendering protection symbolic. This disconnect reflects a wider implementation gap between supranational obligations and the fragmented capacities of Member States to realise those commitments on the ground.

The needs of climate-displaced children extend beyond legal categorisation. Instruments like the EU Strategy on the Rights of the Child and the UNICEF/IOM Guiding Principles (UNICEF and IOM 2022) emphasise participation, trauma-informed care, and inclusive school access. As Bhabha (2014, 61) notes, rigid status frameworks may overlook the concrete vulnerabilities and service needs of children in mobility contexts. Yet, as McAdam (2012, 95) cautions, deprioritising recognition altogether may fragment accountability and weaken legal protections. Recognition is therefore necessary but not sufficient.

Chapter 5 now turns from legal principles to practical strategies—outlining policy pathways ranging from accelerated enrolment benchmarks to funding access—that can embed education rights in the EU's multilevel governance system.

5 From Principle to Practice: Recommendations and Conclusion

5.1 Introduction: translating recognition into access

Through binding legal instruments the European Union together and its Member States have established the right to education for displaced children yet these instruments do not include climate-displaced children across the EU territory. Article 14 of the Directive 2013/33/EU of the European Union mandates Member States to offer education to minor asylum seekers with conditions equivalent to nationals within a three-month timeframe starting from application (European Union 2013). The practical implementation of educational access faces persistent challenges because of enrollment delays along with insufficient language support and insufficient funding for preparatory classes. Surveys conducted in 19 EU nations demonstrate significant discrepancies between Member State reception standards (ECRE 2023). While the CRC guarantees every child's right to education, irrespective of legal status, climate-displaced children, who falls outside recognised categories, remain ineligible for services or subject to discretionary treatment. The current system lacks essential policies to manage non-standard displacement cases thus forcing affected children to remain trapped in legal and administrative uncertainty.

The lack of legal status recognition makes the exclusion process more intense. The international law does not explicitly grant climate-displaced children the right to education according to UNESCO (2024) becoming invisible in many national education systems. Moreover, UNICEF UK states that legal commitments become meaningless without converting them into funding and child-responsive policy and planning initiatives (Pegram and Oakes 2017, 5). Recognition needs to be implemented through specific mechanisms which target the recognized population. Crucially, as the Council of Europe affirms, protective policies need not await new legal definitions: governments can and should act proactively to mitigate displacement-related harms (Council of Europe 2019). Such actions are feasible given the existing child rights obligations under the CRC and soft-law commitments in EU instruments, which can be operationalised even in the absence of formal status reform.

This chapter builds on the legal analysis of Chapter 4 by exploring how to translate recognition into effective access to education. While some immediate measures can and should be implemented regardless of formal status—especially for humanitarian reasons—they cannot substitute the structural role of legal recognition. Without an appropriate legal status, climate-displaced children often remain formally entitled but practically excluded. Therefore, the policy pathways outlined in this chapter are intended not as alternatives to legal recognition, but as complementary mechanisms to reinforce and operationalise rights once status has been clarified. The central argument of this thesis remains that legal recognition is a necessary precondition for ensuring durable, non-discriminatory, and rights-based access to education within the EU framework.

5.2 Guiding frameworks

The strategies proposed in this chapter need a normative foundation that not only secures legal entitlements, but also ensures that those rights translate into meaningful, measurable outcomes for children. The EU can create education

policies, that are both legally grounded and ethically robust, by utilizing the Child-Rights-Based Approach (CRBA) together with the Capabilities Approach (CA). CRBA relies on legal rights and state duties, the CA focuses the attention to children's real ability to thrive, learn, and participate fully in society.

The Child-Rights-Based Approach (CRBA) finds its legal basis in the CRC which guarantees education rights (Articles 28–29) alongside non-discrimination (Article 2), best interests of the child (Article 3) and the right to be heard (Article 12) (UN General Assembly, 1989). The specified provisions provide a systematic legal framework to handle climate-displaced children's particular vulnerabilites. The Committee on the Rights of the Child (2003) defines the complete implementation of CRC principles through domestic law, policy development, budgeting and impact assessment in General Comment No. 5. These standards are reflected in the EU Charter of Fundamental Rights, particularly Articles 14 and 24, supporting the compatibility of the CRBA with EU legal obligations (European Union, 2000). The CRBA functions as both a moral requirement and an enforceable legal framework for EU institutions.

