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CLIMATE-INDUCED MIGRATION: LEGAL AND HEALTH IMPLICATIONS

Avidan Kent and Maya Prabhu

Introduction

One of the most significant consequences of climate change will be mass human displacement. While the ubiquitous image of climate-induced migration is that of an Atlantis-like sinking island nation, the reality will be far more varied. Rising sea levels may indeed cause small island states to slowly submerge. Equally likely are slow-onset events, such as increased heat levels and droughts¹ which will propel individuals to migrate.² Extreme weather events, such as typhoons, wildfires and floods, will affect the habitability of certain regions, leading to land erosion and increased salinization of agricultural land.³ Some of these impacts will lead directly to rapid displacement, whereas others will more indirectly influence economic, social or political conditions.⁴ Some of these push factors are permanent in nature; in other cases, the damage may be temporary and could be remedied.

Just as the reasons for migration are varied, so does the act of migration itself take many different forms. Some affected communities will react to eroding coastlines by moving their homes several hundred meters inland.⁵ Others will engage first in internal migration to different regions or large cities, or seek to cross borders in order to avoid the long-term impacts of climate change.⁶ Some affected persons who reside in the richest communities in the world⁷ will benefit from financial and governmental institutions and the availability of adaptation options. Others will be entirely unprotected. Some migrants will have easy routes to other well-resourced countries,⁸ while others will not. Some will consider their displacement a temporary condition, hoping that future adaptation efforts will allow their return. Others will settle down in their new locations and build new lives eking out whatever livelihoods and communities they can.

In short, there is no single lens through which to view the process of climate-induced migration. Not surprisingly, efforts to address this phenomenon at the international level are abstract and fragmented. The purpose of this chapter is to provide a historical overview of legal interventions and to consider important gaps in the social and health needs of migrants. The chapter will conclude with proposals for climate migration interventions.

Climate-Induced Migration and International Law: A Timely Opportunity

International climate change laws and policies have traditionally focused on the environmental and economic impacts of climate change. It was not until 2008 that social development and human rights received more attention. Several Human Rights Council Resolutions became the bellwether, addressing the link between climate change and human rights.⁹ These Resolutions ‘trickled down’ into the UNFCCC process, leading to explicit references to human rights in a number of UNFCCC COP decisions.¹⁰ The process of linking climate change with social development peaked with the 2015 Paris Agreement, characterized by John Knox as a ‘human rights treaty’ due to its clear emphasis on the human and social dimension.¹¹

Within this broader context came the 2010 Cancun Agreements,¹² which called on the UNFCCC’s member states to

enhance action on adaptation . . . by undertaking, inter alia. . . Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.¹³

This statement was the first international recognition of human displacement as linked to, and resulting from, climate change. This placed the topic of climate-induced migration on the UNFCCC negotiations table, sparking international recognition within the climate regime and beyond.¹⁴

Steps beyond declaratory statements were undertaken in 2015, as part of COP Decision 1/CP.21 (‘Adoption of the Paris Agreement’). The UNFCCC Member States established the Task Force on Displacement, mandated to “develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change”.¹⁵ In line with the expansion of climate negotiations into the ‘social sphere’, the Task Force assembly included organizations such as Red Cross, IOM, UNHCR, ILO, UNDP, PDD, and civil society representation.¹⁶

Additional measures occurred in 2018 with the adoption of the UN Global Compacts on Migration (GCM) and Refugees (GCR). These initiated further actions such as the GCM review process and the identification of specific issues for negotiations like the Task Force Report.¹⁷ However, none of these developments defined new rights and obligations in the context of climate-induced migration. More recently, the decisions establishing and operationalising the UNFCCC Loss and Damage Fund have made important references to climate migration, which may represent a promising step forward. The size of this fund and its future usefulness remain to be seen.

It is important to note the institutional framing for climate-migration. For many years, the topic was ‘institutionally homeless’, outside of international institutions’ mandate and off-limits from any meaningful negotiation table. The COP 1/CP.21 Decision and the Task Force on Displacement established the UNFCCC as an institutional home for climate-induced migration negotiations. Other notable institutional developments that have taken place in the last decade include the creation of the highly active Migration, Environment and Climate Change (MECC) Division at the UN Migration Agency (IOM); the establishment of the Nansen Initiative (later on transformed into the Platform on Disaster Displacement); and increased attention from IGOs, such as the Red Cross and the UNHCR.

