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Climate-Related Displacement and the EU Legal Framework

Protection Gaps, Human Rights Obligations and Pathways for Reform

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ABSTRACT

This thesis examines how persons displaced by climate-related factors are protected within the legal frameworks of the European Union and its Member States. Climate change is reshaping human mobility through both sudden-onset events, such as floods, storms and wildfires, and slow-onset processes including sea-level rise, desertification and land degradation. As environmental hazards intersect with structural inequalities, weak governance and historical marginalisation, climate-related displacement emerges not only as an environmental phenomenon but as a human-rights and justice issue. Despite rising numbers of people displaced by climate change, neither EU nor international law recognises the status of “climate refugee”, leaving affected individuals in a position of legal invisibility and dependent on fragmented national practices or narrow interpretations of existing asylum law.

Given this background, this thesis explores how climate-displaced persons can be protected within the legal systems of the EU and its Member States. It analyses the EU legal framework, relevant human-rights frameworks and emerging jurisprudence, as well as international developments. Through doctrinal legal research, the thesis evaluates current protection gaps and the extent to which EU climate ambitions and migration reforms interact. Ultimately, the thesis proposes pathways towards a coherent, human rights-based EU response that integrates scientific evidence, intersectionality and multi-level governance to ensure effective protection for climate-displaced persons.

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1. Introduction

Climate change has become one of the most pressing challenges of the 21st century, reshaping ecosystems, economies and human mobility patterns on an unprecedented scale¹. Its impacts are already driving millions of people from their homes each year, whether through sudden-onset events such as floods, storms and wildfires, or slow-onset processes including sea-level rise, desertification, salinisation and land degradation². While the majority of those affected remain internally displaced, a significant and growing number are compelled to move across borders³. Global trends indicate that climate-related mobility will intensify in the coming decades, particularly in regions where environmental hazards converge with structural inequalities, weak governance, poverty, discrimination and historical marginalisation⁴. These intersecting factors shape who is most exposed to harm, who can adapt in place, and who is forced to move. As a result, climate-related displacement is not merely an environmental phenomenon but a human rights and justice issue, raising profound questions about responsibility, equity and protection. This is especially relevant in light of climate injustice, as those least responsible for greenhouse gas emissions are often the most severely affected by their consequences, while high emitting States, predominantly in the “Global North”, benefit from the very systems that have contributed to the climate crisis⁵.

The climate crisis and its impacts, namely, climate-related displacement, are challenges which demand a thorough examination of international and regional migration

¹ See, for example, World Meteorological Organization, *State of the Global Climate 2025 (WMO-No. 1391)* (2026)

<https://library.wmo.int/viewer/69807/download?file=WMO-1391-2025_en.pdf&type=pdf&navigator=1> accessed 18 June 2026, p.26-29.

² Ibid.

³ See, for example, European Parliamentary Research Service, *The concept of ‘climate refugee’* (Briefing, 2026) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI\(2021\)698753_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI(2021)698753_EN.pdf)> accessed 18 June 2026, p.2, 4 and 5.

⁴ See, for example, Gabriele M. Quinti and Federico L. Marta, ‘Climate Change Mitigation and Adaptation Policies: Addressing Unintended Effects of Inequalities’ (2025) 14 *Social Sciences* <<https://www.mdpi.com/2076-0760/14/6/368>> accessed 18 June 2026, p.1-3.

⁵ See, for example, Sheri R. Levy, Meroona Gopan, Luisa Ramírez, Allan B. I. Bernardo, Martin D. Ruck and Anni Sternisko, ‘A human rights-based approach to climate injustices at the local, national, and international levels: Program and policy recommendations’ (2024) 18(1) *SIPR* <<https://spssi.onlinelibrary.wiley.com/doi/epdf/10.1111/sipr.12103>> accessed 30 May 2026, p.3-5.

frameworks, as well as the urgent and comprehensive remedy of existing protection gaps. Within this context, it is crucial to address the legal uncertainty that characterizes current migration policies and frameworks, particularly the lack of a clear legal status for persons displaced by climate related factors⁶. Against this backdrop, the EU presents itself as a global leader in human rights, climate action and the rule of law⁷, yet its legal and policy frameworks remain ill-equipped to address climate-related displacement and mobility, as it will be demonstrated throughout this thesis. As climate change impacts worsen and climate displacement numbers are expected to rise, individuals will increasingly seek protection from environmental degradation and disasters, namely within Member States⁸. The EU's identity as both a major historical emitter⁹ and a global actor committed to human dignity, equality and non-refoulement¹⁰, places it at the centre of debates on responsibility, protection and climate justice. Despite the growing urgency of the issue, neither EU nor international law recognises the status of "climate refugee", and no dedicated protection regime exists for those displaced by climate-related factors¹¹. This legal invisibility creates significant protection gaps, leaving affected individuals dependent on fragmented national practices, discretionary humanitarian measures, or narrow interpretations of existing asylum law, as this thesis will highlight. Although recent developments, such as the Human Rights Committee's decision in *Teitiota v. New Zealand*, the Global Compact for Migration, and evolving jurisprudence on non-refoulement, signal a gradual shift, the absence of a coherent legal framework persists.

Consequently, the central research question guiding this thesis is the following: how are persons displaced by climate-related factors protected within the legal frameworks of the European Union and its Member States? To answer this, the thesis examines the extent to which EU asylum law, human rights law and emerging policy instruments can respond to

⁶ EPRS, *The concept of 'climate refugee'* (n3) p.1-4.

⁷ See, for example, EU Action Plan on Human Rights and Democracy 2020-2027 (2024) <<https://eupolcoppes.eu/uploads/17259689171835252362.pdf>> accessed 18 June 2026.

⁸ EPRS, *The concept of 'climate refugee'* (n3) and WMO, *State of the Global Climate 2025* (n1).

⁹ See, for example, Manya Rathore, 'GHG emissions in the EU – Statistics & Facts' (*Statista*, 17 December 2025)

<<https://www.statista.com/topics/4958/emissions-in-the-european-union/?srsltid=AfmBOor527PMftAvqh-Q7SDH8MwnsCH0T48sNScFXeO5y4Ih1CkAun6D>> accessed 8 May 2026.

¹⁰ Charter of Fundamental Rights of the European Union [2012] OJ C326/391, arts.1, 19 and 20.

¹¹ See, for example, EPRS, *The concept of 'climate refugee'* (n3).

climate-related displacement, and identifies the reforms necessary to ensure effective, human rights-based protection.

In order to guide the reader, the thesis is structured into five main chapters, each building upon the previous to form a coherent examination of climate-related displacement within the EU. The present Chapter introduces the topic, outlines the relevance of climate change as a driver of human mobility, clarifies key terminology, and presents the research questions, methodology and scope. Chapter 2 provides the legal foundation for the study and is divided into two major parts: Section 2.1. examines the EU legal framework, beginning with an overview of the CEAS and followed by detailed analyses of the Qualification Directive and the Temporary Protection Directive; Section 2.2. then turns to human rights law, outlining the relevant international, regional and domestic frameworks which shape protection for climate-displaced persons, as well as how they are interpreted by the relevant Courts. Following this, Chapter 3 focuses on current developments and is also divided into two major parts: Section 3.1 focuses on developments within the European Union, beginning with an analysis of the EU's climate policy and then assessing the recent CEAS reform under the New Pact on Migration and Asylum. Therefore, this section evaluates whether, and to what extent, EU climate ambitions and migration reforms interact. Section 3.2 broadens the lens to consider other international developments that may influence the EU's future approach. It examines emerging jurisprudence and legislative innovations within the Inter-American system, the evolving role of the ICJ and the UN in clarifying States' obligations regarding climate change, and the potential future approaches of the ECtHR, including its possible interplay with the CJEU in cases involving climate-related harm. Together, these developments provide a comparative and forward-looking basis for assessing how the EU and its Member States might adapt their legal frameworks to address climate-related displacement more effectively. Chapter 4 presents the core analytical contribution of the thesis and is divided into four sections: 4.1. identifies short-term priorities within the existing legal framework; 4.2. proposes long-term structural reforms ; 4.3. outlines the mandatory elements for effective protection, including enhanced data, improved COI, scientific integration and an intersectional human rights-based approach; and 4.4. argues for a

multi-level response that connects protection with mitigation, resilience building and a just economic transition. Finally, Chapter 5 synthesises the findings and reflects on the broader implications for EU law, Member States and climate justice.

Methodologically, the thesis relies on doctrinal legal research, analysing EU legislation, international human rights instruments, case law, policy documents and contemporary academic literature. Its scope is limited to the EU and its Member States, while drawing on global developments where relevant to contextualise the EU's obligations and responsibilities. Through this approach, the thesis aims to contribute to the academic and policy debate by clarifying existing legal gaps, evaluating current practices, and proposing pathways towards a more coherent and just protection framework for climate-displaced persons.

To navigate this complex issue, the thesis adopts some terminological distinctions which are important to clarify. This thesis uses the term climate-displaced persons and climate-related displacement to capture a broad spectrum of individuals, meaning those already displaced, those compelled to migrate pre-emptively, and those at risk of displacement due to deteriorating environmental conditions. Additionally, the term refers to cross-border displacement, since the focus of this thesis is international protection within the legal framework of the EU and its Member States, regarding individuals displaced from outside the EU. This term also encompasses climate-related mobility, recognising that movement may be forced, voluntary, anticipatory or adaptive. The use of these terms instead of “environmentally displaced person” or “environmental displacement” is simply a stylistic choice, intended to emphasise the key factor of climate and consistently recall climate change as the issues are discussed. Moreover, the term “climate refugee” is not used because, as mentioned above, neither EU nor international law recognises the status of “climate refugee”. The term “refugee” has a specific legal meaning, namely in the context of the 1951 Refugee Convention¹², as will be discussed below. Finally, the thesis employs the term vulnerability in a structural sense, referring not to inherent characteristics but to the systemic inequalities and discriminatory conditions which heighten exposure to climate impacts.

¹² Ibid, p.3.

2. Legal Framework

This chapter outlines the legal framework relevant to the protection of climate-displaced persons within the EU and its Member States. Section 2.1 examines the EU legal system, focusing on the CEAS, before its reform, and its relevance for climate-related displacement. First, it analyses the Qualification Directive (2.1.1), particularly, the refugee and subsidiary protection statuses and their limits in cases of climate-related harm, and then, the Temporary Protection Directive (2.1.2), assessing its potential and constraints in situations of mass displacement triggered by environmental events. Section 2.2 turns to human rights law, first outlining the international framework (2.2.1), including core rights such as the right to life and non-refoulement, and then analysing the European Convention on Human Rights (2.2.2) and its relevance for climate-related claims. Finally, Section 2.3 considers Member State-specific frameworks, highlighting domestic approaches which shape the practical availability of protection and contribute to divergences across the EU. Together, these sections provide the legal foundation for assessing the EU's current capacity and limitations in responding to climate-related displacement.

2.1. The EU and the Common European Asylum System (CEAS)

The EU has positioned itself as a central defender of fundamental rights and as a global promoter of its internal values. Article 2 of the Treaty on the European Union (TEU) states that the 'Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights'¹³. Article 3 of the TEU further emphasizes the EU commitment to uphold these values in its relations with the wider world, promoting the protection of human rights globally. This external dimension is reinforced by Article 21 of the TEU, which requires the Union to advance the universality

¹³ Consolidated Version of the Treaty on European Union [2016] OJ C202/13.

and indivisibility of human rights in all areas of its external action, specifically mentioning assisting ‘populations, countries and regions confronting natural or man-made disasters’¹⁴. Additionally, the EU Charter of Fundamental Rights obliges EU institutions and Member States to implement EU law in accordance with human rights principles¹⁵, providing a lens through which the EU’s asylum and migration rules must be interpreted. Consequently, several Charter provisions are directly relevant to climate-related displacement, including human dignity (Article 1), the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), and the principle of non-refoulement (Article 19).

Following this general architecture, the Common European Asylum System (CEAS) is a legal and policy framework aimed at ensuring the harmonisation of standards regarding asylum, international protection and reception conditions in the EU. According to the EU Agency for Asylum (EUAA), the CEAS main objectives are: achieving a clear and functional process to determine which Member-State is responsible for examining an application for protection; establishing a set of common standards in order to inform fair and efficient asylum procedures; ensure a set of common minimum conditions for the dignified reception of applicants for protection; and reach convergency on the criteria for granting protection statuses and for the content of protection related with those statuses¹⁶. As part of this framework, there were several pieces of legislation in force, including the Qualification Directive, the Asylum Procedures Directive, the Reception Conditions Directive, the Dublin Regulation and the EURODAC Regulation. The New Pact on Migration and Asylum, which entered into application on 12 June 2026, introduces substantial reforms to the CEAS. However, it is important to examine how the system operated prior to the recent changes, before exploring, in section 3.1.2., how the CEAS reform impacts climate-related displacement and the extent to which these recent developments address or not the existing protection gaps.

¹⁴ Ibid, art.21(2)(g)

¹⁵ Charter of Fundamental Rights of the European Union (n10), preamble.

¹⁶ European Union Agency for Asylum, ‘Common European Asylum System and Current Issues’ (EUAA, 2021) <<https://www.euaa.europa.eu/asylum-report-2020/21-common-european-asylum-system-and-current-issues>> accessed 17 March 2026.

2.1.1. The Qualification Directive

Within this legislation package, the Qualification Directive establishes standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted¹⁷. This Directive incorporates the narrow definition of refugee present in the 1951 Refugee Convention¹⁸, with Article 2(d) defining refugee as a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons, is unable or, owing to such fear, unwilling to return to it, insofar exclusion reasons do not apply. This definition holds the following three key elements: (i) being outside the country of origin, (ii) due to fear of persecution on account of specific reasons, listed as race, religion, nationality, political opinion or membership of a particular social group, and (iii) inability or unwillingness to avail oneself of the protection of their country or return to it. Consequently, this definition seems to rule out immediately any possibility for climate-displaced persons to be considered a refugee due to environmental reasons alone, as fear of persecution for at least one of the listed reasons is an essential element to be granted such status, and adverse environmental conditions are not among those grounds. Although there is no common definition for ‘persecution’ and the full meaning of the term may differ depending on the legal system, there are two essential elements which remain: persecution is caused by human actors and is deliberate, even if to varying degrees¹⁹. Therefore, one could not fit “natural disasters” or adverse environmental conditions in this definition, as these phenomena are not primarily perpetrated by humans in the classical sense nor are they deliberate as in being the

¹⁷ Directive 2011/95/EU of the European Parliament and of the Council [2011] OJ L337/9.

¹⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137, art.1.

¹⁹ Christopher D Boom, ‘Beyond Persecution: A Moral Defence of Expanding Refugee Status’ (2018) 30 (3) IJRL 512, p. 517-518; and, in particular, see Case C-542/13 *Mohamed M’Bodj v Etat belge* (2014) para.35-36.

intended result, even if they originate from “man-made” climate change. An argument can be made about the possibility of categorising polluters or even the international community as persecutors, but some obstacles arise. For starters, it would mean that, for each individual case, a direct causality had to be established between the climate change impact in question and the specific actions or inactions of the polluter or the international community²⁰, which would be difficult considering these are complex phenomena which often involve multiple actors. Additionally, as McAdam explains, there is also a fundamental shift of the traditional refugee paradigm, as ‘Convention refugees flee their own government (or private actors that the government is unable or unwilling to protect them from), a person fleeing the effects of climate change is not escaping his or her government, but rather is seeking refugee from – yet within – countries that have contributed to climate change’²¹. Consequently, the refugee definition does not apply to climate-displaced persons, unless specific situations occur where they are subject to some form of persecution as it is described by Article 2(d). For example, in the event of a sudden-onset or slow-onset disaster, if authorities deny assistance and protection to certain people because of their race, religion, nationality, political opinion or membership of a particular social group, and, consequently, these people are treated in a way which qualifies as persecution, or if disputes over limited natural resources result in situations of violence, serious human rights violations or armed conflicts, and the people seeking protection are affected due to some form of discrimination based on the grounds previously mentioned²². However, such examples reflect how this narrow definition of refugee does not provide comprehensive protection for climate-displaced persons, as they either must endure/be likely to endure another form of hardship or they are not entitled to protection under this legal concept.

In addition to the traditional refugee protection, the Qualification Directive establishes another form of protection through Articles 2(f) and 15. Under Article 2(f), a person is eligible to subsidiary protection when they do not qualify as a refugee but there are

²⁰ Walter Kälin and Nina Schrepfer, ‘Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches’ (UNHCR Research Paper No.24, February 2012) p.31 <<https://www.refworld.org/reference/lpprs/unhcr/2012/85058>> accessed 17 March 2026.

²¹ Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP 2012) p.45.

²² Kälin and Schrepfer (n20), p.32-33.

substantial grounds to believe they would face a real risk of suffering serious harm (as defined by Article 15) if returned to either their country of origin or, in the case of a stateless person, to their country of habitual residence, and is unable or, owing to such risk, unwilling to avail themselves of the protection of that country²³. In this line, Article 15 defines serious harm as: (a) the death penalty or execution, (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict²⁴. Subsidiary protection is, therefore, based on the principle of non-refoulement²⁵, and Articles 2 and 3 of the ECHR²⁶, which set forth the right to life and the prohibition of torture, respectively. Once again, there is no explicit mention of environmental hazards or disasters as a form of "serious harm", however many have argued that an interpretation which includes such cases, particularly of Article 15(b), is not only possible but also required by human rights standards.

Examining the wording of Article 15(b), we can initially gather that the ill-treatment must occur in the country of origin of the person seeking protection, which potentially excludes medical cases, i.e. when the harm would not be directly caused by the country of origin, but by the applicant's own medical condition combined with inadequate healthcare in that country. Furthermore, according to the CJEU, a human actor of serious harm in the receiving state is also required, based on Article 6 of the Directive and its preamble²⁷, where it states that "[r]isks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm"²⁸. Both of these factors narrow the personal scope of application of Article 15(b) when compared to the principle of non-refoulement under Article 3 of the ECHR, essentially driving apart subsidiary protection from the prohibition of refoulement²⁹.

²³ Directive 2011/95/EU (n17).

²⁴ Ibid.

²⁵ Emphasized by Article 21(1) of the Qualification Directive.

²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) ETS No.5.

²⁷ See *Mohamed M'Bodj v Etat belge* (n19) para.35-36.

²⁸ Directive 2011/95/EU (n17) recital 35.

²⁹ Margit Ammer and Monika Mayrhofer, 'Cross-Border Disaster Displacement and Non-Refoulement under Article 3 of the ECHR: An Analysis of the European Union and Austria' (2023) 35 IJRL 322, p.332-333.

Before the *Mohamed M'Bodj v Etat belge* case in 2014, the academic community argued that Article 15(b) would also apply to cases of persons facing poor conditions upon their return, including lack of water, food or basic shelter³⁰. However, since the *M'Bodj* case and with the Court doubling down on the requirement of an actor of serious harm in 2018³¹, the CJEU goes against this understanding, despite the fact that Article 15(b) of the Directive is supposed to correspond, in essence, to Article 3 of the ECHR³², with its meaning and scope being, at a minimum, the same, according to Article 52(3) of the EU Charter³³. Additionally, Article 15(b) of the Directive must also be interpreted in line with Article 19(2) of the EU Charter, which states that “[n]o one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”³⁴. Evidently, this redaction of the EU Charter imposes no such limits to the application scope of subsidiary protection as imposed by the Court in their aforementioned rulings.

In practice, this jurisprudence tendency of drawing a gap between subsidiary protection and the principle of non-refoulement may result in persons being stuck in legal limbo without a right to residence, as they might not be refouled under Article 3 of the ECHR and Article 19(2) of the EU Charter, but remain without subsidiary protection status, solely dependent upon the particular Member State’s discretionary power on granting protection based on compassionate or humanitarian grounds³⁵. In addition to leading to substantial differences in the treatment of individuals protected under the principle of non-refoulement, this also leaves room for further differential treatment within the EU if Member States decide differently on protection cases involving similar circumstances. Such an outcome calls into question the entire purpose of the CEAS, which is to harmonise the conditions for

³⁰ Ibid, p.333. See also McAdam (n21) p.76-79 and Vikram Kolmannskog and Finn Myrstad, ‘Environmental Displacement in European Asylum Law’ (2009) 11 EJML 313.

³¹ See C-535/16 *MP v Secretary of State for the Home Department* (2018) paras.45-46

³² See Case C-465/07 *Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie* (2009) para.28.

³³ Charter of Fundamental Rights of the European Union (n10).

³⁴ The Qualification Directive must be interpreted in a manner consistent with the rights recognised by the EU Charter, see, for example, Case C-364/11 *El Kott v Bevándorlási és Állampolgársági Hivatal* (2012) para.43.