The CRBA functions as an ethical principle but it does not by itself ensure educational access. The CA helps children who experience educational exclusion due to their legal status by offering a necessary perspective change. Nussbaum, reguarding the CA, argues that justice should be measured by what individuals are actually able to do and to be (Nussbaum, 2011, 18). The emphasis on this is particularly relevant for displaced children whose rights often go unrealised in practice. Walker and Unterhalter (2007, 27-30) utilize the CA to analyze curriculum inclusivity together with psychosocial well-being and structural support. These vital indicators for climate-induced displacement policy interventions in education.

The CRBA and CA operate as complementary systems. Children's legal entitlements are defined by the first framework while the second framework determines their practical rights fulfillment. The EU Strategy on the Rights of the Child (European Commission, 2021) demonstrates this integration through its non-binding approach that emphasizes child participation and social inclusion and specialized support for marginalized populations. The UNICEF and IOM (2022) Guiding Principles, examined previously, show how operationalization works by suggesting basic enrollment simplification and trauma-sensitive education and child-centered policy creation as first steps.

However both approaches risk having an abstract nature when used for policymaking purposes, especially the CRBA requires legal harmonization and monitoring to function effectively. The fragmented governance structure of EU migration and education policy can be navigated through this dual framework which serves as an ethical guide for institutional reform and coordination.

The following sections will demonstrates how this combined framework directly informs proposals for removing legal barriers, reforming school enrolment criteria, enabling inclusive curricula for effective child-rights outcomes.

5.3 Removing status-linked legal and administrative barriers

While full legal recognition of climate-displaced children remains a long-term objective, urgent action is required to take apart the status-linked legal and administrative barriers that currently prevent many of these children from accessing education. The achievement of recognition does not provide retroactive compensation for extended

periods of educational denial. The EU must implement status-independent practical solutions which utilize current capabilities to grant all children their right to education regardless of their legal status.

The EU needs to expand educational guarantees under the Reception Conditions Directive (2013/33/EU) for all children present within its territory. The Directive (2013/33/EU) grants educational access only to minor asylum seekers through Article 14 and requires a maximum three-month delay for enrollment, excluding undocumented and non-asylum-seeking children from access (European Parliament and Council 2013, art. 14). This exclusion has significant real-world consequences: many climate-displaced children fall into legal grey zones, unable to enrol in school due to the absence of formal status. Making legal classification as a requirement for fundamental rights access, as Costello (2016, 281–284) argued, establishes structural inequality which undermines both EU fundamental rights law and international obligations Amending or reinterpreting the Directive by including all minors would establish fundamental equality, aligning EU law with the Convention on the Rights of the Child's non-discrimination principle.

According to UNICEF (2023) status clarification processes exclude children from receiving education. Building on this, the EU should adopt a documentation regime for undocumented children—particularly unaccompanied minors. Lack of legal identification is among the most immediate obstacles to school enrolment across the EU. The European Union Agency for Fundamental Rights (2017, 38) indicates that strict administrative procedures block educational access for students even though education remains legally accessible. A child's physical presence should serve as the basis to establish eligibility for registration which would enhance administrative efficiency while protecting children's rights. This method advocates for an evidentiary system which accounts for child-specific needs and transfers procedural responsibility to institutions. Moreover, displaced-children often arrive with disrupted educational trajectories and lack formal documentation of their previous studies. To guarantee educational continuity the EU needs to create standards that allow mutual acceptance of student achievements. According to the Council of Europe (2021) flexible recognition of informal and non-formal education represents a child-centered tool which could be implemented throughout the entire EU territory

A legitimate concern, however, is that this kind of status-independent policy measures implementation might a non-uniform and long-lasting system of protection. Bhabha (2014, 53–55) points out that administrative solutions which replace formal legal reforms will hide institutional breakdowns and allow governments to delay durable solutions. The identified risks need proper acknowledgment, yet, the urgency of displaced children's recognition of educational needs demands a fast approach. Policy solutions such as the implementation of presumptive eligibility serves as a critical tool that addresses both immediate harm and develops institutional preparedness for complete legal recognition.