³⁵ Ammer and Mayrhofer (n29) p.334 and Kolmannskog and Myrstad (n30) p.324.

international protection across Member States. It also raises serious concerns about the upholding of the principle of equality, a fundamental value in the EU.

We don't yet know how the CJEU would rule on an expulsion case relating to climate displacement, as there have been no cases before the Court in which disasters or other environmental impacts in the receiving State were in question. Despite the previously mentioned requirement for an actor of serious harm, there is the possibility for the Court to consider this requirement fulfilled if 'the State of origin did not adequately prevent or respond to a disaster and/or did not adequately protect a person affected by the disaster'³⁶. However, it is also possible that the Court would consider these situations to be "general shortcomings" in the receiving State, and thus not the result of any human actor, ultimately not accepting the argument that there is always human agency in any disaster³⁷. Nevertheless, there are strong arguments for an interpretation according to EU primary law and international human rights law in a way that protects climate displaced persons. The requirement for the ill-treatment to occur in the country of origin, as instilled in the wording of the Article 15(b) of the Directive, does not exclude these cases, since the climate event responsible for displacement would occur in the respective country. Additionally, when we take into account the drafting history of the Qualification Directive, it becomes apparent how the drafters had a particular intention regarding the human actor requirement, and how the CJEU distorted that intention in its medical cases jurisprudence by not following a teleological interpretation. First, Article 6 of the Directive clearly presents an indicative list of actors of persecution as demonstrated by the word "include", and, therefore, should be interpreted broadly to allow for the inclusion of more. Additionally, the drafters intended for the Directive to reflect a protection-based approach, in which the focus is on whether effective protection exists in the country of origin, as opposed to an accountability-based approach, in which persecution can only be an act of the state³⁸. This means that the source of the persecution or serious unjustified harm is deemed irrelevant, and, instead, the relevant enquiry is whether an applicant can obtain effective protection against harm or the threat of

³⁶ Ammer and Mayrhofer (n29) p.334.

³⁷ Ibid.

³⁸ Céline Bauloz, 'Foreigners: Wanted Dead or Alive?: Medical Cases before European Courts and the Need for an Integrated Approach to Non-Refoulement' (2016) 18 EJML 409, p.429-431.

harm in their country of origin³⁹. Consequently, Article 6 was one of the articles incorporated into the Directive to counter the accountability-based approach, and it should not be used to restrict the risk of serious harm to that stemming only from the listed actors, as this is not its aim⁴⁰. Another point worth highlighting is, although recital 35 of the Directive displays the intention to narrow the scope of subsidiary application as mentioned above, as Kolmannskog and Myrstad explain, we could also argue that ‘the impacts of unprecedented and accelerating climate change are not ‘risks to which a population [...] is generally exposed to’. It is also clear that although hazards may strike indiscriminately, disasters only result from the combination of a hazard with certain existing vulnerabilities and a lack of protection’⁴¹. Climate change induced displacement could then be interpreted, depending on the individual cases, as a situation falling outside of the risks to which a population is generally exposed to and, in the same line, constitute an exceptional situation which would also qualify as serious harm. Taking all these elements into account, there is certainly potential for the CJEU to interpret Article 15(b) of the Qualification Directive in a way which grants protection to climate displaced persons. However, this would mean moving away from the current jurisprudence trend of focusing on the human actor requirement and drawing a gap between subsidiary protection and the principle of non-refoulement.

2.1.2. The Temporary Protection Directive

The Temporary Protection Directive, which entered into force in 2001, establishes minimum standards for giving temporary protection in the event of a mass influx of displaced persons⁴². This Directive is an exceptional mechanism meant to alleviate pressure on national asylum systems and was triggered for the first time by the Council in response to the Russian

³⁹ European Commission, ‘Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection’ COM(2001) 510 final, explanatory memorandum on art.9.

⁴⁰ Bauloz (n38).

⁴¹ Kolmannskog and Myrstad (n30) p.321.

⁴² Council Directive 2001/55/EC [2001] OJ L212/12.

invasion of Ukraine in 2022⁴³. Although there were talks about an explicit recognition for persons displaced by natural disasters in text of the Directive⁴⁴, the final document has no such mention. Article 2(c) defines “displaced persons” as ‘in particular [...] persons who have fled areas of armed conflict or endemic violence [and] persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights’. However, this article is not exhaustive, which suggests that the Directive could also be invoked in response to a sudden influx of climate displaced persons. In the same line, “generalised violations” of human rights often transpire during or after a climate disaster, which would make the persons displaced by such events within the recognised category of Article 2(c)⁴⁵. Nevertheless, displacement caused by slow-onset events, such as desertification or sea-level rise, will likely not fulfil the “mass influx” requirement⁴⁶. This is because, in such cases, it is anticipated that displacement will be a gradual and progressive process, just as the climate event itself⁴⁷. Thus, the Directive would be mainly applicable to sudden-onset event, such as floods or earthquakes. Still, as Kolmannskog and Myrstad note, because the term ‘mass-influx’ was not given a general definition in the Directive and it should be decided based on the specific circumstances of each situation, one can argue that ‘if a majority decides that a natural disaster calls for invoking the Temporary Protection Directive mechanisms, it is free to do so’⁴⁸. The practical challenge comes from the need to gather enough political will and agreement to activate such mechanisms.

Furthermore, while the Temporary Protection Directive could provide protection to some groups of climate-displaced persons, it won’t exactly be suitable for individuals who need to stay for a long period of time or even permanently. Article 4 of the Directive establishes a maximum of three years for temporary protection, even though this time limit has been surpassed for persons fleeing the war in Ukraine. In June 2025, temporary

⁴³ European Commission, ‘Asylum in the EU - Temporary Protection’ (2 April 2025) Migration and Home Affairs <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu/temporary-protection_en> accessed 29 March 2026.

⁴⁴ Council of the European Union, ‘Outcome of Proceedings’ (2001) 6128/01, p.4.

⁴⁵ Kolmannskog and Myrstad (n30) p.317.

⁴⁶ Hélène Ragheboom, *The International Legal Status and Protection of Environmentally-Displaced Persons: A European Perspective* (International refugee law series 8, Brill Nijhoff, 2017) p.474.

⁴⁷ Ibid.

⁴⁸ Ibid.

protection was extended, for a third time and against the wording of Article 4, until March 2027, after Member States unanimously endorsed the Commission's proposal⁴⁹. The Commission justified this extension based on the ongoing precarious situation in Ukraine, the need to safeguard those still requiring protection, and the risk of overwhelming national asylum systems if temporary protection ends abruptly without transitional measures⁵⁰. Although these extensions are noteworthy, it is not desirable that the individuals remain with an uncertain status, residing in a country for a long period of time on a "temporary basis", without a more permanent residence status⁵¹. As the Commission highlights the uncertain situation in Ukraine and the inability to ensure a safe environment for those who would wish to return, one can draw parallels to a situation involving an environmental disaster. Just like after a war, reconstruction after an environmental disaster or degradation often requires more time than the three years envisioned for the temporary protection⁵². Additionally, other major concerns such as access to livelihoods and housing⁵³ directly impact the safe and dignified return of individuals, especially in cases where a large number of people is involved. Therefore, there ought to be better mechanisms in place which would ensure a more certain and stable status for the individuals fleeing such situations, and legal standards providing a clearer path for dignified return conditions, when returning is possible. In the Ukraine case, the Commission has proposed a Council Recommendation which would set out several measures in order to establish a transitional mechanism for people who either will want to eventually return to the country, or people who will want to obtain a more permanent residence status through employment, education or family reasons, for example⁵⁴. Nevertheless, the situation remains very uncertain due to not only the conditions in the country, but also the vague language used by the Commission, as well as the uncertain way in

⁴⁹ Council of the European Union, 'EU member states agree to extend temporary protection for refugees from Ukraine (13 June 2025) Press Release
<<https://www.consilium.europa.eu/en/press/press-releases/2025/06/13/eu-member-states-agree-to-extend-temporary-protection-for-refugees-from-ukraine/>> accessed 29 March 2026.

⁵⁰ European Commission, 'A predictable and common European way forward for Ukrainians in the EU' COM(2025) 649 final.

⁵¹ Kolmannskog and Myrstad (n30) p.318-319.

⁵² Ibid, p.318.

⁵³ European Commission, 'A predictable and common European way forward for Ukrainians in the EU' (n50).

⁵⁴ Ibid.

which the Directive activation and continuous application is being conducted. Which leads us to the conclusion that even if there was an overall agreement in this particular situation to overcome the time limits of temporary protection set out in the Directive without amending the Directive itself, there is no legal certainty that the same reasoning and practicality would be applied in other situations, however dire and deserving they might be. Furthermore, it remains to be seen if, and how exactly, the Commission and the Member States would support a similar use of this protection mechanism in the specific case of an environmental disaster, without legislative reform and considering the political nature of its activation process. Another important point to consider is the fact that five years is the required time threshold for third-country nationals to be able to obtain long-term residence in the EU, so how can a mechanism which lasts for the same amount of time or potentially even longer still be credibly understood as “temporary”⁵⁵. All things considered, it is clear that the EU is still trying to navigate the practical challenges of activating this Directive, but so far this has not undermined the rights of those in need of protection. It is unclear, however, what future circumstances would lead the EU and its Member States to adopt such an approach again, or whether a similar political consensus could be achieved in response to climate-related displacement.

In overview, the Temporary Protection Directive could help manage the protection gap for climate-displaced persons within the EU and its Member States in the event of a mass-influx caused by an environmental disaster, provided there is enough political will and consensus. Nonetheless, better legal certainty is needed, for example through legislative reform, as well as a clearer path to residence status, particularly for individuals requiring a long-term or permanent stay in the host Member State, which is highly likely in the event of an environmental disaster.

⁵⁵ Meltem Ineli Ciger, ‘Towards Temporary Prolonged Protection?’ (*EU Migration Law Blog*, 10 June 2025) <<https://eumigrationlawblog.eu/towards-temporary-prolonged-protection/>> accessed 29 March 2026.

2.2. Human Rights Law

As referenced in the previous section, human rights law is invaluable for an analysis on climate-displaced persons rights and the respective regional frameworks, as it is the basis for minimum standards of treatment. As McAdam explains, international human rights law ‘provides a means of assessing which rights are compromised by climate change and which national authorities have primary responsibility for responding to those rights at risk. Secondly, if those rights are at risk, human rights law may provide a legal basis on which protection may be sought (and granted) in another State (known as ‘complementary protection’). Thirdly, if relocation occurs, human rights law requires minimum standards of treatment to be observed in the host State, and is thus relevant to the legal status afforded to those displaced’⁵⁶. Therefore, an overview and analysis of the relevant international frameworks must be performed in order to determine which fundamental rights and standards can provide the basis for protection of climate-displaced persons. At the same time, as this is the minimum threshold that every State must respect and ensure, it is essential to understand such standards in order to be able to hold the respective States accountable.

2.2.1. International Framework

Within the international human rights framework, the right to life is the very foundational guarantee which protects individuals and requires States to adopt appropriate measures to safeguard them from reasonably foreseeable threats⁵⁷. The right to life is recognised in all regional human rights treaties and in several international documents, among which Article 6 of the ICCPR⁵⁸. According to the Human Rights Committee (HRC), the right to life does not allow any derogation, even in situations of armed conflict or public

⁵⁶ McAdam (n21) p.52.

⁵⁷ Rhona K M Smith, *Textbook on International Human Rights* (6th edition, OUP 2014) ch.13.

⁵⁸ International Covenant on Civil and Political Rights 999 UNTS 171.

emergencies, and it is therefore the ‘supreme right’⁵⁹. Furthermore, the right to life must be protected effectively if all other human rights are to be enjoyed, and its own substance is also shaped by other human rights⁶⁰. Namely, the right to an adequate standard of living, which comprises adequate food, clothing, housing and the continuous improvement of living conditions, and the right not to be deprived of a means of subsistence are strongly linked with the right to life⁶¹. These rights are particularly relevant when analysing environmental degradation and climate displacement, given that climate change can severely impact people’s ability to work their land or lead to substantial infrastructure destruction, for example. Thus, it is clear that the right to life ‘should not be interpreted narrowly’ and encompasses the right of individuals to ‘enjoy a life with dignity’⁶². Additionally, the prohibition on arbitrary deprivation of life present in Article 6(1) encompasses ‘intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission’, also extending beyond injury or threat to bodily or mental integrity⁶³. Consequently, States have both negative and positive obligations stemming from Article 6, which means States must not only refrain from interfering with individuals’ right to life, by not engaging in conduct that results in arbitrary deprivation of life, but also actively protect individuals, by ensuring their right to life and exercising due diligence when it comes to conduct not attributable to the State that may result in loss of life. In General Comment No. 36, the HRC affirmed that States are required to take special measures regarding persons in vulnerable situations facing specific threats, including displaced persons, asylum seekers, refugees and stateless persons⁶⁴. Additionally, States ‘should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity’⁶⁵, such as environmental degradation, deprivation of indigenous peoples’ land, territories and resources, life-threatening diseases, and widespread hunger, malnutrition, extreme poverty and

⁵⁹ Human Rights Committee, ‘General Comment No.36: Article 6: Right to Life’ (2018) CCPR/C/GC/36.

⁶⁰ Ibid, para.2.

⁶¹ McAdam (n21) p.56.

⁶² HRC, ‘General Comment No.36’ (n59) para.3.

⁶³ Ibid, para.6.

⁶⁴ Ibid, para.23.

⁶⁵ Ibid, para.26.

homelessness, all of which can be caused or exacerbated by climate change⁶⁶. Climate change, environmental degradation and unsustainable development are also recognised by the HRC as ‘some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life’⁶⁷. Although these statements are fairly general and the HRC does not explore the theme of climate-related displacement with much depth, it is nevertheless evident that the right to life plays and will continue to play a crucial role in ensuring minimum protection standards for people displaced by climate change.

Another fundamental right which goes hand in hand with the right to life is the prohibition of torture or inhuman treatment enshrined, namely, on Article 7 of the ICCPR. The prohibition of torture does not allow for any limitations, unlike Article 6, with no justification or extenuating circumstances being accepted to excuse a violation. Furthermore, the HRC asserts that it is States’ duty to protect all individuals against the acts described on Article 7, through legislative and other measures which may be necessary⁶⁸. Once again, this means that States have both negative and positive obligations arising from Article 7, which reinforces the proactive role they must play when dealing with situations that involve cruel, inhuman, or degrading treatment. Subsequently, the question that arises is whether one can categorise climate change impacts and its induced disasters as resulting in cruel, inhuman, or degrading treatment of individuals fleeing from such events. As will be further developed below, there are convincing arguments for an affirmative answer based on the interaction of Articles 6 and 7 and non-refoulement obligations, supported by the recent HRC view on *Teitiota v. New Zealand*.

Both Article 6 and Article 7 of the ICCPR entail non-refoulement obligations, as States must not refool persons to another country if their life is threatened or if they face a real risk of torture or cruel, inhuman, or degrading treatment upon their return. The HRC goes one step further, affirming that the obligation not to extradite, deport or transfer under Article

⁶⁶ See, for example, UN Environment Programme, ‘Indigenous Peoples and the nature they protect (UNEP, 8 June 2020) <<https://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect>> accessed 3 April 2026; and World Health Organization, ‘Climate Change’ (WHO, 12 October 2023) <<https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>> accessed 3 April 2026.

⁶⁷ HRC, ‘General Comment No.36’ (n59), para.62.

⁶⁸ Human Rights Committee, ‘General Comment No.20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)’ (1992) para.2.

6 ‘may be broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status’⁶⁹. Put simply, the HRC recognises that, under Article 6, individuals who do not fall within the refugee definition may still be entitled to international protection, as States must not return any individual to a country where they would be at substantial risk of irreparable harm due to torture, ill-treatment or other serious breaches of human rights obligations⁷⁰. Amid worsening impacts of climate change and environmental degradation, it becomes increasingly difficult to dismiss the real risk of death or cruel, inhuman or degrading treatment faced by individuals upon return to affected areas⁷¹. Building on this point, the HRC views on *Teitiota v. New Zealand*⁷², although not resulting in a favourable decision for the author, made important remarks on climate displacement and resulting non-refoulement obligations. Recalling General Comment No.36 and its conclusions, the Committee emphasised that the right to life must not be interpreted in a restrictive manner and that severe environmental degradation can not only ‘compromise effective enjoyment of the right to life’ but also ‘adversely affect an individual’s well-being and lead to a violation of the right to life’⁷³. The Committee also noted that New Zealand’s courts acknowledged that climate change or natural disasters impacts could potentially provide a basis for protection, although they did not find the author’s situation to merit such protection after an individualised assessment⁷⁴. In the end, the Committee decided that the author’s particular circumstances did not amount to a violation of his right to life upon being refouled. However, the decision left the door open for other protection claims based on climate displacement, as long as they are better substantiated by the HRC’s standards. Particularly, the Committee pointed out that ‘climate change-induced harm can occur through sudden onset events and slow onset processes’, which can both drive ‘cross-border movement of individuals seeking protection’⁷⁵. It asserted that, without robust

⁶⁹ HRC, ‘General Comment No.36’ (n59), para.31.

⁷⁰ Monica Visalam Iyer, ‘Environmental Migration in Regional Human Rights Courts: A Lifeboat from the "Sinking Vessel"’ (2024) 91 Tenn L Rev 363, p.374.

⁷¹ Ibid, p.375.

⁷² Human Rights Committee, *Teitiota v New Zealand* (2020) CCPR/C/127/D/2728/2016.

⁷³ Ibid, para.9.4 and 9.5.

⁷⁴ Ibid, para.9.6 and 9.7.

⁷⁵ Ibid, para.9.11.

national and international efforts, these climate change effects could expose individuals to violations of Articles 6 and 7 of the ICCPR, triggering non-refoulement obligations in sending States⁷⁶. Ultimately, the HRC also concluded that, due to the extreme risks involved, the conditions of life in a country could become incompatible with the right to life with dignity even before these risks materialise⁷⁷.

All things considered, the Committee's reasoning shows notable progress in how Articles 6 and 7 are interpreted, acknowledging that climate-related harm can, in principle, trigger international protection obligations, even when traditional forms of persecution are not present. By recognising that environmental degradation can make a territory uninhabitable for individuals before the risk physically materialises in full (in the *Teitiota* case meaning the submersion of the island State of Kiribati), the HRC effectively expanded the scope of non-refoulement to include situations where climate change undermines the basic conditions necessary not only for survival, but also for enjoying a life with dignity. In this way, *Teitiota v. New Zealand* is a pivotal reference point for a human rights law approach when addressing the protection of climate displaced persons, an approach which prevents narrow interpretations and puts focus on the actual violations of human rights occurring⁷⁸. This is exactly why the decision is considered a landmark, as it brought the long-standing discussion surrounding the intersection of civil and political rights with economic and social rights to an individual case regarding climate change impacts⁷⁹. However, a critical view of the high threshold applied to the individual case by the HRC is warranted, as each risk factor was assessed independently rather than cumulatively, and, therefore, the Committee did not consider how the combined likelihood of these factors could amount to a "real risk of irreparable harm"⁸⁰. Additionally, as Sommario notes, the negative outcome of the decision

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Jane McAdam, Bruce Burson, Walter Kälin and Sanjula Weerasinghe, *International Law and Sea-Level Rise: Forced Migration and Human Rights* (FNI Report 1/2016, Lysaker, FNI 2016) p.36.

⁷⁹ Ayako Hatano, 'Emerging International Norms to Protect "Climate Refugees"?': Human Rights Committee's Decision on *Teitiota v New Zealand*' (2021) 10(2) JAHSS

<https://www.jstage.jst.go.jp/article/jahss/10/2/10_32/pdf/-char/en> accessed 23 June 2026, p.43-44.

⁸⁰ Emanuele Sommario, 'When climate change and human rights meet: A brief comment on the UN Human Rights Committee's *Teitiota* decision' (2021) 77 QIL

creates ‘the impression that only a starvation-like scenario or situations characterized by extreme and indiscriminate violence would trigger an obligation of non-refoulement by a State party’, when it would be rather counterintuitive to the right of life to require high numbers of deaths or violence before the non-refoulement obligation is triggered⁸¹.

Consequently, when considering the intersection of civil and political rights with economic and social rights, it is crucial to also consider all other relevant factors and vulnerabilities cumulatively, as ‘the combination of environmental, social, economic and political factors, which draw on human-made as well as natural vulnerabilities, may better substantiate a claim than one based solely on the impacts of “climate change”’⁸². This is due to the fact that vulnerable individuals will face the worst effects of climate change, as they generally have a limited capacity to adapt, receive less governmental support and generally have less ability to recover infrastructure⁸³. Furthermore, they may also experience any combination of disadvantageous socioeconomic factors, discriminatory practices and varying degrees of exposure⁸⁴. As a result, it is essential to adopt an intersectional human rights law perspective when dealing with climate displaced persons and the protection they require, an area which still requires substantial developments and implementation by both States and international bodies.

2.2.2. European Convention on Human Rights

An additional framework that also applies to Member States is the European Convention on Human Rights⁸⁵, under which Articles 2 and 3 entail the right to life and the

https://www.qil-qdi.org/wp-content/uploads/2021/02/04_HR-in-Climate-Litigation_SOMMARIO_FIN.pdf
accessed 23 June 2026, p.60.

⁸¹ Ibid, p.64.

⁸² Ibid.

⁸³ See, for example, Govind K Makharia, Anahita Sadeghi, Desmond Leddin and Anthony Costello, ‘Impact of climate change on vulnerable populations’ (2023) 72(12) Gut
<<https://gut.bmj.com/content/gutjnl/72/12/2201.full.pdf>> accessed 5 April 2026.

⁸⁴ Office of the High Commissioner for Human Rights, ‘The Impacts of Climate Change on the Human Rights of People in Vulnerable Situation (6 May 2022) A/HRC/50/57.

⁸⁵ ECHR (n26).

prohibition of torture, respectively. Much like the CJEU, the ECtHR has not ruled on any *refoulement* case where the risk in question was related to environmental harm or climate change impacts. However, the Court has recognised that the right to a healthy environment is connected to the right to life and that environmental harm may affect the right to life, as well as the right to respect for private life and home, under Article 8 ECHR, and the right to property, under Article 1 of Protocol No.1⁸⁶. Particularly, in *Budayeva v. Russia*, the ECtHR concluded that States' positive obligations to protect the right to life encompass protection from natural disasters when the risk is known, which means competent authorities must, namely, establish mechanisms and procedures for disaster risk mitigation, as well as supervise potentially dangerous situations⁸⁷. Nevertheless, when it comes to a protection claim, the crucial question is whether there is a risk of harm to the applicant which would amount to a violation of Article 2 or 3 if they are returned to their country of origin, similarly to the discussion on Articles 6 and 7 of the ICCPR.

In most cases, Article 2 violations are discussed in conjunction with Article 3 of the ECHR, rarely resulting in a specific focus on right to life when a violation of prohibition of torture is found⁸⁸. Under Article 3, the Court requires that an individual faces a real risk of torture or ill-treatment upon return for the non-*refoulement* obligations of the sending State to be triggered. Additionally, the source of harm is interpreted as being able to originate: (i) directly from the authorities of the receiving State, (ii) from the actions of non-state actors in the receiving State, or (iii) from the socioeconomic conditions in the receiving State⁸⁹. This distinction, commonly referred to as “source of harm” approach, has shaped the Court's judgements on medical cases, that is cases involving, for example, ‘a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country’⁹⁰. Within this scope, climate-related harm may only fit in the third category, which the Court has severely distinguished from the other two with a very high threshold. In *N v. UK*, the ECtHR

⁸⁶ Loukis G Loucaides, *The European Convention on Human Rights: Collected Essays* (Martinus Nijhoff, 2007) ch.10.

⁸⁷ McAdam (n21) p.59 and 60.

⁸⁸ Ibid, p.58.

⁸⁹ Kathryn Greenman, ‘A Castle Built on Sand? Article 3 ECHR and the Source of Risk in *Non-Refoulement* Obligations in International Law’ (2015) 27(2) IJRL 264, p.266.

⁹⁰ *N v United Kingdom* App No.26565/05 (ECtHR, 27 May 2008) para.43.

held that, when no actor is involved, Article 3 protection applies ‘only in a very exceptional case, where the humanitarian grounds against the removal are compelling’⁹¹. It later reaffirmed this interpretation in *Sufi and Elmi v. UK* and suggested the medical cases threshold would be applicable to situations concerning natural disasters, such as droughts⁹². As the Court has been interpreting it, the medical cases threshold for inhuman or degrading treatment means that a significant decline in the applicant’s circumstances, including their life expectancy, is not sufficient in itself to constitute a violation of Article 3⁹³. For example, in *D v. UK*, the Court affirmed that poor medical conditions in the receiving State which could further reduce the applicant’s life expectancy and cause him severe mental and physical suffering, the possible infections on account of lack of shelter upon return, and the absence of moral or social support would not constitute breaches of Article 3 *per se*⁹⁴. Rather, the combination of his particular circumstances upon removal would amount to inhuman treatment. Therefore, considering the ‘very exceptional circumstances of this case and given the compelling humanitarian considerations at stake’⁹⁵, the ECtHR concluded the refoulement of the applicant would violate Article 3. Nevertheless, in 2016, the *N v. UK* threshold was modified with the Grand Chamber Judgment of *Paposhvili v. Belgium*. Although the very exceptional standard remained largely unchanged, the Court classified non-refoulement as a negative obligation⁹⁶ and contended that Article 3 is triggered regardless of the source of harm ‘[i]f the ill-treatment reaches the necessary level of severity’⁹⁷. But, as many argue, this approach is conceptually flawed: considering the absolute nature of prohibition of torture and ill-treatment, the sending State violates Article 3 not due to the conduct of the receiving State, but because of the decision to expel the individual⁹⁸. Against this backdrop, applying the medical cases threshold to disaster displacement claims would render Article 3 protection hollow for most applicants. Such an approach would also rest on outdated assumptions about the nature of environmental disasters and the role of human actors in climate change and

⁹¹ Ibid, para.42.

⁹² *Sufi and Elmi v. United Kingdom* App Nos.8319/07 and 11449/07 (ECtHR, 28 June 2011) para.281.

⁹³ *N v UK* (n90), para.42.

⁹⁴ *D v UK* App No.30240/96 (ECtHR, 2 May 1997) para.52 and 53.

⁹⁵ Ibid, para.54.

⁹⁶ *Paposhvili v. Belgium* App No.41738/10 (ECtHR, 13 December 2016) para.188.

⁹⁷ Ammer and Mayrhofer (n29) p.327 and 328.

⁹⁸ See, for example, Ammer and Mayrhofer (n29) p.328 and Greenman (n89) p.272.

related environmental harm. Disasters are not “natural” in the sense previously assumed by the Court, for example, in *Sufi and Elmi v. UK*. Disasters originate from the interaction of environmental hazards with human vulnerability, governance failures and structural inequalities⁹⁹. Therefore, and as McAdam explains, ‘the combination of environmental, social, economic, and political factors, which draw on human-made as well as natural vulnerabilities, may better substantiate an Article 2 or 3 claim than one based solely on the impacts of ‘climate change’¹⁰⁰. As will be further developed below, instead of relying on traditional categories, such as the distinctions between sources of harm and the medical cases threshold, the ECtHR should adopt an intersectional approach that considers the issue within the context of broader environmental, social, economic and political vulnerabilities. This would better reflect the lived reality of climate-related displacement and align with the Court’s own emphasis on thorough risk assessments¹⁰¹. It would also be in line with the conviction that the ECHR is a living instrument which must be interpreted according to present-day standards, a doctrine that has been a central feature in ECtHR case-law for a long time¹⁰².

2.3. Member States Specific Frameworks

Within the Member States, several cases of specific implementation of both the regional European frameworks and international human rights law show a more protective system towards climate displaced persons, although there has been a trend of restricting such approaches in recent years. Sweden and Finland explicitly granted protection in cases related to environmental disasters. The “Swedish Aliens Act”¹⁰³ offered an alternative source of

⁹⁹ Ammer and Mayrhofer (n29) p.330.

¹⁰⁰ McAdam (n21) p.60 and 61.

¹⁰¹ Present, for example, in *Paposhvili v. Belgium* (n96) paras.194-206.

¹⁰² See, for example, George Letsas, ‘The ECHR as a Living Instrument: Its Meaning and its Legitimacy’ (2012) SSRN <<https://ssrn.com/abstract=2021836>> accessed 7 April 2026.

¹⁰³ Aliens Act (2005:716)

<https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf> accessed 12 April 2026.

international protection for persons who did not fulfil the requirements to be considered a refugee or granted subsidiary protection. This included people ‘unable to return to [their] home country because of an environmental disaster’¹⁰⁴, although, it would only encompass sudden-onset disasters, not slow-onset disasters or degradation of people’s livelihood¹⁰⁵. In the same line, the “Finnish Aliens Act”¹⁰⁶ granted a residence permit based on humanitarian protection when individuals could not return to their country of origin because of an environmental catastrophe (provided they were not eligible for asylum or subsidiary protection)¹⁰⁷. However, Finland removed this provision in 2016, and Sweden’s provision was suspended in 2016 and repealed in 2021¹⁰⁸, both following the 2015 “migration crisis” and the ensuing political environment¹⁰⁹.

On the other hand, Italy still provides some forms of protections to environmental-related migrants within its legal system. The Consolidated Immigration Act provides for the possibility to grant temporary protection based on humanitarian needs during, namely, natural disasters¹¹⁰. Article 20-bis also specifically establishes the requirements for granting a residence permit for individuals unable to return to their country experiencing a calamity, although for a maximum period of one year. Furthermore, Article 5(6) does not permit the refusal or revocation of residence permits in cases where there are serious humanitarian reasons not to do so, or where there are constitutional or international

¹⁰⁴ Ibid, ch.4, section 2(3).

¹⁰⁵ Kolmannskog and Myrstad (n30) p.323.

¹⁰⁶ Aliens Act 301/2004

<https://www.refworld.org/sites/default/files/2024-02/finland_aliens_act_2010_eng.pdf> accessed 12 April 2026.

¹⁰⁷ Ibid, section 88a.

¹⁰⁸ Matthew Scott and Russel Garner, ‘Nordic Norms, Natural Disasters, and International Protection: Swedish and Finnish Practice in European Perspective’ (2022) 91 NJIL 101, p.105 and 106.

¹⁰⁹ Saara Koikkalainen, Oksana Shmulyar Gréen, Joni Virkkunen, Md Azmeary Ferdoush and Svitlana Odynets, ‘Unpacking the temporary protection of displaced people from Ukraine within the tightening migration governance in Sweden and Finland’ (2026) 52(2) JEMS <<https://www.tandfonline.com/doi/epdf/10.1080/1369183X.2025.2565913?needAccess=true>> accessed 12 April 2026, p.433 and 434.

¹¹⁰ Decreto Legislativo 25 luglio 1998, n.286

<<https://www.normattiva.it/esporta/attoCompleto?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348#>> accessed 12 April 2026, art.20.

obligations of the State. This provision is interpreted as including serious natural disasters or other serious factors preventing refoulement with dignity and safety¹¹¹.

The Austrian case is even more compelling, as, under the Asylum Act, the risk of a violation of Article 3 of ECHR results in subsidiary protection being granted¹¹². Although the law does not explicitly refer to environmental-related protection, Austria's Constitutional Court has asserted that environmental disasters and their effects must be considered by authorities when assessing applications for subsidiary protection¹¹³. In its jurisprudence, the Court has clarified that the assessment of a "real risk" under Article 3 cannot ignore the broader living conditions awaiting the applicant upon return based on up to date sources of Country of Origin Information (COI), which may include disasters, environmental degradation, or the cumulative impacts of climate-related hazards¹¹⁴. This position is reinforced by the Supreme Administrative Court, which has repeatedly held that, under exceptional circumstances, there may be a violation of Article 3 if the individual is not able to secure a minimum level of subsistence and live in conditions compatible with human dignity upon return¹¹⁵. As Ammer and Mayrhofer note, Austrian courts have thus developed what is commonly referred to as the "livelihood approach", under which the lack of sufficient livelihood (whether caused by conflict, socioeconomic collapse or disaster impacts) may constitute inhuman or degrading treatment within the meaning of Article 3 ECHR¹¹⁶. This approach is particularly significant because it allows Austrian authorities to take into account the effects of droughts, floods and other environmental phenomena when evaluating the risk of ill-treatment. Nevertheless, this approach also has a high threshold and inconsistencies in its implementation remain¹¹⁷, as cases are evaluated based on the specific circumstances of each applicant. Namely, such inconsistencies stem from the fact that COI is not only reflected

¹¹¹ Anna Fazzini, 'Recent Developments in the Protection of Environmental Migrants: The Case of Italy' in Giuseppe Cataldi and Peter Hilpold (eds), *Migration and Asylum Policies Systems' National and Supranational Regimes* (Editoriale Scientifica, 2023) p.203.

¹¹² Federal Act Concerning the Granting of Asylum (Asylum Act 2005), as amended <https://www.ris.bka.gv.at/Dokumente/Erw/ERV_2005_1_100/ERV_2005_1_100.pdf> accessed 12 April 2026, ch.2, section 4.

¹¹³ Ammer and Mayrhofer (n29) p.336.

¹¹⁴ Ibid.

¹¹⁵ Ibid, p.337.

¹¹⁶ Ibid.

¹¹⁷ Ibid, p.344.

to varying degrees on the real risk assessment and interpreted differently, but also varies substantially in quality and quantity depending on the receiving State¹¹⁸. Another particularity worth highlighting is the apparent clash between the Austrian Courts and EU law, as far as the CJEU interprets it. As explained in section 2.1.1., the CJEU requires an actor of serious harm for subsidiary protection to be granted under the Qualification Directive. The Austrian Supreme Administrative Court, however, clarified that, under national law, there is no requirement for an actor of serious harm, in line with the absolute nature of Article 3 of the ECHR and the principle of non-refoulement¹¹⁹. Thus, even though EU law has primacy and is directly applicable, the Qualification Directive cannot be applied directly only to the detriment of individuals¹²⁰. In other words, the Asylum Act cannot be interpreted according to the Qualification Directive, because national law cannot be interpreted *contra legem*¹²¹. Although the Constitutional Court does not interpret this position as a contradiction to EU law due to the possibility afforded to Member States to grant protection on other humanitarian grounds¹²², this, nevertheless, highlights the problematic jurisprudence of the CJEU when drawing a gap between subsidiary protection and the principle of non-refoulement (discussed in section 2.1.1.). Here, we see how the Austrian courts reached the same conclusion, as granting subsidiary protection in order to fulfil the State's non-refoulement obligations prevents a 'violation of the constitutionally guaranteed right to equal treatment of non-nationals relative to one another'¹²³.

All these examples demonstrate that, at the national level, a more flexible and context-sensitive interpretation of Article 3 is not only possible but has already been applied. It also illustrates how domestic frameworks can move beyond the rigid categories developed by the ECtHR and fill the protection gaps left by the EU system, incorporating human rights law in their procedures in order to accommodate contemporary forms of displacement, including those driven by climate change. The problem arises, as mentioned above, when not

¹¹⁸ Ibid, p.343.

¹¹⁹ Ibid, p.337 and 338.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid, p.338.

all Member States adopt such an approach in deciding these cases. Instead, different standards are applied in an area that should be harmonised, which ultimately leads to differential treatment of individuals in similar situations. This fragmentation violates the very fundamental values of equality and equal treatment within the EU and among Member States, where such values are constitutionally guaranteed. Furthermore, analysing national examples reveals a worrying trend of withdrawing certain categories of protection which were previously afforded, both to better reflect the EU framework and to conform to the current framing of migration as a security issue. In other words, this dynamic reflects the general securitisation of migration within the EU, where both national and regional policy increasingly prioritises immigration deterrence and border control over protection¹²⁴. As a result, States are adopting stricter rules and granting less protection to third-country nationals than before, even as climate-related impacts intensify and vulnerable individuals face escalating risks. This policy trend is particularly dangerous in the context of climate change-related migration, where the need for comprehensive and anticipatory protection is growing rather than diminishing. It also makes vulnerable individuals mainly dependent upon Member States' discretionary power to grant protection based on humanitarian grounds, which, as discussed above, largely differs in scope, accessibility and interpretation from State to State. Consequently, the asymmetry of these national approaches, combined with the restrictive tendencies of EU harmonisation, threatens to undermine the minimum standards that human rights law is intended to guarantee.

2.4. Concluding Remarks

In sum, the analysis of the current EU legal framework reveals a complex system that is either unable or unwilling to effectively address the realities of climate-related

¹²⁴ See, for example, Valeria Bello, 'The spiralling of the securitisation of migration in the EU: from the management of a 'crisis' to a governance of human mobility?' (2022) JEMS <<https://www.tandfonline.com/doi/epdf/10.1080/1369183X.2020.1851464?needAccess=true>> accessed 13 April 2026.

displacement. Normatively, the EU and its Member States are bound by a comprehensive network of constitutional values, treaty obligations and fundamental rights guarantees that should, in principle, ensure thorough protection for individuals facing serious harm. The foundational legal instruments of the EU are based on the values of respect for human dignity, equality and the universality of human rights, which are commitments that necessarily extend to persons displaced by environmental degradation and/or climate-induced disasters. However, the practical implementation of these commitments within the CEAS and among Member States is fragmented and inconsistent with the protective aims of human rights law. The Qualification Directive, as interpreted by the CJEU, illustrates this fact clearly: by insisting on a narrow interpretation of Article 15(b) and upholding the requirement for an actor of serious harm, the Court has effectively limited the scope of subsidiary protection, thereby diverging from the absolute nature of the principle of non-refoulement under Article 3 of the ECHR and Article 19(2) of the Charter. This jurisprudential trend risks leaving climate-displaced persons in a legal vacuum, as they might be unable to be refouled due to human rights obligations yet unable to obtain a secure protection status under EU law. In other words, individuals facing life-threatening environmental conditions might fall between the cracks of two regimes as human rights law prevents their removal through the principle of non-refoulement, but EU asylum law, constrained by the CJEU's restrictive reading, fails to grant them a corresponding residence status. The result is a category of persons who are legally protected from expulsion but not legally protected in their stay, undermining both the harmonisation objectives of the CEAS and the EU's commitment to ensuring equal and effective protection for all individuals at risk. This gap not only perpetuates legal uncertainty but also exposes climate-displaced persons to prolonged precarity, discretionary national practices and unequal treatment across Member States. In addition, while the Temporary Protection Directive offers a potential mechanism for addressing mass influxes triggered by environmental disasters, it remains politically conditional and ill-suited for situations requiring long-term or permanent solutions. Its activation requires a great amount of political consensus among Member States, which makes it an unreliable instrument in contexts where prompt and foreseeable protection is essential. Moreover, its inherently temporary nature prevents it from providing the stability

and long-term status that individuals displaced by irreversible or lasting climate impacts are likely to require.

Beyond the EU framework, the international human rights system and the Council of Europe architecture further emphasise the need for a more consistent and protective approach to climate-related displacement, while also providing guidance to the EU and its Member States. Particularly, the HRC's views in the *Teitiota v. New Zealand* case is a landmark decision that asserts individuals could be exposed to violations of Articles 6 and 7 of the ICCPR due to the effects of climate change, triggering non-refoulement obligations in sending States. Similarly, the Council of Europe framework, centred on the ECHR, reinforces these obligations through Articles 2 and 3. Although the ECtHR has not yet ruled on a climate-displacement expulsion case, its jurisprudence on disaster-related risks, socio-economic vulnerability, and the absolute nature of Article 3 provides a solid basis for future claims. However, this will require an intersectional approach that considers the issue in the context of broader environmental, social, economic and political vulnerabilities.

At the same time, national practices demonstrate that more protective interpretations are both possible and are already emerging. Sweden, Finland, Italy, and Austria, for example, show that Member States can integrate environmental-related harm into their protection frameworks, whether through humanitarian provisions, constitutional guarantees, or broad interpretations of Article 3 of the ECHR. Nevertheless, these national differences also highlight the structural weaknesses of the CEAS as a system which aims for harmonisation but continues to produce significantly different outcomes for individuals in similar situations. Such discrepancies undermine the principles of equality and legal certainty which lay at the heart of the EU legal order.

Overall, the current EU framework reflects a broader legislative and policy struggle between its identity as a global human rights actor and its increasingly securitised approach to migration governance. As climate change impacts are predicted to intensify and, consequently, displacement will become more frequent, the limitations of the existing system

will become even more apparent¹²⁵. Addressing these protection gaps requires not only doctrinal clarification at the EU and international levels, but also a renewed commitment to aligning asylum and migration law with the EU's foundational values and its international human rights obligations. Otherwise, the EU risks failing to provide meaningful protection to those most affected by climate-related harm, thereby weakening both the coherence of its legal system and the credibility of its human rights commitments.