Ensuring school access for climate-displaced children does not require rewriting EU migration law, but, rather, reinterpreting existing obligations through child-rights centred implementation. Needed steps are: extending education guarantees, simplifying documentation, and ensuring continuity through academic recognition which can significantly improve educational access and stability for children otherwise made invisible by legal formalism. These reforms combine both emergency assistance and an innovative EU education policy structure based on child rights untethered from outdated assumptions about legal status.

5.4 Building Inclusive and Resilient Education Systems

Despite formal recognition of the right to education under both international and EU law, current education systems across the European Union continue to fall short in ensuring that climate-displaced children can enjoy inclusive, high-quality, and climate-resilient learning environments. The CRC contains two vital provisions which guarantee universal education access through Article 28 and furthermore, define the purpose of education as child development through Article 29 (UN General Assembly 1989). This is translated into the already mentioned Articles 14 and 24 of the EU Charter of Fundamental Rights which uphold these rights at the EU level (European Union 2000). Climate-displaced children face systematic obstacles which prevent them from accessing their rights in reality. In line with the CA the definition of "educational functionings" means the real freedom to develop knowledge, skills, and resilience through learning (Nussbaum 2011, 70-74). The implementation gap needs to be resolved through interconnected reforms that include linguistic inclusion pathways and climate-literate and trauma-sensitive curricula and targeted teacher training with EU coordination for stronger accountability.

First, Member States should introduce publicly funded language-bridge and programmes tailored to all refugee children, including those displaced by climate-related factors. While legal instruments such as the CRC and the EU Charter prohibit discrimination in education, these rights remain unenforced unless implemented through structured support mechanisms such as preparatory language tracks, peer mentoring, or modular integration classes. One of the most immediate barriers to a meaningful participation is linguistic because without adequate language instruction, children cannot access the curriculum or integrate socially, increasing, thus, dropout risks. Early-stage language and transition support according to Dryden-Peterson (2016, 475) enables both academic advancement and emotional well-being of students. EU incentives would help solve national resistance to create uniform educational programs by providing support. Specific funding could be tailored on the establishment and monitoring of such inclusion programmes across Member States.

Complementing linguistic integration, the second reform requires embedding climate literacy and trauma-sensitive content in national curricula. The Council Recommendation on Learning for Environmental Sustainability (European Commission 2022) demands that Member States should incorporate sustainability education across all subjects and levels. The new policy demonstrates growing recognition that educational programs should train students not only to understand environmental risks but to help address them. This kind of programs are vital for climate-displaced children. Climate-displaced children frequently experience trauma, which cannot remain unaddressed in school settings. The study by Burde et al. (2017, 629) shows how psychosocial needs are commonly disregarded in emergency educational situations which leads to negative learning outcomes. An EU-coordinated framework, adaptable to national contexts, could ensure that children are not only learning about climate but also participating in emotionally supportive classrooms that enable them to regain stability, self-confidence, and a sense of agency.

In order to create these effective learning environments, a third essential reform pillar should focus on teacher capacity. The EU needs to promote Member States to establish programs that teaches staff members trauma-informed and intercultural teaching methods. The Reception Conditions Directive under Article 15 demands Member States

to provide appropriate training for staff who work with minors yet, it lacks specific standards regarding content and scope (European Parliament and Council 2013, art. 14–15). The unclear nature of these regulations creates uneven readiness among staff. Teaching staff who works with displaced students need training in emotional literacy and cultural responsiveness to manage classrooms with such vulnerable children. Specific funding must provide resources for institutions to develop teacher training programs with EU-approved standards.