3. Current Developments

Having examined the EU framework and how the CJEU interprets it, as well as the international framework in terms of Council of Europe standards, ECtHR jurisprudence, and the broader United Nations system, this chapter will now consider current developments that determine and influence (i) how Member States address climate change and displacement; and (ii) how individuals who seek international protection are received within the EU. Accordingly, this chapter first examines EU climate policy and the CEAS reform established by 2024's pact on migration and asylum and then assesses whether EU climate policy influenced any of the changes introduced by this reform. Secondly, it will examine other international developments, such as recent approaches within the Inter-American system and the views of other international bodies, such as the ICJ's advisory opinion on states' obligations regarding climate change and recent relevant reports from UN Special Rapporteurs. Finally, it will analyse how all these developments could shape the ECtHR and, by turn, the CJEU's approaches to climate-related displacement cases and granting of international protection. In short, these emerging developments will be analysed to determine whether contemporary legal and policy initiatives are capable of addressing the protection needs of climate-displaced persons.

¹²⁵ See, for example, EPRS, *The concept of 'climate refugee'* (n3) p.2-4.

3.1. EU Policy and CEAS Reform

At the EU level, particular attention will be given to the climate policy architecture of the Union, specifically the Green Deal, and the extent to which these frameworks acknowledge the mobility consequences of climate impacts, or fail to do so. It is essential to understand this relationship, given that the EU is positioning itself as a global leader in climate action while simultaneously reforming its migration and asylum systems in ways that restrict access to protection. Examining these climate initiatives is therefore crucial for understanding the policy environment in which the CEAS reform was negotiated. By considering these developments together, this analysis explores whether the EU's climate policy architecture has had any discernible influence on the new CEAS and, more broadly, whether the EU's internal reforms reflect the realities of a world increasingly shaped by climate-related mobility.

3.1.1. The European Green Deal and The Adaptation Strategy

The European Green Deal, which entered into force in 2019, aims to achieve climate neutrality by 2050 and cut emissions by at least 50% by 2030¹²⁶. For this, the EU outlined several measures and asserted that all its actions and policies would have to contribute to the Green Deal objectives¹²⁷. Measures included mobilising industry for a clean economy, mobilising research and fostering innovation, and reinforcing initiatives with third countries on cross-cutting issues. In this regard, the Green Deal envisioned changes across all sectors, including energy, industry, transport and agriculture, aiming to decouple economic growth from resource use¹²⁸. Moreover, it identified preservation and restoration of ecosystems and

¹²⁶ European Commission, 'European Green Deal' (European Commission)
<https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en> accessed 21 April 2026.

¹²⁷ European Commission, 'The European Green Deal' COM(2019) 640 final, 11 December 2019.

¹²⁸ Ibid.

biodiversity as priorities, as well as strengthening enforcement of environmental legislation and aligning taxation with climate objectives¹²⁹. The EU also positioned itself as global leader in promoting climate policies across the world in order to tackle climate change¹³⁰. Furthermore, it recognised the global climate and environmental challenges as a ‘significant threat multiplier and a source of instability’, potentially resulting in conflicts, food insecurity, population displacement and forced migration¹³¹. Consequently, it asserted that climate policy implications should also shape EU’s action on external issues, including the Common Security and Defence Policy¹³².

But what initially was an ambitious policy, has been subtly dismantled under the guise of administrative simplification. Ceding to pressure from the corporate and industrial lobbies, the European Commission adopted the Omnibus I package, which makes several amendments to sustainability regulations¹³³, including the Corporate Sustainability Reporting Directive (CSRD)¹³⁴ and the Corporate Sustainability Due Diligence Directive (CSDDD)¹³⁵. The CSRD requires companies to comply with the European Sustainability Reporting Standards, which include not only how companies impact people and the environment, but also how social and environmental issues impact companies’ financial risks and opportunities¹³⁶. In turn, the CSDDD requires companies to conduct due diligence throughout their operations in order to address negative impacts on human rights and the environment¹³⁷. Among the changes now made, the common thread is restricting the initial scope of

¹²⁹ Ibid.

¹³⁰ Ibid, p.20-22.

¹³¹ Ibid, p.21.

¹³² Ibid.

¹³³ See, for example, Mark Segal, ‘EU States Give Final Approval to Omnibus Package to Cut Sustainability Reporting and Due Diligence Requirements’ (*ESG Today*, 24 February 2026) <<https://www.esgtoday.com/eu-states-give-final-approval-to-omnibus-package-to-cut-sustainability-reporting-and-due-diligence-requirements/>> accessed 21 April 2026.

¹³⁴ Directive (EU) 2022/2464 of the European Parliament and of the Council [2022] OJ L322/15.

¹³⁵ Directive (EU) 2024/1760 of the European Parliament and of the Council [2024] OJ L,2024/1760.

¹³⁶ UNEP Finance Initiative, ‘European Sustainability Reporting Standards (ESRS)’ (*UNEP FI*, 2023) <<https://www.unepfi.org/impact/interoperability/european-sustainability-reporting-standards-esrs/>> accessed 21 April 2026.

¹³⁷ Mark Segal, ‘EU Adopts Environmental, Human Rights Sustainability Due Diligence Law’ (*ESG Today*, 24 May 2024) <<https://www.esgtoday.com/eu-adopts-environmental-human-rights-sustainability-due-diligence-law/>> accessed 21 April 2026.

application and decreasing companies' obligations. For example, the CRSD is now applicable to only 10% of companies initially covered, and the CSDDD limits due diligence to direct suppliers instead of the entire value chain¹³⁸. This deregulation process effectively strips key instruments of the Green Deal of any meaningful impact, going far beyond "simplification" procedures. It represents a substantial retreat from the EU's own stated ambition to embed sustainability, accountability and long-term risk management into corporate governance¹³⁹. By narrowing the scope of reporting and weakening due diligence obligations, the Omnibus I package undermines the preventive and transformative potential of these instruments, weakening their capacity to address systemic environmental and human rights harms¹⁴⁰. Furthermore, as Mark notes, withdrawing due diligence obligations will not relieve companies of burdens, it will 'simply transfer them to societies and ecosystems already bearing the costs of unsustainable business practices'¹⁴¹. In practice, this backsliding once again signals a prioritisation of short-term economic interests¹⁴² over the structural reforms required to meet the EU's climate and sustainability commitments.

As part of the Green Deal, the EU also adopted the Adaptation Strategy in 2021, aiming to realise its resilience building objectives based on four pillars: (i) smarter adaptation by improving knowledge and tools to guide actions; (ii) faster adaptation across the board; (iii) systematic adaptation by supporting policy development at all levels and sectors; and (iv) stepping up international action for climate resilience¹⁴³. Regarding the fourth pillar, the European Commission affirmed that EU's adaptation ambition must match its global leadership in climate change mitigation and that 'adaptation is a crosscutting element in the EU's and Member States' external action, spanning international cooperation, migration,

¹³⁸ Segal (n133).

¹³⁹ European Commission, 'The European Green Deal' (n127) p.17.

¹⁴⁰ See, for example, CIDSE, *Economic Effects of the EU CSDDD Considering the Omnibus Process* (September 2025) <<https://www.akeuropa.eu/sites/default/files/2025-09/AC17640802.pdf>> accessed 23 June 2026, p.61-62; and Katarzyna Szepelak and Grzegorz Paciecha, 'Omnibus I and the non-regression principle for EU values and objectives' (*European Law Blog*, 20 April 2026) <<https://www.europeanlawblog.eu/pub/04d7p91h/release/1>> accessed 24 June 2026.

¹⁴¹ Axel Mark, 'Withering sustainability? The rise (and fall?) of sustainability due diligence' (2026) 9 JIBP <<https://link.springer.com/article/10.1057/s42214-026-00248-8>> accessed 24 June 2026, p.276.

¹⁴² Ibid, p.275.

¹⁴³ European Commission, 'Forging a climate-resilient Europe – the new EU Strategy on Adaptation to Climate Change' COM(2021) 82 final, 24 February 2021.

trade, agriculture and security’¹⁴⁴. Additionally, the Commission declared that EU’s external action must target adaptation more effectively through an approach which links humanitarian, development and peace concerns, and, thus, reaches the most exposed, vulnerable, conflict-prone and marginalised communities, ‘leaving no one and no place behind’¹⁴⁵. It also acknowledged climate-related displacement and the interconnections between climate change, security and mobility¹⁴⁶. The Adaptation Strategy makes particular reference to the Paris Agreement as well, which addresses climate displacement through the Warsaw International Mechanism (WIM) and its Task Force on Displacement. This task force was established to develop recommendations regarding integrated approaches for preventing, minimising and addressing climate-related displacement¹⁴⁷. On the other hand, a new integrated framework for European climate resilience and risk management is being developed and is expected to be adopted during the second half of 2026¹⁴⁸. The new framework aims to answer requests for bolder action from the European Parliament and the Council, and recommendations by the European Court of Auditor, which concluded there were several deficiencies with the Strategy’s practical implementation¹⁴⁹. However, it is mainly focused on internal mechanisms regarding climate adaptation within the Member States¹⁵⁰.

Based on all these commitments, one can argue that the EU has a duty to properly address climate-related displacement, although no explicit development is made on the issue within the current climate policy framework. Consequently, even though the European Green Deal never specifically strived to address climate-related migration or displacement, it is still

¹⁴⁴ Ibid, p.18.

¹⁴⁵ Ibid, p.19.

¹⁴⁶ Ibid, p.20.

¹⁴⁷ International Organization for Migration, ‘Task Force on Displacement’ (Environmental Migration Portal) <<https://environmentalmigration.iom.int/task-force-displacement>> accessed 22 April 2026.

¹⁴⁸ European Commission, ‘European Climate Resilience and Risk Management – Integrated Framework’ (Climate Action)

<https://climate.ec.europa.eu/eu-action/adaptation-and-resilience-climate-change/european-climate-resilience-and-risk-management-integrated-framework_en> accessed 22 April 2026.

¹⁴⁹ European Court of Auditors, ‘Special Report 15/2024: Climate adaptation in the EU – Action not keeping up with ambition’ (2024) <https://www.eca.europa.eu/ECAPublications/SR-2024-15/SR-2024-15_EN.pdf> accessed 22 April 2026.

¹⁵⁰ European Commission, ‘European Climate Resilience and Risk Management – Integrated Framework’ (n148).

important to highlight here because of its intended purpose and inherent message. Once more, the EU positioned itself as a global leader and promoter of affirmative action in tackling climate change issues, sustainable development and mitigation efforts across the world. However, not only the values and objectives of the Green Deal did not translate into all EU policy instruments and actions as pledged, but also the EU has effectively scaled back the Deal's own implementation. Such actions add to the backsliding of climate protection policies that has been happening for the last few years¹⁵¹, a very dangerous practice when climate change impacts are worsening. Furthermore, plenty of warranted criticisms could already be made to EU climate policy before this deregulation, since it was not meaningfully addressing crucial issues. As it stood, the Green Deal focused on mitigation and green industrial policy, not on human impacts¹⁵². Despite the acknowledgement that, even in a best-case scenario, the considerable reduction of emissions has set out in the Green Deal will not stop all climate change adverse impacts¹⁵³, the EU failed to establish a clear strategy to address climate-induced migration, a rising consequence of those impacts¹⁵⁴. In fact, the increasingly securitisation approach to migration and asylum resulted in a stricter reformulation of the CEAS, as will be developed ahead. This demonstrates an obvious contradiction, as the EU recognises climate change as a driver of displacement and migration, but simultaneously devotes its policies to mobility deterrence instead of focusing on

¹⁵¹ See, for example, Danny Aeberhard, Rachel Haganand and Matt McGrath, 'Trump withdraws US from key climate treaty and dozens of other groups' (*BBC News*, 8 January 2026) <<https://www.bbc.com/news/articles/cp80ln97py5o>> accessed 22 April 2026; and Sarah Butler, Jasper Jolly, Gwyn Topham, Jillian Ambrose, Kalyeena Makortoff and Helena Horton, 'Was 2025 the year that business retreated from net zero?' (*The Guardian*, 20 December 2025) <<https://www.theguardian.com/environment/2025/dec/20/was-2025-the-year-that-business-retreated-from-net-zero>> accessed 22 April 2026.

¹⁵² See, for example, ActionAid International, 'The Risks and Challenges of EU Responses to Climate-Induced Mobility' (4 December 2024) <https://actionaid.org/opinions/2024/risks-and-challenges-eu-responses-climate-induced-mobility?utm_source=copilot.com> accessed 23 April 2026.

¹⁵³ COM(2021) 82 final (n143) p.2.

¹⁵⁴ See, for example, Chiara Bachels, Martina Bianco, Melinda Nagy and Nándor Dani, 'COP29, the European Green Deal – is the global community overlooking climate migration in its fight against climate change?' (*The New Federalist*, 21 November 2024) <<https://www.thenewfederalist.eu/cop29-the-european-green-deal-is-the-global-community-overlooking-climate?lang=fr>> accessed 23 April 2026.

protective solutions¹⁵⁵. Thus, the tenet of ‘leaving no one behind’ is effectively discarded. In the end, as Baraggia emphasises, ‘climate-related mobility lies at the crossroads of these two policy fields, yet it is not systematically addressed by either of them’¹⁵⁶, as it will be demonstrated in the following section.

3.1.2. CEAS Reform – New Pact on Migration and Asylum

The Pact on Migration and Asylum, approved in 2024 and fully applicable since 12 June 2026, is a legislation package which reforms the CEAS by amending and building on several key instruments¹⁵⁷. The EU presents the new policy as based on four pillars: secure external borders, fast and efficient procedures, effective system of solidarity and responsibility, and embedding migration in international partnerships¹⁵⁸. The amendments include, among others, changes to the Qualification Directive in the form of a new Qualification Regulation, a new Reception Conditions Directive, Screening Regulation and Asylum Procedure Regulation.

In terms of the new Qualification Regulation, the definitions of “refugee” and “person eligible for subsidiary protection”, as well as the concepts of “persecution” and “serious harm”, have not changed compared to the Qualification Directive¹⁵⁹. For the purposes of this discussion, the key point to note about the new instrument is that, as it is now a Regulation rather than a Directive, Member States have significantly less room to interpret it, as it is

¹⁵⁵ Antonia Baraggia, ‘Climate-related migration within the EU legal framework: the dark side of the green transition’ (2026) 73(1) DPCE Online
<<https://www.dpceonline.it/index.php/dpceonline/article/view/2681/2940>> accessed 24 June 2026, p.469.

¹⁵⁶ Ibid.

¹⁵⁷ European Commission, ‘Pact on Migration and Asylum’ (Migration and Home Affairs)
<https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en> accessed 23 April 2026.

¹⁵⁸ Ibid.

¹⁵⁹ See Directive 2011/95/EU (n17) arts.2(d) and (f), and 15; and Regulation EU 2024/1347 of the European Parliament and of the Council [2024] OJ L 1347, arts.3(5) and (6), and 15.

directly applicable without the need for transposition¹⁶⁰. In practice, this means that Member States specific domestic frameworks, namely those that were analysed in section 2.3., can no longer provide more progressive interpretations within the asylum and subsidiary protection categories. Therefore, the Regulation's harmonising effect consolidates the restrictive nature of EU asylum law, effectively closing off the interpretative flexibility that previously enabled certain Member States to mitigate protection gaps by adopting broader national approaches.

One of the other main reforms is the introduction of border procedures at European external borders, which, namely, apply to people who come from countries with a proportion of decisions granting international protection of 20% or lower (recognition rate)¹⁶¹. For these procedures, detention-like camps will be created, with a capacity to hold up to 30,000 people at Union Level¹⁶², with a possibility to increase it up to 120,000 in the upcoming years¹⁶³. After the initial check as part of a new established screening, the asylum procedures should not last longer than 12 weeks¹⁶⁴. Although this is presented as a positive measure to not leave individuals in an uncertain situation over a long period of time, there are several concerns regarding the safeguards in place. In combination with other changes, the whole process is now designed to prioritise speed and securitisation, rather than guaranteeing people's fundamental rights and international protection¹⁶⁵. First, the pre-entry phase may incentivise pushbacks (meaning the forced return of people across international borders without individual assessments) in order for Member States to avoid their obligations regarding screening and border procedures and alleviate resources constraints in the camps¹⁶⁶.

¹⁶⁰ European Union, 'Types of Legislation'

<https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en> accessed 2 July 2026.

¹⁶¹ Regulation (EU) 2024/1348 of the European Parliament and of the Council [2024] OJ L 2024/1348, arts.42(1)(j) and 45.

¹⁶² Ibid, art.46.

¹⁶³ David Niebauer and Max Urbitsch, 'Dismantling of Refugee Protection: The Reform of the Common European Asylum System' (*EU-RENEW*, 15 March 2024) <<https://eu-renew.eu/dismantling-of-refugee-protection-the-reform-of-the-common-european-asylum-system/>> accessed 23 April 2026.

¹⁶⁴ Regulation (EU) 2024/1348 (n161) art.51(2).

¹⁶⁵ Young Meijers Committee (Migration and Asylum Subcommittee), 'Final Comment on the EU Pact on Migration and Asylum' (2026) <<https://www.commissie-meijers.nl/wp-content/uploads/2026/03/YMC-Migration-and-asylum-subcommittee-final-comment-2.pdf>> accessed 24 April 2026, p.8.

¹⁶⁶ Ibid, p.10.

Additionally, the screening phase, limited to a maximum of seven days, ‘may fail to detect protection needs, vulnerabilities or implicit asylum claims’ due to its simplified procedure¹⁶⁷. Screening is presented as a neutral measure and, thus, has no direct remedy, but it is intended to direct people into fast-track border procedures or return pathways¹⁶⁸. The information collected during this phase can also be used to expedite the rejection of asylum applications, therefore establishing a ‘direct link between a preliminary process and removal decisions’¹⁶⁹. The border procedure differs substantially from standards asylum procedures, including fewer appeals opportunities, reduced legal assistance and NGO access, and an overall presumption of inadmissibility¹⁷⁰. Also worth noting is that there is no automatic suspensive effect of appeals, meaning that an individual can be refouled while waiting for a decision regarding their case¹⁷¹. Lastly, processing the asylum applications in the intended timeframe may prove challenging and potentially lead to overcrowded camps, which lead to very inhumane situations, as camps such as Moria, for example, have proved¹⁷².

Furthermore, there is a possibility for Member States to declare a crisis situation in the event of increased numbers of asylum seekers, which allows for longer asylum procedures and for people who come from countries with a higher recognition rate than 20% to be included in the border procedures¹⁷³ and, thus, be held in the detention camps. Even though the declaration of a crisis situation requires the formal approval of the European Commission and the Council¹⁷⁴, there is legitimate concern over the possibility of disproportional use of this mechanism by Member States, ‘leading to lowered protection standards and a normalization of the “crisis” scenario’¹⁷⁵. This ongoing association of irregular migration with crisis results in a rationalisation of aversion, which justifies applying “exceptional

¹⁶⁷ Ibid, p.11.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid, p.12.

¹⁷¹ Regulation (EU) 2024/1348 (n161) art.68(3).

¹⁷² Niebauer and Urbitsch (n163) and Maximilian Pichl, ‘The Moria Complex’ (Medico International, 2020) <https://www.medico.de/fileadmin/user_upload/media/study_the_moria_complex.pdf> accessed 24 April 2026.

¹⁷³ Regulation (EU) 2024/1348 (n161) art.11.

¹⁷⁴ Ibid, arts.3 and 4.

¹⁷⁵ Niebauer and Urbitsch (n163).

measures” at the cost of individuals’ fundamental rights and protection¹⁷⁶. As Moreno-Lax further explains, ‘[c]risis foment a notion of necessity that conceals and normalises transgressions, making them admissible, legitimate, and even indispensable. It obscures the structural complexities and long-term causes underlying the phenomenon thereby being “crisified”’¹⁷⁷. Thus, the securitisation of the issue is reinforced, reimagining asylum seekers ‘as sources of insecurity rather than its victims’¹⁷⁸.

There is also a doubling down on the policy of “safe third country”, which allows Member States to reject an asylum application without examining its substance if applicants could have sought international protection in a non-EU country that is considered safe¹⁷⁹. Now, even if only parts of the country are considered as safe, it is sufficient to determine that individuals can be expelled to the respective country, provided the additional requirements are also fulfilled such as the existence of a “reasonable connection” between the individual and the third-country¹⁸⁰. This concept is interlinked with a major focus on “international migration partnerships”, commonly referred to as externalisation process, which is also very concerning. As Häkli and Peltonen explain, ‘[w]hile framed as efforts to combat smuggling and address root causes of migration, outsourcing containment not only shifts responsibility away from the EU but also displaces the risks of violence and death onto migrants intercepted before they reach European shores’¹⁸¹. Outsourcing enforcement to countries like Turkey, Libya or Tunisia, where human rights violations are well documented¹⁸², further denies safe

¹⁷⁶ Violeta Moreno-Lax, ‘Crisis as (Asylum) Governance: The Evolving Normalisation of Non-access to Protection in the EU’ (2024) 9(1) European Papers – A Journal on Law and Integration <https://www.europeanpapers.eu/system/files/pdf_version/EP_eJ_2024_1_SS1_3_Violeta_Moreno-Lax_00752.pdf> accessed 26 April 2026, p.184-186.

¹⁷⁷ Ibid, p.186.

¹⁷⁸ Jouni Häkli and Noora Peltonen, ‘The European Union as a humanitarian border: the production of vulnerability in the New Pact on Migration and Asylum’ (2026) Higher Education <<https://doi.org/10.1080/13562576.2026.2635505>> accessed 26 April 2026, p.10.

¹⁷⁹ Council of the European Union, ‘Safe third country: Council and European Parliament agree on new EU law restricting admissibility of asylum claims’ (Press Release, 18 December 2025) <<https://www.consilium.europa.eu/en/press/press-releases/2025/12/18/safe-third-country-council-and-european-parliament-agree-on-new-eu-law-restricting-admissibility-of-asylum-claims/#:~:text=The%20amendments%20to%20the%20safe%20third%20country,country%20that%20is%20considered%20safe%20for%20them.>>> accessed 26 April 2026.

¹⁸⁰ Regulation (EU) 2024/1348 (n161) art.59(2) and (5).

¹⁸¹ Häkli and Peltonen (n178).

¹⁸² See, for example, Amnesty International, ‘Tunisia: Rampant violations against refugees and migrants expose EU’s complicity risk’ (6 November 2025)

and legal pathways to the EU for migrants and asylum seekers while essentially perpetuating systematic violence and undignified treatment. As Häkli and Peltonen conclude, the New Pact ‘actively produces material conditions of risk and dependency. Practices of containment, externalization, and legal ambiguity translate into lived precarity for migrants held in overcrowded reception centres or stranded in liminal space (...) The outcome is a regime in which the EU’s promise of care coexists with systemic harm – producing the very humanitarian emergencies it purports to alleviate’¹⁸³.

Following this overview, we can conclude that the EU climate policy has had no influence whatsoever on the CEAS reform, contrary to the Green Deal commitments¹⁸⁴. As mentioned above, although the EU has positioned itself as a global leader in advancing ambitious climate action and has explicitly recognised climate change as a “significant threat multiplier and a source of instability”, with potential to generate conflicts, food insecurity, population displacement and forced migration¹⁸⁵, it has not translated these concerns into the CEAS reform. The Green Deal further asserts that climate considerations should inform the Union’s external action, including its Common Security and Defence Policy¹⁸⁶, yet this strategic framing has not affected the design or content of the New Pact. The CEAS reform only introduces stricter rules and mechanisms that further endanger migrants and asylum seekers and make way for more human rights violations¹⁸⁷. In particular, the introduction of detention-like camps for border procedures and the early division of individuals into categories, such as the recognition rate, risk perpetuating discriminatory practices and disregarding essential procedural safeguards¹⁸⁸. It also contradicts CJEU's interpretation of the right to asylum, as the Court asserts that the prospects of success of a claim are irrelevant

<<https://www.amnesty.org/en/latest/news/2025/11/tunisia-rampant-violations-against-refugees-migrants-eu-risks-complicity/>> accessed 26 April 2026; and ECRE, ‘EU External Partners: EU Accused of Funding Forced Deportations from Türkiye – European Commission President Calls for Development of Return Hubs – Egypt and Tunisia Round-Up’ (*ECRE Weekly Bulletin*, 2026)

<<https://ecre.org/eu-external-partners-eu-accused-of-funding-forced-deportations-from-turkiye-%E2%80%95-eu-ropean-commission-president-calls-for-development-of-return-hubs-%E2%80%95-egypt-and-tunisia-r/>> accessed 26 April 2026.

¹⁸³ Häkli and Peltonen (n178) p.10-11.

¹⁸⁴ See n130 and n132 above.

¹⁸⁵ European Commission, ‘The European Green Deal’ (n127) p.21.

¹⁸⁶ See above n132.

¹⁸⁷ See above n183.

¹⁸⁸ See, for example, Moreno-Lax (n176) p.207-208.

for the recognition of any individual's rights to make an application for international protection, even if they are staying illegally on the territory¹⁸⁹. As emphasised before, the right to asylum requires for each case to 'be assessed individually and on its own merits'¹⁹⁰. Instead, the focus will now be the individual's nationality and the compression of procedural timelines, which severely condition the ability to gather evidence, obtain legal assistance and prepare the respective claim¹⁹¹. In short, the New Pact on Migration and Asylum undermines individuals' rights to asylum and to an effective remedy, as well as the principle of non-refoulement. This is happening at a time when there is an increased need for international protection to be enhanced, not reduced, due not only to widespread conflicts¹⁹², but also to the growing impacts of climate change¹⁹³, which will both deepen existing vulnerabilities and generate new ones¹⁹⁴.

3.2. Other International Developments

In recent years, several international bodies have begun to outline more explicit obligations relating to climate-induced harm and displacement, representing a gradual but significant shift in the global understanding of State responsibility in the context of climate change. These developments, although not binding on the EU as such, contribute to the international interpretative environment in which Member States also operate and increasingly influence the legal expectations surrounding the protection of climate-displaced persons. Therefore, it is crucial to analyse these developments and how they might contribute to a much needed change in EU and Member States decision-making. Furthermore, they can

¹⁸⁹ See, for example, Case C-392/22 *X v Staatssecretaris van Justitie en Veiligheid* (2024) para.51.

¹⁹⁰ Young Meijers Committee (n165) p.14.

¹⁹¹ Ibid.

¹⁹² ICRC, 'Humanitarian Outlook 2026' (2026) <<https://www.icrc.org/en/article/humanitarian-outlook-2026>> accessed 25 June 2026.

¹⁹³ See, for example, Climate Change Advisory Council, *Annual Review: Our Changing Climate in 2025* (2026) <<https://www.climatecouncil.ie/councilpublications/annualreviewandreport/CCAC-AR2026-2-our-changing-climate-final.pdf>> accessed 26 June 2026, p.10-14.

¹⁹⁴ See, for example, Häkli and Peltonen (n178) p.14-15.

also provide a valuable perspective on how the ECtHR and the CJEU can approach climate-related displacement cases when they inevitably reach the Courts.

3.2.1. The Inter-American System

The Inter-American system is one of the most advanced and comprehensive regional frameworks for addressing the intersection between environmental harm, human rights and human mobility. Unlike the European system, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) have consistently adopted a dynamic and evolving interpretation of rights, explicitly recognising a healthy environment as a precondition for the enjoyment of a wide range of civil, political, economic, social and cultural rights. Such an approach has resulted in a system with sophisticated standards for environmental protection, State responsibility regarding environmental harm, and human rights implications of climate-induced displacement. Against this backdrop, the Inter-American system has emerged as a global reference point for understanding how climate change interacts with structural inequalities, vulnerability and forced mobility, offering insights that are increasingly relevant internationally, including for the European framework on climate-related protection.

More than 20 years ago, the IACHR had already recognised that the realisation of the right to life is not only connected with but also dependent on the environment¹⁹⁵. Furthermore, the Additional Protocol to the American Convention on Human Rights, adopted in 1988, specifically recognises the right to a healthy environment under Article 11¹⁹⁶. More recently, the IACtHR's Advisory Opinion 23/17 recognised the right to a healthy environment as an autonomous and enforceable right under Article 26 of the American

¹⁹⁵ McAdam (n21) p.61.

¹⁹⁶ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No.69.

Convention on Human Rights¹⁹⁷, which requires the progressive realisation of economic, social and cultural rights¹⁹⁸. The Court also asserted that, among others, the rights to life, health, water, food, housing and the right to not be forcibly displaced are all rights particularly vulnerable to environmental impacts¹⁹⁹. Additionally, it concluded that other rights might also be in jeopardy, such as the rights to liberty and security, since climate-induced displacement often creates violent conflicts between displaced persons and the population living on the territory to where they are displaced to²⁰⁰. Another key finding from this Opinion was the assertion that States are responsible for transboundary environmental harm, even if the conduct which caused the harm is not prohibited under international law²⁰¹. Following this Advisory Opinion, in *Lhaka Honhat v. Argentina* the IACtHR detailed States' obligations regarding the respect and protection of the right to a healthy environment, namely with positive obligations and accountability measures²⁰². It also specifically used human rights to address environmental damage²⁰³, which is part of the approach argued in Chapter 2 to be required for climate-related cases. Building on this, the IACHR adopted Resolution 2/24 on human mobility caused by climate change, which comprehensively argues for States to 'incorporate differentiated, intersectional, and intercultural approaches to protection into all laws and practices they adopt', taking into account 'multiple discrimination and the possible legal and/or practical obstacles that people may face in accessing and enjoying their rights'²⁰⁴. The Resolution also goes in depth regarding cross-border displacement and, consequently, the right of everyone to seek and receive asylum. The Commission starts by affirming the need to implement the expanded

¹⁹⁷ IACtHR, Advisory Opinion OC-23/17 (15 November 2017) para.57 and 62.

¹⁹⁸ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No.36, art.26.

¹⁹⁹ IACtHR, Advisory Opinion OC-23/17 (n197) para.66.

²⁰⁰ Ibid.

²⁰¹ Ibid, para.103.

²⁰² Iyer (n70) p.407.

²⁰³ Maria Antonia Tigre, 'Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina' (2021) 115(3) AJIL

<<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/D9DE378094040097131E02394C675BE2/S0002930021000476a.pdf>> accessed 28 April 2026, p.712.

²⁰⁴ IACHR, Resolution 2/24 on human mobility induced by climate change (adopted on 26 December 2024) Doc. No.52, para.3.

definition of refugee established in the Cartagena Declaration on Refugees²⁰⁵, which encompasses ‘persons who have fled their country because their lives, safety or freedom have been threatened by [...] massive violation of human rights or other circumstances which have seriously disturbed public order’²⁰⁶, thus including climate-related events²⁰⁷. Additionally, it is asserted that ‘States must incorporate into their legislation broad and flexible criteria of interpretation’ to establish the causal link between climate change impacts and the circumstances that lead people to seek international protection²⁰⁸. These criteria should ‘enable the identification of the context in which social, political, cultural and environmental factors, aggravated by the impacts of climate change, including socio-environmental disasters, interact with other determinants of displacement’²⁰⁹, with socio-environmental disasters meaning catastrophic events stemming from the intersection of natural hazards and human exposure and vulnerability, causing severe environmental, economic and social disruption²¹⁰. Moreover, the IACHR calls for a cumulative risk assessment in the event of refoulement, which should consider the specific circumstances of the individual, the interaction of mobility with climate change consequences and the measures taken by the individual’s country of origin or residence in that regard²¹¹. In conclusion, it is asserted that the principle of non-refoulement is non-derogable, therefore it must be guaranteed in all circumstances, even in situations of exception, emergency or public calamity²¹².

The latest development from the Inter-American system took the form of another landmark Advisory Opinion in 2025, in which the Court outlines the legal framework for States’ obligations regarding the climate emergency from a human rights perspective²¹³. The

²⁰⁵ Ibid, para.29.

²⁰⁶ Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena Declaration on Refugees (adopted 22 November 1984).

²⁰⁷ IACHR, Resolution 2/24 (n204) para.29.

²⁰⁸ Ibid, para.30.

²⁰⁹ Ibid, para.31.

²¹⁰ Ibid, p.5.

²¹¹ Ibid, para.37.

²¹² Ibid, para.39.

²¹³ Maria Antonia Tigre, Maxim Bönnemann and Korey Silverman-Roati, ‘A Blueprint for Rights-Based Climate Action: The Inter-American Court of Human Rights’ Advisory Opinion on the Climate Emergency’ (*Verfassungsblog*, 9 July 2025)

<<https://verfassungsblog.de/inter-american-court-of-human-rights-advisory-opinion-climate/>> accessed 29 April 2026.

Opinion is very comprehensive and addresses several issues, but there are particular points worth highlighting here. The Court noted that ‘when people are forced to move internationally, they face numerous human rights violations’²¹⁴. It also noted that, with regard to migration and forced displacement driven by the impacts of climate change, states must first adopt measures to prevent it and ensure the protection of those most exposed to these impacts²¹⁵. However, the IACtHR acknowledged that these measures may prove insufficient to address the root causes of migration and forced displacement, thus, States must also ‘develop regulatory, public policy, institutional, and budgetary instruments to address the needs of populations in situations of involuntary mobility’ and ‘take into account the possible convergence of factors that may increase the vulnerability of the persons affected, whether before, during, or after displacement’²¹⁶. Moreover, the Court emphasised the need for active cooperation between States to effectively protect the human rights of climate-displaced persons, and recalled, among other instruments, the Global Compact for Safe, Orderly and Regular Migration in which the importance of cooperation between neighbouring countries and other interested countries is highlighted, including when it comes to agreements for reception and assistance of displaced persons²¹⁷. Along the same line, it was stressed that ‘the safe, orderly and regular management of migratory flows is a concern and shared responsibility of the international community’, requiring the adoption of common strategies based on multilateralism and solidarity when addressing climate-induced mobility²¹⁸. The IACtHR goes even further by considering that ‘States must establish an appropriate regulatory framework that provides effective legal and/or administrative mechanisms at the domestic level to guarantee the legal and humanitarian protection of persons displaced across international borders due to the impacts of climate change’, suggesting mechanisms such as humanitarian visas, temporary residence permits and protection under refugee status to protect people from refoulement²¹⁹.

²¹⁴ IACtHR, Advisory Opinion OC-32/25 (29 May 2025) para.420.

²¹⁵ Ibid, para.422.

²¹⁶ Ibid, para.424.

²¹⁷ Ibid, para.430.

²¹⁸ Ibid, para.431.

²¹⁹ Ibid, para.433.

Together, these developments demonstrate the remarkable depth and coherence of the Inter-American system's approach to climate-related harm and displacement. Across their jurisprudence, both the IACHR and the IACtHR consistently emphasise that climate change does not create vulnerability in isolation, rather, it amplifies existing social, economic, cultural and political inequalities, placing already marginalised individuals and communities at heightened risk²²⁰. This recognition shapes the system's emphasis on differentiated, intersectional and context-sensitive protection measures, as well as its call for cumulative risk assessments along with broad and flexible interpretative criteria when determining international protection needs. Crucially, the Inter-American bodies affirm that the principle of non-refoulement is absolute and fully applicable in climate-related contexts, and that States must adopt regulatory, institutional and policy frameworks capable of addressing both the drivers and consequences of climate-induced mobility. In many respects, the positions articulated by the IACHR and the IACtHR mirror the core argument advanced throughout this thesis: that climate-related displacement must be understood through a human rights-based lens which considers structural vulnerability, multicausality and the indivisibility of rights. Their jurisprudence shows that environmental degradation threatens not only the right to life and physical integrity, but also access to water, food, housing, health and, ultimately, the right to live with dignity. By explicitly linking climate impacts to forced displacement, and by outlining concrete obligations for prevention, protection, cooperation and non-refoulement, the Inter-American system provides a compelling model for how international and regional bodies, including within the EU and Council of Europe systems, could evolve in addressing the emerging realities of climate-induced mobility. In this sense, the Inter-American experience reinforces the broader claim that contemporary protection frameworks must adapt to the complex and accelerating challenges posed by climate change if they are to remain effective, equitable and aligned with fundamental human rights principles²²¹.

²²⁰ IACHR, Resolution 2/24 (n204) para.38 and IACtHR, Advisory Opinion OC-32/25 (n214) para.415-421.

²²¹ See, for example, Tigre, Bönnemann and Silverman-Roati (n213) and Susana Borràs-Pentinat, 'The IACtHR Climate Emergency Advisory Opinion: A Legal Analysis of the State Obligations' (2025) EPL <<https://journals.sagepub.com/doi/epdf/10.1177/18785395251403470>> accessed 1 May 2026, p.20-21.

3.2.2. The International Court of Justice and the United Nations

The 2025 Advisory Opinion of the International Court of Justice (ICJ) on climate change is another substantial step forward regarding legal recognition of the climate emergency. In this extensive document, the ICJ developed its opinion on States' obligations under international law to ensure climate protection and the legal consequences for States who cause environmental harm, namely before small State islands and the people affected²²². Although the questions posed before the Court were not directly related to displacement and thus the Court did not expressly delve deeply into the issue, there are still quite a few remarks worth highlighting. First, the overall recognition of the interconnection between international human rights law, environmental law and climate change law throughout the document touches upon the intersectional approach previously discussed and also called for by the Inter-American system, for example. Accordingly, this recognition also allows for new lines of arguments in international protection claims²²³. Furthermore, and again in line with the IACtHR, the Court asserted that a 'clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights', including the right to life and the right to an adequate standard of living²²⁴. Additionally, the ICJ acknowledged that the displacement of populations is one of the severe and far-reaching consequences of climate change²²⁵, emphasising how sea level rise, in particular, will affect small island States and low-lying coastal States, leading to forced displacement both internally and across borders²²⁶. The Court stated how conditions resulting from climate change are likely to endanger individuals' lives and 'lead them to seek safety in another country or prevent them from returning to their own'²²⁷. Therefore, States have obligations under the principle of non-refoulement where there is a real risk of harm to the right of life if individuals are returned to their country of

²²² ICJ, Advisory Opinion on Obligations of States in respect of Climate Change (23 July 2025).

²²³ Jane McAdam, 'Displacement in the ICJ's Advisory Opinion on Climate Change' (2026) 56(I-2) EPL <<https://journals.sagepub.com/doi/epdf/10.1177/18785395251407456>> accessed 2 May 2026, p.39.

²²⁴ ICJ, Obligations of States in respect of Climate Change (n222) para.393.

²²⁵ Ibid, para.73.

²²⁶ Ibid, para.357.

²²⁷ Ibid, para.378.

origin, with the Court also recalling the HRC's views on *Teitiota v. New Zealand*²²⁸. Finally, the ICJ underlined the duty of international cooperation for the protection of the environment, asserting that it forms part of customary international law and serves as a guiding principle for the interpretation of other standards²²⁹. While the Court did not go in detail regarding what this duty entails when it comes to displacement, countries like Portugal and the Netherlands associated it with: (i) facilitating cross-border movement, (ii) offering possibilities of temporary or permanent residency, and (iii) ensuring displaced persons are accommodated, with international human rights law providing a legal framework for protection²³⁰.

This Advisory Opinion is considered a landmark decision as it delves in several complex legal issues related to climate change and addresses many of them for the first time within this international context²³¹. As Foster notes, 'the Court has done much valuable and potentially influential work in an exercise that has largely involved 'bringing out the meaning' of the law applicable to human-induced climate change.'²³². Nevertheless, some criticism is owed to the ICJ as it did not go as far as it could have discussing climate-induced displacement and States' obligations in this context, even when a substantial number of written and civil society submissions referred to it as a major concern²³³. Some judges also expressed how the Court could have gone further in their separate opinion, with one judge stating that, due to sea-level rise, small island States are likely to become uninhabitable, leaving their population with nowhere to live²³⁴. Therefore, the Court should have detailed that, under non-refoulement obligations and international human rights law, States must 'take proactive measures to prevent refoulement and to ensure that other rights are respected during

²²⁸ Ibid.

²²⁹ Ibid, para. 142.

²³⁰ Oral Submissions of Portugal, Verbatim Record 2024/48 (10 December 2024) para.41 and Written Statement of the Netherlands (21 March 2024) para.5.43 and 5.44.

²³¹ Caroline E. Foster, 'The 2025 International Court of Justice Advisory Opinion on *Obligations of States in respect of Climate Change*' (2025) 74 ICLQ <<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/DED109CE194CB420EA6C911F1005E620/S0020589325101292a.pdf/the-2025-international-court-of-justice-advisory-opinion-on-obligations-of-states-in-respect-of-climate-change.pdf>> accessed 26 June 2026, p.808.

²³² Ibid.

²³³ McAdam (n223) p.40.

²³⁴ Separate Opinion of Judge Aurescu, para.25.

the individuals' stay in the State's territory', including the 'duty to conduct an individualized risk assessment, or an obligation to admit those seeking protection and even to issue temporary residence permits for them'²³⁵. This line of reasoning aligns with the previously developed idea that, to protect climate-displaced persons comprehensively, an intersectional human rights-based approach is required in which individuals, and their specific circumstances, are fairly considered and dignified solutions for residency in other territories are provided for. As McAdam argues, '[a]ddressing climate mobility necessarily also demands holistic, multidisciplinary and multisectoral responses which can adapt to changing circumstances and needs over time. To be truly effective, they require international cooperation in good faith, as well as inclusive, participatory and collaborative approaches that reflect local and traditional knowledges and perspectives'²³⁶.