Critics might claim that education belongs to Member States while these reforms could lead to jurisdictional conflicts and system fragmentation. However, the Reception Conditions Directive only requires education access for asylum-seeking minors, leaving climate-displaced children without guaranteed inclusion (European Parliament and Council 2013). The EU possesses powerful policy instruments which respect national autonomy. Through funding conditionalities, soft law tools like Council Recommendations, and transnational platforms such as the European Education Area, the EU can steer harmonisation without overstepping its mandate. The EU should improve monitoring through existing education indicators to link financial disbursement to rights-based outcomes for a better impact.

The four reforms which use concrete learning outcomes instead of abstract rights fulfill the Capabilities Approach while showing how much work remains to turn legal educational rights into real learning experiences. The integrated model which combines language access with climate and trauma-informed curricula and trained educators and monitored investment would both enhance climate-displaced children's right to education and develop a stronger resilient European education system.

5.5 Partnerships and participatory governance

Effective governance for climate-displaced children's education cannot be imposed only from above. Realising the participatory rights enshrined in Article 12 of the Convention on the Rights of the Child (UN General Assembly 1989) and Article 24 of the EU Charter of Fundamental Rights (European Union 2000) requires the active engagement of children themselves and that their voices are meaningfully heard. Children themselves are best placed to co-design systems that ensure that their lived realities are understood and that meaningful actions are taken to protect their rights. Municipalities are often the first institutional actors encountered by displaced children and thus play a pivotal role in designing inclusive education responses. With EU coordination these decentralised efforts can be scaled without sacrificing local adaptability or trust. Civil society organizations alongside NGOs and informal educational frequently bridge institutional gaps in access and inclusion. UNICEF (2021) identifies informal networks as essential stabilisers for children excluded from formal systems, particularly during emergencies.

A meaningful inclusive structure requires official channels that enable children to influence policy decisions. Lundy (2007, 933–937) emphasizes that CRC Article 12 participation will remain symbolic unless structural safeguards are in place. Lundy model—space, voice, audience, and influence—requires institutional commitments such as child councils, consultation mandates, and feedback loops (Lundy, 2007, 934–937). For climate-displaced children, meaningful participation must be visible in policy outcomes, not just consultation forms, to uphold their rights effectively.

Together these actors can bring complementary capacities, local flexibility and experiential insight. This is crucial since formal EU structures alone cannot achieve truly significant results. Child participation and embedding such partnerships makes governance more democratic, more legitimate, and more aligned with the rights and needs of climate-displaced children.

5.6 Monitoring, data and accountability

Robust rights-based accountability structures are necessary in order to prevent climate-displaced children's reform efforts from becoming empty promises. The EU must prioritise the development of child-specific indicators and the systematic collection of disaggregated data specifically made up for climate-displaced children. Without these tools, implementation gaps risk being obscured rather than addressed. The Fundamental Rights Agency (FRA) shows that EU policies require child-sensitive monitoring metrics (FRA 2021). The indicators should focus on both administrative outcomes and evaluate whether both legal rights meaningful education's rights are respected. Indicators need to be co-developed with children and civil society organizations to accurately represent their real-life situations. . The EU must establish regular collection of disaggregated data about climate-displaced minors that includes their educational access along with their mobility patterns and academic performance. Current datasets remain fragmented and do not distinguish between types of displacement, leaving climate-affected children largely invisible in EU statistics (Eurostat 2023). The collection of this data serves both moral and practical purposes because it enables the creation of specific evidence-based interventions.

5.7 Scenario-based roadmap

The EU's current normative framework, while grounded in robust legal commitments to children's rights, does not yet ensure effective and inclusive access to education for climate-displaced children from third countries. Bridging this implementation gap requires a phased, scenario-based roadmap that balances political feasibility with normative urgency—advancing interim protections while preparing the ground for more transformative legal change. This thesis has demonstrated that the EU's protection remains conditional on migration status (RQ1); that the lack of formal recognition exacerbates invisibility and legal ambiguity (RQ2); and that although formal recognition would address systemic exclusion, its short-term feasibility is constrained by political and institutional resistance (RQ3). The proposed reform strategy involves multiple steps to operationalize rights through, short, medium and long-term periods for implementation.