The United Nations' bodies have also recently been delving into this issue, particularly through relevant reports from different Special Rapporteurs. A 2022 report of the Special Rapporteur on the human rights of migrants highlighted how '[s]low-onset events of climate change [...] are exacerbating pre-existing poverty, inequality and exclusion, compelling people to migrate. [...] Likewise, the adverse effects of sudden-onset events linked to climate change may have serious effects on subsistence in the territory, while they can also accentuate dynamics of violence, insecurity and political persecution'²³⁷. Furthermore, the Special Rapporteur asserted that '[w]hen well governed, migration becomes a safe and accessible choice and can help people to adapt to environmental and climate change pressures. Making humane migration part of the solution is an important practice to address the climate emergency'²³⁸. In order to fulfil this, States should adopt 'human rights-based, gender-responsive and child-sensitive procedural safeguards to ensure that all migrants are able to present their cases on the basis of equality and non-discrimination'²³⁹. Additionally, the Special Rapporteur stressed the importance of meaningful involvement of

²³⁵ Ibid.

²³⁶ McAdam (n223) p.45 and 46.

²³⁷ General Assembly, 'The impact of climate change on the human rights of migrants' Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, UN Doc A/77/189 (19 July 2022) para.35.

²³⁸ Ibid, para.39.

²³⁹ Ibid, para.40.

civil society and affected communities in policymaking, as well as the necessity of listening to migrants themselves regarding human rights violations they experience²⁴⁰. Building upon this report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change emphasised that ‘climate change is a global problem that must be addressed at the international level’²⁴¹. Currently, only a small number of “mostly very poor” countries are facing this burden, while the “developed” countries host a small percentage of those in need of asylum²⁴². Instead, what is required is ‘an international response, commensurate with the enormity of the issue, and a global sense of responsibility’ and, thus, ‘the international community has a responsibility to find the necessary funding and technical and humanitarian support to assist those displaced across international borders due to climate change and uphold their rights’²⁴³. The Special Rapporteur also dismissed the argument that it is difficult to distinguish between causes of displacement, since modern science demonstrates there is a human factor in extreme weather events nowadays, and it is also possible to identify whether people are coming from areas affected by climate change²⁴⁴. Moreover, Fry affirms that, within the context of climate change, displaced persons are subject to severe human rights violations due not only to an absence of international instruments which provide proper protection, but also due to lack of effective implementation of the instruments that do exist and appropriate international cooperation regarding policy instruments which apply to displaced persons²⁴⁵. Based on the previous analysis of the EU framework and policy system, as well as its implementation by Member States, it is clear that there is a correlation with the Special Rapporteur’s statement. There is a lack of recognition of climate-induced displacement and, thus, a lack of specific protection for people affected by it. Additionally, the existing instruments are not being implemented effectively since, as discussed in previous sections, there are ways to apply them in order to provide protection for displaced persons, but these paths are not being explored. The lack of international cooperation is also evident

²⁴⁰ Ibid, para.83 and 84.

²⁴¹ Human Rights Council, ‘Providing legal options to protect the human rights of persons displaced across international borders due to climate change’ Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, UN Doc A/HRC/53/34 (18 April 2023) para.24.

²⁴² Ibid.

²⁴³ Ibid, para.25.

²⁴⁴ Ibid, para.27.

²⁴⁵ Ibid, para.64.

within the EU: while positioning itself as a global leader in climate change action, the EU ignores the people who are affected the most in its policies and actively establishes international agreements for migration and asylum deterrence.

3.2.3. ECtHR's possible future approaches and interplay with the CJEU

Following the analysis of the current developments in the EU framework, as well as the more progressive advances at the international level, it is now important to explore the possible approaches that the ECtHR could take when dealing with cases concerning climate-related displacement and international protection claims, particularly when it comes to the principle of non-refoulement. This shift in focus is necessary given that the ECtHR could play a vital role in addressing the human rights implications of climate-induced displacement, especially as EU law continues to provide limited avenues for protection. Moreover, the international developments examined in the previous section, ranging from the Inter-American system's expansive environmental jurisprudence to the ICJ's and UN bodies' evolving articulation of States' obligations in the context of climate change, offer important normative guidance that could and should inform the ECtHR's reasoning. As previously outlined, the ECtHR should move beyond traditional categories and adopt a more intersectional, context-sensitive approach, which not only reflects the modern realities of climate-induced displacement but also aligns with the Court's own interpretation of the ECHR as a living instrument. In this way, rather than fitting future displacement-related cases on strict and already established lines of interpretation, the Court should address the issue based on the idea that climate change and its impacts represent a particular context which must be analysed accordingly.

Along these lines, Scott affirms that climate change-related harm does not fit within the other categories of harm established in ECtHR case law, these being: (i) direct and intentional infliction, where the serious harm is intentionally inflicted by the receiving State or non-state actors in its territory; (ii) purely naturally occurring, where the harm results from

naturally occurring phenomena such as diseases; and (iii) predominant cause, where actors in the receiving State are the predominant cause of a humanitarian crisis²⁴⁶. Therefore, another category should be introduced to address climate change-induced displacement. The Court should specifically recognise that the sending State contributed, to some extent, to the harm that the individual would be exposed to if they are refouled²⁴⁷, as European countries have historically been responsible for a large percentage of global greenhouse gas emissions²⁴⁸. Consequently, a lower threshold should be applied in this context than in the other categories of cases, because in such cases the sending State did not contribute to the origin of the harm²⁴⁹. On the other hand, cases of displacement related to climate change could also be included in the category of “predominant cause”, provided applicants can establish a causal link between climate change resulting from greenhouse gas emissions by certain actors, and demonstrate that the effects of climate change are the predominant cause of the harm feared upon return²⁵⁰. The author acknowledges this claim would have additional obstacles, but it would be, nonetheless, a reasonable argument. First, in *Sufi and Elmi v. UK*, the Court concluded that the actions of multiple actors were, cumulatively, the predominant cause of a humanitarian crisis. Similarly, climate change results from global greenhouse emissions, making the international community collectively responsible for the resulting harm²⁵¹. However, as previously mentioned, some States have disproportionately contributed to greenhouse gas emissions compared to others, so these so-called “developed” States should be considered the predominant cause of climate change²⁵². Second, Scott affirms that the most challenging aspect of this approach would be to consider climate change as the predominant cause of a “natural disaster”²⁵³. However, as discussed in Section 2.2.2, disasters are not “natural” in the sense previously assumed by many, including the ECtHR. Instead, they originate from the interaction of environmental hazards with human vulnerability, governance

²⁴⁶ Matthew Scott, ‘Natural Disasters, Climate Change and Non-Refoulement: What Scope for Resisting Expulsion under Articles 3 and 8 of the European Convention on Human Rights?’ (2014) 26(3) IJRL 404, p.414 and 423.

²⁴⁷ Ibid, p.423.

²⁴⁸ See, for example, Rathore, ‘GHG emissions in the EU’ (n9).

²⁴⁹ Scott (n246) p.423.

²⁵⁰ Ibid, p.424.

²⁵¹ Ibid, p.425.

²⁵² Ibid.

²⁵³ Ibid, p.426.

failures and structural inequalities, with modern science demonstrating that there is an undeniable human-factor in extreme weather events nowadays²⁵⁴. Therefore, adhering to current scientific standards and an intersectional understanding of environmental disasters, climate change could easily be identified as the “predominant cause” of such events.

Identically, Ammer and Mayrhofer argue that the Court should not adopt the “source of harm” approach when ruling on climate-induced displacement cases because such an approach ‘leads to inconsistencies within the court’s own jurisprudence’, particularly when it comes to the negative obligation component of the principle of non-refoulement, as well as its absolute nature²⁵⁵. Instead, the ECtHR should only examine if the specific circumstances of the individual reach the threshold of harm²⁵⁶. The authors also argue that if the Court insists on using the “source of harm” approach, then it should consider modern science standards regarding climate change and related disasters and, subsequently, apply a lower threshold for climate-induced displacement cases²⁵⁷. Additionally, and similarly to Scott’s argument, although sending and receiving States are jointly responsible for climate change, the sending State will often be responsible for a much larger percentage of greenhouse gas emissions than the receiving State, when looking at scientific records²⁵⁸.

Collectively, these arguments show that the ECtHR’s traditional categorisation of harm does not adequately address the complex and multifaceted nature of climate-related displacement. While Scott’s proposals suggest two possible approaches, either recognising climate change as a distinct fourth category of harm or subsuming it under the “predominant cause” category, they both ultimately point to the same conclusion: the Court must abandon rigid, source-focused classifications which were developed for fundamentally different factual scenarios. As Ammer and Mayrhofer emphasise, insisting on the “source of harm” approach not only produces inconsistencies within the Court’s own jurisprudence but also risks undermining the absolute nature of non-refoulement. Accordingly, the approach

²⁵⁴ See, for example, Carbon Brief, ‘Mapped: How climate change affects extreme weather around the world’ (*Carbon Brief*, 18 November 2024; updated 19 March 2026) <<https://interactive.carbonbrief.org/attribution-studies/index.html>> accessed 9 May 2026.

²⁵⁵ See, above, section 2.2.2. and Ammer and Mayrhofer (n29) p.331.

²⁵⁶ Ibid.

²⁵⁷ Ibid, p.332.

²⁵⁸ Ibid, p.330.

advocated in this thesis is one that moves beyond narrow doctrinal categories and instead requires the ECtHR to conduct a holistic, intersectional and scientifically grounded assessment of risk. This means recognising that climate-related harm stems from the cumulative interaction of environmental hazards with social, political and economic vulnerabilities, as well as structural inequalities, which cannot be meaningfully separated into distinct legal boxes. It also requires acknowledging the differentiated historical responsibility of States for greenhouse gas emissions and the transboundary nature of climate impacts. In short, the ECtHR should adopt an approach which reflects contemporary scientific knowledge and the lived realities of climate-displaced persons, applying a lower threshold where appropriate and assessing all intersecting drivers of harm cumulatively.

Climate litigation has been increasingly growing internationally, and it is likely to impact *refoulement* jurisprudence at the European level as well²⁵⁹. Moreover, Courts can (and should) rely on binding and non-binding international instruments²⁶⁰, particularly those which have developed States' obligations within the field of climate-related displacement. Accordingly, a potential path for the ECtHR to reach a modern intersectional approach is through the interaction with other regional courts and international bodies, which have made recent strides in climate jurisprudence, as mentioned above. Beyond the HRC view on *Teitiota v. New Zealand* and the Inter-American system, the UN Committee on the Rights of the Child (CRC) has recently stated that 'the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location'²⁶¹. Additionally, the Committee held that climate change harmful effects are reasonably foreseeable and States have the obligation to mitigate emissions on their territory to prevent harm not only within but also outside their territories²⁶². From these assertions, one can conclude that failure to do so could make States prone to varying degrees of responsibility, including in cases where impacts are so severe that they result in displacement. As Tigre and Lichet argue, the type of approach adopted by the CRC 'will be replicable in

²⁵⁹ Ibid, p.331.

²⁶⁰ Ibid.

²⁶¹ *Sacchi v Argentina*, UN doc CRC/C/88/D/104/2019 (22 September 2021), para.10.

²⁶² Ibid, para.10.10-10.12.

other rights-based cases because it draws on international jurisprudence, readily available scientific evidence, and petitioners' testimonies to establish causation and foreseeability²⁶³. This replicability can prove highly significant because 'the issue of extraterritoriality needs to be confronted head-on to grapple with the global justice dimension of climate change – a dimension that remains under-addressed in rights-based climate litigation'²⁶⁴. Moreover, the Committee's decision to use the case as a catalyst for a new General Comment also 'signals the potential of human rights litigation to contribute to normative development beyond a specific case'²⁶⁵. Therefore, such decisions could not only influence the way in which the ECtHR rules on climate change-related cases but could also prompt legislative bodies to adopt new standards accordingly.

Overall, this positive interaction of the ECtHR with other regional and international courts and bodies might also have repercussions within the CJEU, as both Courts have a long and complex history of connection. Although the CJEU has somewhat distanced itself from the ECHR (and, consequently, ECtHR's interpretations) in order to assert the autonomy of EU law²⁶⁶, the CJEU still refers to the ECHR when required, mainly for legitimacy reasons and regarding complex cases²⁶⁷. As Tinière argues, 'if the Court wants to give a fundamental rights interpretation that is widely accepted enough to constitute a common ground in Europe and form part of this constitutional pact, it cannot do it alone and needs to rely on the European Convention law which remains "The" European common standard of protection'²⁶⁸. The author further explains that the CJEU usually refers to ECHR and corresponding jurisprudence in three main ways: (i) to establish a new or underused interpretation, grounding it on ECtHR case-law in order to define it more precisely; (ii) to help introduce a new methodology for interpretation of EU fundamental rights; or (iii) to reinforce a

²⁶³ Maria A. Tigre and Victoria Lichet, 'The CRC Decision in *Sacchi v Argentina*' (2021) 25(26) ASIL Insights <<https://www.asil.org/insights/volume/25/issue/26>> accessed 9 April 2026.

²⁶⁴ Margaretha Wewerinke-Singh, 'Between Cross-Border Obligations and Domestic Remedies: The UN Committee on the Rights of the Child's decision on *Sacchi v. Argentina*' (*Children's Rights Observatory*, 2021) <<https://www.childrensrightsobservatory.org/case-notes/casenote2021-10#commentary>> accessed 9 May 2026.

²⁶⁵ Ibid.

²⁶⁶ See, for example, Opinion 2/13 Accession of the European Union to the ECHR ECLI:EU:C:2014:2454 (18 December 2014) para.170.

²⁶⁷ Romain Tinière, 'The Use of ECtHR Case Law by the CJEU: Instrumentalisation or Quest for Autonomy and Legitimacy?' (2023) 8(1) European Papers 323, p.327 and 328.

²⁶⁸ Ibid.

well-established interpretation of a fundamental right when it is challenged or politically sensitive²⁶⁹. With respect to climate change-related cases, all three options could apply to some extent, giving ample leeway for the CJEU to ground its reasoning in accordance with progressive developments from the ECtHR.

3.3 Concluding Remarks

The current developments within the EU system examined in this chapter reveal a profound divergence between the EU's proclaimed climate ambitions and the realities of its migration and asylum governance. On the one hand, the Union presents itself as a global leader in climate action, advancing comprehensive initiatives such as the European Green Deal and the EU Adaptation Strategy, both of which acknowledge the far-reaching consequences of climate change for human security, livelihoods and mobility. On the other hand, the CEAS reform introduced through the New Pact on Migration and Asylum shifts in the opposite direction, consolidating a securitised and deterrence-oriented approach which restricts access to protection precisely when climate-related displacement is growing. The lack of any meaningful integration of climate considerations into the CEAS reform illustrates a fundamental disconnect between the EU's climate policy architecture and its asylum framework, which threatens the credibility of the Union as a global actor that is committed to human rights.

In contrast, other international bodies have begun to articulate far more coherent and forward-looking approaches to climate-related mobility. The Inter-American system, through the jurisprudence of the IACtHR and the resolutions of the IACHR, has developed a sophisticated understanding of how climate change interacts with structural inequalities, human rights and forced displacement. Its emphasis on intersectionality, cumulative risk assessment, non-refoulement, and the need for flexible interpretative criteria offers a very

²⁶⁹ Ibid, p.328 and 329.

compelling model for a rights-based protection framework. In the same vein, the recent ICJ's Advisory Opinion and the work of UN bodies, particularly through Special Rapporteurs, reinforce the view that climate change threatens a wide range of fundamental rights and that States must adopt preventive, protective and cooperative measures to address climate-induced mobility. In sum, the common thread emerging across all recent international developments is that climate change does not create vulnerability in isolation. Rather, it amplifies pre-existing social, economic and political inequalities, disproportionately affecting those already marginalised. This recognition aligns closely with the central argument advanced throughout this thesis: climate-related displacement must be understood through a human rights-based lens attentive to structural vulnerability, multicausality and the indivisibility of rights. The Inter-American system's jurisprudence, the ICJ's reasoning and the positions of UN bodies all assert that environmental degradation threatens not only the right to life and physical integrity, but also access to water, food, housing, health and, ultimately, the ability to live with dignity. They also affirm that the principle of non-refoulement applies fully in climate-related contexts, and that States must develop regulatory and institutional frameworks capable of addressing both the drivers and consequences of climate-induced mobility.

In light of these developments, it becomes increasingly clear that the EU's current approach falls substantially short of what is required in a world facing a climate emergency. As climate change impacts intensify and displacement becomes more frequent and complex, those affected will require protection systems capable of delivering coherent and human rights-aligned responses to the harms they are exposed to. In order to achieve this, the EU and its Member States must demonstrate the necessary political and legal resolve to adapt their protection frameworks, with the ECtHR and the CJEU playing a crucial role in guiding this development through their interpretative authority. The international trends analysed in this chapter provide both a normative foundation and a practical roadmap for such evolution. Ultimately, if the EU is to uphold its foundational values and meet its human rights obligations, it must adapt its protection framework to the growing challenges associated with

climate change, ensuring that those displaced by environmental harm are not left without meaningful safeguards or legal recognition.

4. Outlook

Following the analysis of the applicable legal frameworks within the EU, including the CEAS, human rights law, and specific cases of Member States, as well as current developments both in within the EU and internationally, this chapter will now discuss multiple layers of reform required to ensure that the EU and its Member States can meaningfully address climate-related harm and displacement. First, I will identify short-term priorities, focusing on how existing legal instruments can already be interpreted in a more evolutive and context-sensitive manner to address climate-related risks. Then, I will examine long-term reforms, namely by outlining two possible paths for structural changes and the development of new complementary pathways for migration. Building on these two layers, I will point out a set of mandatory elements for effective protection, emphasising the need for enhanced data systems, improved COI and the integration of scientific expertise into all stages of policy development and decision-making. In this sense, the need for a broader intersectional and human rights-based framework will be accentuated, thus recognising that climate-related mobility is shaped by the interaction between environmental degradation and structural inequalities. Finally, this chapter highlights how none of these measures can succeed in isolation. A multi-level response is indispensable, one that connects protection and adaptation mechanisms with mitigation efforts, resilience building and a clean economic transition. The following sections develop this argument in detail, demonstrating why only an integrated, multi-sectoral and multi-level approach can address both the causes and consequences of climate-related displacement.

4.1. Towards Effective Protection: Short-term Priorities

To begin, there are several immediate measures which should be implemented in order to ensure better protection in the short-term and within the existing framework. First, there needs to be a substantial evolution in the interpretation of the existing legal instruments. As discussed in Chapter 2, Article 15(b) of the new Qualification Regulation should be interpreted in line with Article 3 of the ECHR and Article 19(2) of the EU Charter, rather than driving subsidiary protection apart from the prohibition of refoulement by narrowing its personal scope²⁷⁰. Thus, the CJEU must move away from the strict “human actor” requirement when interpreting the new legislation. Furthermore, this interpretation should be expanded in order to recognise that climate change-related harm can constitute inhuman or degrading treatment. The idea that climate impacts are not ‘risks to which a population is generally exposed’²⁷¹ should be at the forefront, grounded in the fact that disasters result ‘from the combination of a hazard with certain existing vulnerabilities and lack of protection’²⁷². Such an approach would already open space for recognising individualised risks within the current framework.

Consequently, both the CJEU and ECtHR have a crucial role in driving this first wave of developments to guarantee protection in the short-term. Both Courts must use existing human rights law more effectively, including with a broader interpretation of Article 3 of the ECHR, at least in a way which deviates from applying traditional doctrine and rigid categories to address an unprecedented phenomenon such as climate change. A more context sensitive reading of Article 3 would allow the Courts to acknowledge that climate-related harm is rarely a standalone factor. As previously explained, it interacts with socio-economic precarity, political instability, discrimination and structural marginalisation. Moreover, the European Courts can steer Member States to begin integrating environmental factors into risk assessments for asylum procedures and return decisions by adopting an intersectional approach which captures how environmental degradation exacerbates existing vulnerabilities

²⁷⁰ See, above, section 2.1.1.

²⁷¹ Qualification Directive (n17) Recital 35, referenced by the CJEU.

²⁷² See, above, Kolmannskog and Myrstad (n30) p.321.

and produces cumulative risks. This would not require legislative reform, but merely a principled and evolutive interpretation of existing obligations, something that is well within the judicial mandate of both Courts.

Moreover, the Temporary Protection Directive could be interpreted in a way which includes environmental disasters as grounds for activation. As analysed in section 2.1.2., this mechanism would likely only be applicable to sudden-onset disasters and therefore cannot provide a comprehensive response for all persons affected by adverse environmental conditions, particularly those displaced by slow-onset events. Nevertheless, this Directive could prove an important protection mechanism for individuals impacted by sudden environmental disasters, just as it has been important to ensure protection for individuals impacted by the war in Ukraine. Fundamentally, its value lies in its capacity to rapidly mobilise reception systems and grant immediate rights in situations of mass displacement. However, due to its temporary, exceptional and politically contingent nature, the Directive can only address a narrow subset of climate-related mobility and cannot replace the need for a more stable, long-term protection framework within EU law.

When it comes to national measures, Italy and Austria should serve as an example for other Member States on how to promptly implement domestic solutions, although not in the exact same way. Since the Qualification Regulation now allows for no interpretative differences regarding international protection²⁷³, it is no longer possible for other Member States to implement the Austrian Courts approach²⁷⁴. Nevertheless, a similar path to the Italian case can be taken, as Article 2 of the new Qualification Regulation explicitly notes that ‘[n]ational humanitarian statuses, where granted, shall not entail a risk of confusion with international protection’, and are, thus, excluded from the scope of the Regulation²⁷⁵. Consequently, through humanitarian visas and the incorporation of human rights law in the respective procedures, Member States can take initiative in filling the protection gap. Such visas provide a pragmatic and legally viable way of granting access to territory and to proper procedures for individuals facing climate-related harm, particularly where the threshold for

²⁷³ See section 3.1.2.

²⁷⁴ See section 2.3.

²⁷⁵ Regulation EU 2024/1347 (n159), art.2(2).

international protection may not yet be met under the current EU law. Within the constraints and flaws of the existing framework, States should utilise their remaining discretionary power to adopt protective measures which reflect contemporary needs. Therefore, expanding the use of humanitarian visas, namely through more flexible and context sensitive national protection statuses, would constitute an essential step towards ensuring that individuals affected by climate-induced displacement are not left without viable pathways to safety while broader structural reforms are still pending.

4.2. Re-thinking the System: Long-term Reforms

Simultaneously, there needs to be substantial structural and legislative reforms arising from joint efforts of the EU as an institution and also Member States. Inevitably, EU legislative initiatives take longer as they involve the Commission, the Parliament and the Council, and, potentially, amendments, several readings and negotiations before a proposal is, ultimately, adopted²⁷⁶. Nevertheless, there must be a commitment to reach an agreement as quickly as possible, so the path to comprehensive protection is as seamless and swift as legally permitted. Evidently, the present political environment does not inspire confidence that such a consensus is currently plausible, particularly because of how the issue touches upon highly contentious subjects such as migration, institutional changes and resources allocation. After the CEAS has just been reformed in a way which significantly tightens the rules and mechanisms in place²⁷⁷, it is very unlikely that a proposal for a new reform in the opposite direction actually happens any time soon. Nevertheless, this is precisely why the issue should be brought to light, and the necessary changes should be underlined and discussed.

²⁷⁶ European Parliament, ‘Ordinary Legislative Procedure: Overview’ (European Parliament) <<https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview>> accessed 19 May 2026.

²⁷⁷ See, above, section 3.1.2.

In this sense, there are two possible paths the EU can take. On the one hand, the CEAS could be reformed again in order to introduce climate-related grounds for protection. This reform would include amending the Qualification Regulation and expanding subsidiary protection, namely, to explicitly incorporate environmental degradation as a potential source of serious harm and either remove, considerably soften or clarify the human actor requirement in order to expressly accommodate environmental-related phenomena. It should also be clarified that fulfilling non-refoulement obligations must lead to the granting of subsidiary protection, therefore guaranteeing equal treatment of non-nationals relative to one-another, in line with the previous reasoning of Austrian Courts²⁷⁸. Additionally, the Temporary Protection Directive could be revised, adding environmental disasters as explicit grounds for activation. Moreover, a pathway to long-term residence for protracted displacement should be provided for, ensuring legal solutions for individuals affected. It is also crucial to establish objective criteria for the instrument's activation and duration in order to guarantee legal certainty and prevent depending upon political will. Furthermore, relevant legal instruments, such as the Qualification Regulation, the Asylum Procedure Regulation and the Screening Regulation, should explicitly establish the comprehensive consideration of environmental factors in thorough risk assessments, putting an end to interpretation debates.

On the other hand, the EU could harmonise humanitarian statuses and explicitly recognise climate-related displacement as grounds for protection, thereby ensuring that the principle of equality is respected across the Union. This would prevent individuals facing similar environmental risks from receiving markedly different treatment solely due to divergent national practices exercised by individual Member States. By establishing common minimum standards and a shared definition of humanitarian protection encompassing climate-related harm, the EU could reduce the current fragmentation of national approaches and provide a more predictable, coherent and human rights-based response to climate-related displacement. This would strengthen legal certainty for individuals and reinforce the Union's commitment to equal treatment and the uniform application of fundamental rights within its territory. Finally, new complementary pathways could also be developed, strengthening

²⁷⁸ See, above, section 2.3.

human rights-based protection. This could be achieved through, for example: (i) regional protection programmes in cooperation with affected States²⁷⁹, (ii) labour mobility schemes for populations facing slow-onset environmental degradation²⁸⁰, and (iii) planned relocation frameworks respecting human rights standards²⁸¹.

In light of these two possible approaches, harmonising humanitarian statuses seems a more realistic and administratively feasible option in the current political climate, although it would still be quite challenging. Unlike a comprehensive CEAS reform, which would require coordinated amendments to multiple legislative instruments and reopen several politically sensitive negotiations once again, harmonising humanitarian protection would enable the EU to introduce meaningful safeguards without restructuring the asylum system entirely. This approach would still need to guarantee long-term protection and clear residency pathways, ensuring that individuals affected by protracted or irreversible environmental degradation are not left in prolonged precarity. At the same time, even if this option is more attainable, it does not eliminate the need for fundamental adjustments within the CEAS itself. Restoring a genuinely human rights-based orientation to EU migration and asylum law remains essential for the Union to effectively guarantee the fundamental rights enshrined, namely, in the EU Charter, instead of perpetuating ‘increasingly restrictive and securitized policies under the guise of humanitarian concern’²⁸².

4.3. Mandatory Elements for Effective Protection

²⁷⁹ See, for example, The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, Volume I (2015) para.120.

²⁸⁰ International Organization for Migration, *Green Futures: Labour Migration and the Transition to a Green Economy* (IOM 2024) p.40.

²⁸¹ Brookings Institution, Georgetown University & UNHCR, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* (2015) p.21-25.

²⁸² Häkli and Peltonen (n178) p.14.

Notwithstanding normative developments, there are several elements that must be considered and accompany all stages of future action. First, there needs to be substantial data enhancement regarding climate-related harm and mobility, including data collection and analysis²⁸³. Current systems rely heavily on fragmented, inconsistent or outdated information²⁸⁴, which is ill-suited to capture the complex and always evolving nature of climate impacts. To ensure that decision-making reflects contemporary realities, the EU and its Member States must invest in robust, interoperable and regularly updated datasets²⁸⁵ which integrate environmental, socio-economic and governance indicators. This requires closer cooperation with scientific bodies²⁸⁶, such as the Intergovernmental Panel on Climate Change (IPCC), meteorological agencies and disaster-risk institutions, as well as with local knowledge systems in affected regions. Strengthening data infrastructures is essential for ensuring that protection assessments are grounded in empirical evidence rather than assumptions or outdated risk models.

Closely linked to this is the need to significantly enhance COI. Traditional COI systems were designed for conflict-driven or politically motivated persecution²⁸⁷ and, therefore, often fail to capture the environmental and structural drivers of displacement. As a result, decision-makers continue to lack the contextual information necessary to properly assess how climate impacts affect the respective countries, as well as interact with governance failures, poverty, discrimination or resource scarcity²⁸⁸. Therefore, COI must be adjusted to also include, namely, environmental and climate-risk indicators, slow-onset processes such as sea-level rise or desertification, and the adaptive capacity of States. This

²⁸³ See, for example, The Nansen Initiative, *Protection Agenda* (n279) para.28 and 112; and European Parliament, *Human Rights and Climate Change: EU External Action* (Study, Policy Department for External Relations, 2020) PE 655.591, p.89.

²⁸⁴ The Nansen Initiative, *Protection Agenda* (n279) para.112.

²⁸⁵ Ibid, para.113; and European Parliament, *Human Rights and Climate Change* (n283).

²⁸⁶ See, for example, International Science Council, 'Safeguarding and enhancing international scientific collaboration for climate action' (*International Science Council*, 4 November 2025) <<https://council.science/statements/climate-science/>> accessed 23 May 2026.

²⁸⁷ See, for example, European Union Agency for Asylum, *Country of Origin Information (COI) Report Methodology* (EUAA, February 2023).

²⁸⁸ See, above, Ammer and Mayrhofer (n118), when the authors note that COI is not only interpreted in different ways, but also varies in terms of quality and quantity with regard to disaster-related aspects, depending on the country.

requires integrating scientific assessments, satellite data and disaster-risk modelling, for example, into COI reports, as well as ensuring that such information is regularly updated and accessible to asylum authorities, courts and legal practitioners²⁸⁹. Without this shift, protection decisions will continue to underestimate the severity and individualised nature of climate-related harm.

The final essential component related to data is the direct integration of this scientific expertise into all stages of policy development and international protection procedures, directly in line with the preamble of the 2015 Paris Agreement, where it recognises ‘the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge’²⁹⁰. As discussed throughout this thesis, climate-related displacement is inherently interdisciplinary, involving complex interactions between environmental science, human rights, public health, and socio-economic vulnerability. Yet EU policymaking either addresses this issue in a highly theoretical manner or ignores the overarching challenges completely²⁹¹. Additionally, the CEAS currently lacks adequate mechanisms to incorporate environmental-related scientific evidence into risk assessments, as climate-related harm is not explicitly considered as a category of serious harm²⁹². To address these gaps, the EU and its Member States should also intensify their efforts to establish formal channels for consultation with climate scientists, disaster-risk experts and public health specialists, for example. This could include doubling down on expert panels, advisory bodies, or standing partnerships with research institutions²⁹³. As Koskina, Georgantas and Plionis argue, to successfully implement scientific expertise in the development of policies aimed at addressing climate change and related migration, first we need to account for ‘the necessity to produce and disseminate climate migration data and the

²⁸⁹ International Science Council, ‘Safeguarding and enhancing international scientific collaboration for climate action’ (n286).

²⁹⁰ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) <https://unfccc.int/sites/default/files/english_paris_agreement.pdf> accessed 23 May 2026, preamble.

²⁹¹ See, above, section 3.1.1.

²⁹² See, Qualification Regulation (n159) arts.3(6) and 15(b); and, above, section 2.1.1 and 3.1.2.

²⁹³ See, for example, European Parliament, *Human Rights and Climate Change* (n286); and European Commission, ‘Climate change, migration and displacement’ (*Knowledge4Policy*, last updated 25 March 2026) <https://knowledge4policy.ec.europa.eu/projects-activities/climate-migration-displacement_en> accessed 23 May 2026.

individual right, often connected to academic freedom, to produce and disseminate scientific information on climate induced migration’ as well as ‘the necessity of a multidisciplinary scientific consensus regarding the main issues under discussion and the most important adaptation and mitigation measures to be adopted’²⁹⁴. Second, this should be done within a legal framework ‘aimed at strengthening the production of scientific data and knowledge –along with actively promoting their use by policy-makers – at the national level’, which can be achieved ‘through the establishment of dedicated bodies securing the societal dimension of the right to formulate policy responses containing the epistemic value of using the best available science’²⁹⁵. However, it is very important to point out that a substantial number of researchers from the “Global South” must be included in both research and policymaking projects, ‘as their countries are more exposed to climate change and thus have a direct and diverse experience of relevant disastrous events as well as of climate-induced migration’²⁹⁶. Moreover, asylum authorities should undergo comprehensive training on how to interpret environmental-related scientific data and related COI in order to ensure the effective implementation of the revised procedures. For this purpose, a revised version of the Practical Guide on Evidence and Risk Assessment²⁹⁷ should be published, reflecting such developments. Embedding scientific expertise into policy development and protection systems would not only improve the accuracy of decisions but also ensure that assessments reflect the cumulative and multicausal nature of climate-related harm.

To this point, enhancing data and COI, and, subsequently, integrate this scientific evidence in EU processes, must be accompanied by a commitment to transparency, accessibility and methodological rigour²⁹⁸. All actors involved, be it domestic authorities, EU

²⁹⁴ Anthi Koskina, Elias Georgantas and Manolis Plionis, ‘Climate crisis and human migration: the emergent sociolegal parameters of a science-based policymaking’ (2024) 6 *Frontiers in Political Science* <<https://www.frontiersin.org/journals/political-science/articles/10.3389/fpos.2024.1468711/full>> accessed 23 May 2026, p.8.

²⁹⁵ Ibid.

²⁹⁶ Ibid, p.12.

²⁹⁷ European Union Agency for Asylum, *Practical Guide: Evidence and Risk Assessment* (EUAA, 2024).

²⁹⁸ See, for example, Annalisa Volpato, Mariolina Eliantonio and Kathryn Wright, ‘Transparency and Participation in the Face of Scientific Uncertainty: Concluding Remarks’ (2023) 14(2) *EJRR* <<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/16B4ACC673C571F018DA7103D1>

agencies, courts or civil society, should be able to scrutinise the sources, methodologies and assumptions underlying climate-related assessments, based on Articles 10 and 11 of the TEU and on Article 15 of TFEU. This is essential for ensuring accountability and for preventing the misuse or selective interpretation of scientific evidence. Ultimately, without a solid informational foundation, neither short-term measures nor long-term reforms will be capable of delivering the required human rights-based protection for individuals affected by climate-related displacement.

Transversal to these assertions regarding data, is the need for always considering at the forefront of any research, policy or legislative initiatives that climate-related migration and its impacts intersect with other stress factors, as consistently argued throughout this thesis. As many times affirmed, climate change does not operate as an isolated driver of displacement, it intersects with poverty, discrimination, weak governance, gender inequalities, and historical marginalisation, producing differentiated exposure to harm and unequal adaptive capacities²⁹⁹. Any protection framework that treats climate change impacts as a uniform or purely environmental phenomenon risks obscuring these layered vulnerabilities and, consequently, is likely to fail in identifying the individuals most at risk. This is why, for instance, enhanced data systems and reformed COI must not only incorporate environmental indicators, but also systematically integrate social vulnerability metrics, governance assessments and indicators of structural inequality³⁰⁰. A human rights-based approach is therefore essential for interpreting climate-related harm in a way which reflects its multicausal and cumulative nature. Such an approach requires policymakers and decisionmakers to meticulously examine how climate impacts exacerbate pre-existing vulnerabilities³⁰¹, relating to, for example, housing, health, food security, political

[B75916/S1867299X2300034Xa.pdf/transparency-and-participation-in-the-face-of-scientific-uncertainty-concluding-remarks.pdf](#)> accessed on 29 May 2026, p. 380.

²⁹⁹ See, for example, McAdam (n21) p.267.

³⁰⁰ In line, for example, with the International Science Council, ‘Safeguarding and enhancing international scientific collaboration for climate action’ (n286); and The Nansen Initiative, *Protection Agenda* (n279) para.112 and 113.

³⁰¹ McAdam (n21) p.267.

participation, or non-discrimination³⁰². It is also essential to examine how these factors shape an individual's ability to withstand or recover from environmental shocks and degradation³⁰³. This approach aligns with the jurisprudence of international human rights bodies, which increasingly recognise that the severity of harm cannot be assessed without considering the contextual vulnerabilities that transform environmental hazards into situations where rights are severely threatened³⁰⁴. Embedding this perspective into policy development, protection frameworks and Courts interpretations ensures that climate-related risks are not artificially compartmentalised but understood instead as part of a broader spectrum of human rights concerns.

Altogether, integrating intersectionality and a human rights-based approach is not an optional advancement but a fundamental requirement for any credible protection system. It ensures that enhanced data, based on reliable scientific evidence, is interpreted in a manner which captures the lived realities of affected individuals, rather than reproducing narrow or outdated categorisations which perpetuate climate injustice³⁰⁵. As Levy and others assert, it is essential to 'reduce silo approaches and accelerate efforts toward an inclusive, honest, transparent, and accountable collaborative approach to most effectively and comprehensively address the multifaceted problem of climate injustices'³⁰⁶. Only by situating climate-related mobility within this broader human rights matrix can the EU and its Member States develop responses which are both practically grounded and normatively aligned with their international and human rights obligations.

In relation to all the considerations above and as a final point, it is very important to note the need to use the term vulnerability in a careful and appropriate way. While the term is, to a certain level, self-explanatory and useful to describe a broad range of situations where

³⁰² See, for example, IACtHR, Advisory Opinion OC-23/17 (n197) para.66.

³⁰³ Ibid.

³⁰⁴ See, above, sections 3.2.1 and 3.2.2.; and, in particular, General Assembly, 'Impact of climate change on the human rights of migrants' (n237) para.83 and 84 and IACtHR, Advisory Opinion OC-32/25 (n214) para.424.

³⁰⁵ See, for example, Andrea Rigon, 'A review of intersectionality and climate change and the potential of intersectional participatory methods and storytelling to co-produce climate justice' (2025) 17(10) *Climate and Development* <<https://www.tandfonline.com/doi/epdf/10.1080/17565529.2025.2477105?needAccess=true>> accessed on 30 May 2026, p.894.

³⁰⁶ Levy (n5) p.12.

certain individuals and/or groups are denied various human rights, we must not forget that such situations result from actions perpetrated by other people and/or unjust systems. As Mayrhofer argues, '[t]he reference to vulnerability is often formulated as being a characteristic or feature of a specific person or group. It is something, which is an essential part of their being and which defines them. It is not formulated as something that happens to them or what others do to them, but rather what they are'³⁰⁷. Additionally, this incorrect framing often leaves out the perpetrators completely, conceptualising the vulnerable individuals or groups as the problem³⁰⁸. Contrary to this framing where the focus is that certain people or groups are inherently victims or the main problem for which a solution needs to be found³⁰⁹, this thesis adopts a concept of vulnerability which centres on the fact that pre-existing³¹⁰ inequalities, discrimination and overall denial of various human rights substantially exacerbate climate change impacts. Hence, the purpose with the use of the term vulnerability here is to highlight the way in which certain people or groups can be targets of structural and systemic inequalities and discrimination that historically and/or presently they are subjected to by various perpetrators. Furthermore, the term is intended to underline the necessity to assert which individuals and communities are effectively in need of support and/or protection to counter the structural and/or systemic inequalities and discrimination they have suffered, often throughout all their lives³¹¹. Therefore, and diverging from the remaining rationale of Mayrhofer, the intersectional approach, at every level of action, called for throughout this thesis must also consider vulnerability as the targeted, structural and systemic denial of human rights which undeniably impact certain people and/or groups³¹². This is imperative in order to effectively contribute to protect the people most affected by climate change impacts and environmental degradation, as well as successfully address the root causes of such injustices³¹³. Thus, we must not omit and overlook the perpetrators of

³⁰⁷ Monika Mayrhofer, 'Framing UN Human Rights Discourses on Climate Change: The Concept of Vulnerability and its Relation to the Concepts of Inequality and Discrimination' (2024) 37 Int J Semiot Law <<https://link.springer.com/article/10.1007/s11196-023-10092-1>> accessed on 31 May 2026, p.107.

³⁰⁸ Ibid.

³⁰⁹ As Mayrhofer suggests in Mayrhofer (n307) p.107 and 108.

³¹⁰ In relation to climate change impacts.

³¹¹ See, for example, Levy (n5) p.23 and 24.

³¹² Ibid.

³¹³ Ibid.

such inequality and discrimination in our discourses, whether they result from the actions of certain individuals and/or groups, or stem from structural and systemic inequality and discrimination. Consequently, the responses to climate change impacts and, specifically, climate-related mobility must include measures to combat the root causes of why certain people and/or groups are vulnerable, which inevitably must tackle the deeply unequal and discriminatory structures and/or systems that also allow for the perpetration of such actions.

4.4. A Multi-Level Response: Connecting Protection with Climate Action

The final point made in the previous section is directly related to the following section, which discusses the need for a multi-level response to address all the issues described throughout this thesis. This is because no single solution impacting a specific sector will comprehensively solve all the challenges arising from the climate emergency, including climate-related displacement and mobility. As will be discussed below, in order to combat the impacts of climate change, it is necessary to combine protection and adaptation mechanisms with, namely, mitigation, resilience building and a clean economic transition that leaves no one behind.

Already years ago, McAdam argued that there needs to be ‘multifaceted solutions, noting that a one-size-fits-all approach to climate-related movement is inappropriate. This is because different groups will have different needs depending on the nature of their mobility’³¹⁴. The author also emphasised how important it is to not let any one particular issue overshadow others in the international fora, for example, if consensus is achieved on a mechanism for dealing with sudden-onset disasters, this must not take away from the simultaneous development of strategies to address slow-onset impacts³¹⁵. More recently, the

³¹⁴ McAdam (n21) p.266.

³¹⁵ Ibid.