The EU can start short-term actions by implementing targeted pilot programs that operate under existing competences. These programs should include trauma-informed education models in high-arrival areas. The EU should establish school access schemes decoupled from legal status since under Article 14 of the Reception Conditions Directive, access to education is currently limited to children applying for asylum (European Parliament and Council 2013). Pilot programs should evaluate flexible educational methods through the EU Strategy on the Rights of the Child. Rights-based conditionalities on EU funding would help incentivise inclusive practices. These experimental programs will produce necessary evidence which can direct the development of future regulatory changes.

In the medium term the focus should shift to direct efforts toward updating existing legislation.. Revising the Reception Conditions Directive to include all children present in the EU—regardless of legal status—and standardising provisions on school registration, language support, and continuity of learning would address normative fragmentation and move Member State practice closer to CRC obligations.

In the long term the EU should pursue legal recognition through treaty reform or the introduction of a sui generis protection category for climate-displaced children in line with the CRC obligations which demand all children, under Article 2, receive non-discriminatory treatment (UN General Assembly 1989). . Legal recognition would need to be accompanied by child-specific safeguards and robust monitoring duties, coordinated at EU level.

Together, this roadmap synthesises the thesis's key findings and outlines a pragmatic, child-rights-consistent strategy to expand educational guarantees for climate-displaced children in an age of increasing mobility and structural risk.

5.8 General Conclusion

This thesis set out to examine whether, and to what extent, the European Union's normative framework safeguards the right to education of children displaced across borders by climate-related harms. Through a child-rights-based legal and policy analysis, the research investigated how the absence of a recognised "climate refugee" status exacerbates protection gaps, and whether formal recognition is both normatively justified and practically feasible. The study drew on EU secondary legislation, international instruments, soft law, and institutional literature to critically examine the relationship between legal design and policy execution, grounding its normative perspective in the principles of the Convention on the Rights of the Child, particularly the best interests of the child and the principle of non-discrimination.

The findings show that the current legal framework is fragmented and inconsistent. While the Reception Conditions Directive (2013/33/EU) provides a baseline of protection for asylum-seeking minors, climate-displaced children—who fall outside of recognised categories—are omitted entirely. As a result, their access to education depends on discretionary national measures or humanitarian exceptions, producing a rights vacuum at odds with the EU's own legal and ethical standards. The lack of a legal definition for "climate refugee" deepens exclusion, creating administrative barriers and delaying access to education and support services. This status-linked exclusion undermines continuity in learning and psychosocial stability. The existing EU framework, as it stands, fails to ensure the universal right to education for all children.

The research makes an original contribution by conceptualising education not only as a fundamental right but also as a vehicle for resilience and integration. It shifts the analytical focus from formal access to effective educational functionings, rooted in substantive equality. The proposed roadmap identifies short-term actions (evidence generation, pilot programmes), medium-term reforms (directive revisions to remove legal ambiguity), and long-term structural change (treaty reform to acknowledge climate displacement as a ground for protection).

Several limitations are acknowledged. The study relied on secondary sources due to operational constraints, and lacked direct interaction with displaced children. The absence of harmonised EU data on climate-displaced minors

further constrained the scope of analysis. In addition, the fast-evolving migration policy landscape—especially with the implementation of the New Pact on Migration and Asylum—may necessitate adaptation of the recommendations.

In light of the findings, the EU must establish a binding legal framework that guarantees access to education irrespective of immigration status. At the same time, the creation of child-centred monitoring systems and harmonised data practices across Member States is essential to track and address protection gaps. Future treaty revisions should integrate climate-induced displacement into the Qualification Directive, aligning EU legal tools with the realities of migration. This is not merely a matter of technical legal coherence—it is a test of Europe's normative commitment to children's rights.

Throughout this thesis, the central claim remains that legal recognition is not a symbolic or aspirational goal: it is the mechanism through which the right to education becomes practically enforceable for climate-displaced children. Without such recognition, access remains fragmented, precarious, and vulnerable to exclusion. The EU therefore faces both a legal and moral imperative: to ensure that recognition, education, and long-term integration are not treated as separate challenges, but as interconnected rights. Upholding these rights would not only reaffirm the EU's foundational values, but also set a global precedent in protecting children amid a changing climate. The time for action is now.

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