Global Compact for Safe, Orderly and Regular Migration, adopted by 164 States³¹⁶, recognises that, to minimise the adverse effects of climate change, States must: (i) strengthen the analysis and sharing of information to better map, understand, predict and address related migration movements; (ii) develop adaptation and resilience strategies considering the implications for migration; (iii) integrate displacement considerations into disaster preparedness strategies and promote cooperation between countries specifically in this field; (iv) harmonise and develop approaches and mechanisms at the subregional and regional levels to address the vulnerabilities of persons affected by sudden-onset and slow-onset disasters; and (v) develop coherent approaches to address the challenges of migration movements within the same context³¹⁷. Accordingly, a 2025 review shows that ‘[a]cross the global case studies, it is clear that while integration is context-specific, successful outcomes are enabled by coherent policy frameworks, inclusive governance, innovative financing, and Nature-Based Solutions. Countries with strong legal mandates, coordinated institutions, and community engagement strategies are better positioned to manage risks and implement adaptive actions. [...] These examples underscore that adaptation and risk reduction are most effective when linked to broader development goals and when grounded in local realities and social equity’³¹⁸. Thus, mobility and displacement measures cannot be detached from the broader climate-policy landscape.

Particularly, a multi-level response must also recognise that effective protection is inseparable from effective mitigation. Without ambitious and sustained efforts to reduce greenhouse gas emissions, the scale and severity of climate-related displacement will continue to grow, overwhelming even the most progressive protection frameworks³¹⁹.

³¹⁶ House of Commons Library, ‘Climate change: an overview’ (Research Briefing, CBP-8459, 2023) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8459/>> accessed 1 June 2026.

³¹⁷ UN General Assembly, ‘Global Compact for Safe, Orderly and Regular Migration’ UN Doc A/RES/73/195 (19 December 2018) para.18(h)-(l).

³¹⁸ Andrea Majlingová and Tibor Sándor Kádár, ‘From Risk to Resilience: Integrating Climate Adaptation and Disaster Reduction in the Pursuit of Sustainable Development’ (2025) 17(12) Sustainability 5447 <<https://www.mdpi.com/2071-1050/17/12/5447>> accessed 1 June 2026, p.14.

³¹⁹ See, for example, Carmen G. Gonzalez, ‘Racial Capitalism, Climate Justice, and Climate Displacement’ (2021) 11(1) Oñati Socio-Legal Series <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3626490> accessed 4 June 2026, p.121.

Consequently, mitigation is an essential step for reducing the environmental and human-rights impacts which drive mobility and displacement. In this regard, the EU's pledge to achieving climate neutrality by 2050 under the European Green Deal, as well as its obligations under the Paris Agreement, are vital components for a long-term strategy to mitigate climate change impacts³²⁰. Similarly, resilience building and a clean economic transition must be understood as integral to addressing climate-related mobility. Strengthening resilience in countries of origin through, for example, climate-resilient infrastructure, sustainable livelihoods, early-warning systems, and social protection, can reduce forced displacement and enhance people's ability to adapt in place³²¹. At the same time, ensuring a just and inclusive transition within the EU is crucial to avoid reproducing inequalities which disproportionately affect marginalised communities³²², including migrants and those at risk of displacement. In this sense, it is imperative to prioritise equity in all climate action, prioritising vulnerable and disadvantaged groups in order to provide equal access to rights and capabilities³²³. A clean economic transition that "leaves no one behind"³²⁴ requires coordinated action across EU institutions, Member States, regional authorities and local communities, ensuring that climate policies do not exacerbate socio-economic vulnerabilities but instead contribute to long-term stability and protection.

Moreover, it is important to highlight that migration also needs to be accepted as a viable form of adaptation, instead of an indication that adaptation has failed³²⁵. When planned, migration can be a means of achieving security and realising human rights³²⁶. This is

³²⁰ Ibid.

³²¹ See, for example, Jane McAdam, 'Building International Approaches to Climate Change, Disasters, and Displacement' (2017) 40 Melbourne University Law Review
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3366669> accessed 4 June 2026, p.10.

³²² See, for example, Alberto Barrio and Beatriz Martínez Romera, 'The Role of Social Protection in Integrating Social and Climate Change Objectives in the European Union' (2025) 16(1) Revista Catalana de Dret Ambiental <<https://revistes.urv.cat/index.php/rcda/article/view/4131/4813>> accessed 4 June 2026, p.7-11; and Mathilde Bouyé, David O'Connor, Alexander Tankou, Delfina Grinspan, David Waskow, Soumya Chattopadhyay and Andrew Scott, 'Achieving Social Equity in Climate Action: Untapped Opportunities and Building Blocks For Leaving No One Behind' (World Resources Institute, 2020)
<<https://integratesdgs.org/wp-content/uploads/2024/09/Bouye-et-al-Achieving-Social-Equity-in-Climate.pdf>> accessed 4 June 2026, p.15.

³²³ Bouyé and others (n322) p.19-21.

³²⁴ A pledge made, namely, in COM(2021) 82 final (n143) p.19.

³²⁵ McAdam (n21) p.269.

³²⁶ Ibid.

where the development of adequate migration pathways comes into play, as ‘[t]his should be the cue for states to contemplate wider structural reforms that would enable people to move in advance of harm—by harnessing migration as a form of adaptation—and allow them to apply for protection if they are at risk of being displaced. Doing so would not only accord with the commitments states have already made under a range of international and regional frameworks, but would also align with their own interests in creating more planned, manageable, and regulated processes for movement’³²⁷. As McAdam asserts, ‘[p]olicies to restrict migration rarely succeed, are often self-defeating, and increase costs to migrants, communities of origin, and destination communities’³²⁸. Thus, the EU and its Member States must rethink their migration stance, shifting away from a standpoint which frames mobility primarily as a problem to be contained, and, instead, moving towards one which recognises migration as a legitimate form of adaptation and a means of safeguarding human rights.

As McAdam further emphasises, ‘policy responses to climate-related movement must not operate in a vacuum. To be effective, interventions must be attuned to and complement policies relating to development, housing, family planning, and the ‘carrying capacity’ of particular environments. This requires a sustained dialogue between actors from a variety of policy and disciplinary spheres to ensure that responses are appropriately targeted. In particular, transformative, sustainable solutions require long-term development, which the humanitarian system alone cannot mobilize. Accordingly, there must be a vertical dialogue between the different levels of policymaking, as well as a horizontal dialogue across the different spheres of policymaking, so that responses are cross-cutting, complementary, and holistic’³²⁹. As referenced extensively throughout this thesis, climate-related displacement and mobility intersects with environmental change, human rights, development and economic transformation, therefore, a multi-level response is indispensable when addressing the issue. Protection mechanisms alone cannot address the structural drivers of mobility, nor can mitigation and transition policies succeed without integrating mobility considerations. As

³²⁷ Jane McAdam, ‘Current Developments - Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement’ (2020) 114(4) *American Journal of International Law* 708, p.725.

³²⁸ McAdam (n21) p.269.

³²⁹ Ibid, p.269 and 270.

Smirnov and others argue, ‘[p]opulation movements are multi-causal and multi-staged; therefore, good governance requires multi-level policy planning and international coordination’³³⁰. Only by aligning these different layers, at the international, regional, national and local levels, can the EU and its Member States develop a coherent and future-proof approach which addresses both the causes and consequences of climate-related displacement and mobility.

As a final point, it is important to emphasise that, by applying several principles of international environmental law, such as CBDR-RC³³¹, the polluter pays principle and the precautionary principle, the resulting framework must be based on responsibility, meaning “Global North” States, which have historically contributed disproportionately to global emissions and continue to do so, have the obligation to not only reduce their emissions drastically but also provide technical and financial resources for climate adaptation and disaster risk reduction to the States most vulnerable to climate change³³². Additionally, States with historically high emissions should accommodate climate-displaced persons in numbers proportional to their responsibility for climate change³³³. This requires moving beyond a narrow focus on mitigation and adaptation support to a broader understanding of mobility justice, where high emitting States not only must actively contribute to preventing harm but also ensure that those already affected can move safely, voluntarily and with dignity. As Gonzalez argues, ‘[a] responsibility-based legal framework grounded in self-determination should require high-emitting states to finance and facilitate the mobility decisions of climate-vulnerable people rather than dictating the terms and destination of migration’³³⁴. Furthermore, this approach should consider how the “Global North” has historically contributed to the vulnerability of the “Global South”, particularly in terms of colonial and

³³⁰ Oleg Smirnov, Gallya Lahav, John Orbell, Minghua Zhang and Tingyin Xiao, ‘Climate Change, Drought, and Potential Environmental Migration Flows Under Different Policy Scenarios’ (2023) *International Migration Review* 57(1) <<https://journals.sagepub.com/doi/epub/10.1177/01979183221079850>> accessed 4 June 2026, p.57.

³³¹ Common but Differentiated Responsibilities and Respective Capabilities.

³³² Gonzalez (n319) p.131.

³³³ Ibid.

³³⁴ Ibid, p.131.

post-colonial interventions which have devastated many lives and livelihoods and continue to do so³³⁵.

4.5. Concluding Remarks

In sum, the analysis in this chapter demonstrates that effective protection in the context of climate-related displacement requires action on multiple fronts and at multiple levels. In the short-term, evolutive judicial interpretation and the strategic use of existing legal tools, such as the Temporary Protection Directive, humanitarian visas and national protection statuses, can already provide meaningful safeguards. This is crucial to guarantee protection in the short-term and enable the first wave of developments by leveraging the existing instruments effectively. In the long-term, the EU must consider two possible paths to ensure the protection of individuals. Either undertake a comprehensive CEAS reform to explicitly incorporate climate-related grounds for protection or harmonise humanitarian statuses across the Union. While the latter is less complex and more attainable in the current political climate, provided it would still guarantee long-term protection and secure residency pathways, targeted reforms to the CEAS will still be necessary to restore a genuinely human rights-based approach to EU migration and asylum governance.

These reforms and resulting procedures must be based on robust data, improved COI, and the systematic integration of scientific expertise, ensuring that protection decisions reflect the complex and evolving nature of climate impacts. At the same time, an intersectional and human rights-based approach must guide the interpretation and application of this evidence across all levels of governance. This is essential to avoid reproducing narrow or outdated categories which obscure structural inequalities and climate injustices. Recognising how climate change interacts with poverty, discrimination, weak governance and historical marginalisation is crucial for identifying those most at risk and for designing responses which

³³⁵ Ibid, p.131 and 132.

genuinely address their needs. For these reasons, intersectionality must be incorporated not only in policy development, but also in protection frameworks and in the interpretations of Courts.

It is also important to note how such approaches require a careful use of the term vulnerability. As argued, vulnerability must not be framed as an inherent characteristic of certain individuals or groups, but as the outcome of targeted, structural and systemic inequalities which result in certain communities being subjected to disproportionate harm. Misusing the term risks erasing the role of perpetrators, being it individuals, institutions or unjust systems, and shifting attention away from the structural conditions which produce risk in the first place. Therefore, an intersectional approach demands vulnerability to be understood as the result of inequalities and discriminatory structures, not as a trait of those affected. This reframing is essential for designing responses that address root causes comprehensively, rather than reproducing harmful narratives which perpetuate inadequate climate action.

Overall, we can conclude that protection, adaptation, mitigation, resilience building and a clean economic transition are interdependent components for a coherent response to the climate emergency and its challenges, including climate-related displacement and mobility. Without ambitious mitigation efforts and a just transition, displacement will continue to intensify. In addition, without strong protection frameworks, those affected will be left without viable pathways to safety and without access to a dignified life. Consequently, multi-level coordination is essential to avoid policies which remain fragmented and lacking. Thus, an adequate and forward-looking approach requires aligning international, regional, national and local action, ensuring that climate-related mobility is addressed not in isolation but as part of a broader commitment to human rights, climate justice and sustainable development. Only through such an integrated and principled approach can the EU and its Member States fulfil their obligations, respond effectively to the profound challenges posed by the climate emergency and ensure protection of climate-displaced persons.

Simultaneously, any effective and just response must also reflect the principles of international environmental law, including CBDR-RC, the polluter-pays principle and the

precautionary principle. These principles make it clear that States in the “Global North”, which have contributed disproportionately to global emissions, have greater responsibility regarding climate change. This requires a shift towards mobility justice, where high-emitting States must facilitate safe, voluntary and dignified movement and acknowledge how historical patterns of colonial and post-colonial harm have shaped present vulnerabilities. Therefore, integrating these responsibility-based principles is essential for any future EU approach that seeks to be both effective and equitable.

5. Conclusion

This thesis has demonstrated that addressing climate-related displacement within the EU system requires a profound rethinking of existing legal, institutional and policy frameworks. The analysis began by showing how the current CEAS is structurally ill-equipped to respond to the realities of climate-induced displacement, largely because its core instruments were designed for different forms of harm. Furthermore, the recent reform only exacerbates the problem by consolidating a securitised and deterrence-oriented approach, which restricts access to various forms of protection. The narrow refugee definition, the restrictive interpretation of subsidiary protection by the CJEU, and the absence of explicit environmental grounds for protection collectively create a protection gap which leaves climate-displaced persons without adequate legal status. The analysis of particular national approaches further revealed that, although some Member States have attempted to fill this gap through broader humanitarian or complementary protection statuses, these responses remain fragmented, discretionary and uneven. As a result, individuals in comparable situations face markedly different outcomes depending on the Member State in which they apply, undermining the principle of equality and the uniform application of fundamental rights across the Union.

On the other hand, the discussion regarding the ECtHR showed that the Court can have an important role in shaping how individuals displaced by climate-related factors are protected. Although its current jurisprudential categories of harm are ill-suited for the multicausal and intersectional realities of climate-induced mobility, the Court has the doctrinal tools to adopt a more holistic, context-sensitive and scientifically grounded approach to non-refoulement which recognises climate-related events as a source of harm. Such an interpretation would align the Court's practice with contemporary scientific knowledge, while also reinforcing the fundamental rights enshrined in the ECHR. This would ensure that protection against serious harm remains effective in the face of new and emerging forms of vulnerability.

Finally, this thesis highlighted how international developments can offer valuable guidance for progressive change within the EU framework. The evolving jurisprudence of the Inter-American system, the ICJ's advisory opinion, and the positions of UN bodies collectively signal a growing recognition that climate change can trigger protection obligations under human rights law. These developments not only illustrate how other legal systems are adapting to contemporary mobility realities but also provide persuasive authority for both EU institutions and the ECtHR to modernise their approaches.

Altogether, these reflections show that the EU and its Member States need to rethink the existing asylum architecture in order to comprehensively address climate-related displacement. Therefore, the EU and its Member States must draw on national innovations, judicial developments and international progress to build a protection framework that is coherent, future-proof and firmly grounded in human rights. In the short-term, measures such as evolutive interpretation of current legal instruments, the use of humanitarian visas, and the incorporation of environmental factors into risk assessments, can partially mitigate the existing protection gap, but they cannot resolve it. Particularly, having to rely solely on developments from the ECtHR and CJEU is simply not a reasonable path to guarantee the fundamental rights of displaced individuals. As McAdam argues '[r]elying on the courts to develop the meaning and scope of existing protection instruments to assist those who move in response to the impacts of climate change will be a slow, unpredictable, and jurisdictionally

varied method for securing protection. Courts can play a vital role in ensuring that human rights treaties are interpreted as living instruments which can respond to changing social circumstances, but they need good test cases to do this³³⁶. Of course, Courts can compel State action and drive legislative change. However, this should be one of many developments implemented, rather than the single catalyst from which international protection for climate-displaced persons arises.

Consequently, long-term reforms are indispensable. In this sense, this thesis argued that the EU faces two possible paths. On the one hand, a comprehensive restructuring of the CEAS, which would entail explicitly recognising environmental degradation as a potential source of serious harm, aligning subsidiary protection with the principle of non-refoulement, and revising the Temporary Protection Directive so that it can meaningfully respond to mass influxes triggered by environmental disasters. On the other hand, the EU could harmonise humanitarian statuses across the Union, with recognition of climate-related displacement as grounds for protection and while guaranteeing long-term protection and clear residency pathways, ensuring that individuals affected by protracted or irreversible environmental degradation are not left in prolonged precarity. It also highlighted the need for new complementary pathways, such as regional protection programmes, labour mobility schemes, and rights-based planned relocation, in order to ensure that individuals affected by climate-related harm have safe and regular avenues to protection. While the first path would require reopening multiple legislative instruments and renegotiating politically sensitive compromises, the second offers a more attainable route for introducing meaningful safeguards, while still presenting a challenge in the current political climate. Nevertheless, even if harmonisation is the more feasible option, it does not eliminate the need for deeper structural adjustments within the CEAS.

In other words, the EU should take the Inter-American system as an example and adopt an equivalent approach which emphasises intersectionality, cumulative risk assessment, non-refoulement, and the need for flexible interpretative criteria. This must be achieved by ensuring differentiated, intersectional and intercultural approaches required for international

³³⁶ McAdam (n21) p.268.

protection grounded in the current reality, instead of doubling down on migration deterrence and tightening of the rules. In turn, Member States must also play a vital role not only in pushing for these changes but also ensuring their domestic frameworks bridge the protection gaps where they are allowed to, namely through humanitarian visas and the incorporation of human rights law in their procedures.

Nevertheless, legal reform alone is insufficient. A central argument of this thesis is that there must be a multi-level and multi-sectoral response to adequately address climate-related displacement and to guarantee affected individuals are effectively protected. Firstly, this response requires a solid informational and analytical foundation. This includes enhanced data systems, improved COI, and the systematic integration of scientific expertise into all stages of policy development and decision-making. Without accurate, up to date and interdisciplinary information, protection decisions will continue to underestimate the severity, individualisation and multicausality of climate-related harm. At the same time, this thesis has shown that data and science must be interpreted through an intersectional and human rights-based approach, as climate change does not operate in isolation. It interacts with poverty, discrimination, weak governance, inequality and historical marginalisation, to name a few. These overlapping stress factors determine who is most at risk of harm, who can adapt, and who is forced to move, whether to safety or in pursuit of a dignified life. Any protection framework that treats climate impacts as uniform or purely environmental phenomena will perpetuate narrow categories which obscure structural inequalities and climate injustices. For this reason, intersectionality must be embedded across all levels of action, including policy development, protection frameworks and judicial interpretation, in order to ensure that responses address not only environmental hazards but also the structural conditions which transform these hazards into human rights violations. Additionally, it is crucial that both research and policymaking initiatives heavily involve perspectives of the “Global South” and those displaced, as their countries are subject to greater climate change impacts³³⁷. Finally, such an approach also requires a careful and appropriate use of the term vulnerability. As argued in this thesis, vulnerability must not be understood as an inherent characteristic of

³³⁷ Gonzalez (n319) p.129 and Koskina, Georgantas and Plionis (n294) p.12.

certain groups, but as the result of targeted, structural and systemic inequalities. Misframing vulnerability not only erases the role of perpetrators, whether they are individuals, institutions or unjust systems, but also shifts attention away from the root causes of harm. Consequently, an intersectional, human rights-based approach demands that vulnerability is conceptualised as a result of structural injustice, and that responses aim not only to protect those affected but also to dismantle the discriminatory systems which produce such inequalities.

This thesis has also underlined that climate-related displacement cannot be addressed without situating it within the broader climate-policy landscape. Protection, adaptation, mitigation, resilience building and a clean economic transition are all essential elements for a coherent response. Additionally, migration itself must be recognised as a legitimate form of adaptation for individuals and communities facing irreversible environmental harm. Without ambitious mitigation efforts, climate change impacts and displacement will exponentially increase³³⁸. Without resilience building in countries of origin, forced mobility will increase³³⁹. Without a just and inclusive transition within the EU, climate policies will exacerbate existing inequalities³⁴⁰. And without multi-level coordination, at international, regional, national and local levels, responses will remain fragmented and insufficient. Simultaneously, any effective and equitable approach must be grounded in responsibility-based principles of international environmental law, acknowledging that States in the “Global North” have historically contributed disproportionately to global emissions. Therefore, they have heightened obligations, namely, to reduce emissions and support adaptation, but also to facilitate safe, voluntary and dignified mobility for climate-vulnerable populations whose precarity is rooted in long-standing structural and colonial injustices.

In conclusion, this thesis has argued that climate-related displacement is not merely a legal challenge, nor solely an environmental one. In reality, it is a multidimensional human rights issue which demands a multidimensional response. Ensuring effective protection requires aligning legal reform, scientific evidence, intersectional analysis and multi-level governance into a coherent and future-proof framework. Only by doing so can the EU and its

³³⁸ See, for example, Gonzalez (n319) p.121.

³³⁹ Ibid, p.126.

³⁴⁰ Ibid, p.126-128.

Member States fulfil their international and human rights obligations, uphold their foundational values, and respond meaningfully to one of the defining challenges of our time.

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