The processes described here are still in early stages. Global, regional and domestic policy responses are all being framed,¹⁸ and different legal approaches are being considered. As such,

there is ‘a window of opportunity for international action on climate-induced migration’¹⁹ in which new norms could be developed.

The Legal Foundations and the Missing Pieces

Though the existing legal framework regulating climate-induced migration is insufficient,²⁰ it does include several important legal elements.²¹ First, a wide body of human rights laws secure climate migrants’ most basic rights.²² Second, other instruments, such as the Sendai Framework, the Nansen Protection Agenda, the UN Guiding Principles on Internal Displacement, the Convention Related to the Status of Stateless Persons, together with certain regional instruments (e.g., the Kampala Convention, the Cartagena Declaration) address specific situations, regions or elements related to climate-induced migration.

At the same time, there are notable gaps in the legal framework²³ which adversely affect the protection of climate migrants’ rights. The following section provides a preliminary review of some of those gaps with a specific focus on migrants’ rights to physical and mental health.

No Right to Cross a Border and Legally Stay in the Host State

The most discussed legal gap concerns climate migrants’ lack of a recognized legal right to seek refuge in other states. The 1951 Refugee Convention provides a ‘refugee’ status only to those who cannot return to their home countries due to a well-founded fear of persecution “for reasons of race, religion, nationality, membership of a particular social group or political opinion”.²⁴ While UNHCR²⁵ and certain domestic courts²⁶ confirm that climate-related events *may impact* asylum decisions, this can only happen where climate-related considerations affect Convention grounds and depend on claimants demonstrating a ‘well founded persecution’.

Other regional instruments, notably the Kampala Convention (African Union) and the Cartagena Declaration (Latin America), provide wider definitions which may allow climate-induced migrants to seek a refugee status in these specific regions. These instruments also address more general events that disturb the public order as grounds for protection. To date, however, there is no indication that states accept a wide interpretation of this wider language to also include climate-related events.

The Financial/Funding Gap

Another identified protection gap concerns the lack of an appropriate financial mechanism to support *inter alia* host states’ costs of hosting migrants (whether internal or international).²⁷ These costs could be substantial, especially where states ambitiously try to secure ‘costly’ rights for migrants, such as the right to education, shelter and healthcare. These costs are substantial in the context of high-income countries, and are beyond the reach of low- and middle-income countries, where the vast majority of climate-induced migration is taking place.

Statehood and Statelessness

Many questions remain regarding notions of statehood and statelessness. In legal terms, it is not clear what the future status of ‘sinking’ states will be, and whether their citizens will become stateless.²⁸ This scenario also suggests severe financial implications,²⁹ ranging from the loss of property, housing and land³⁰ to the loss of the much wider states’ rights vis-à-vis their resources

(including their Exclusive Economic Zones).³¹ The UN International Law Commission is currently researching statehood issues together with issues that are related to the protection of individuals affected by sea level rise.³²

The Enforcement Gap

As stated earlier, a wide body of human rights laws provides protection for climate migrants' most basic needs.³³ Similarly, the need to protect climate migrants' human rights has indeed been recognized by the international community.³⁴ In reality, there is a recurring "gap between law and practice. [. . .] in practice these rights are rarely fully realized, especially for IDPs."³⁵

Human rights laws often require victims to establish that the threat to their rights is imminent.³⁶ Due to the slow nature of many climate-related effects, the threat in these cases may not be regarded as imminent until it becomes nothing short of extreme. This point was demonstrated in the Human Rights Committee's iconic *Teitiota* ruling. Even whilst accepting the claim that "sea level rise is likely to render the Republic of Kiribati uninhabitable",³⁷ the Committee did not regard the threat as sufficiently imminent. The Committee commented that the next decade "could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community" in order to protect the petitioner's right to life. Two dissenting members observed that the current living conditions were already dire due to the lack of access to clean water and habitable space, the destruction of food crops, flooding and severe health issues relating to poor water quality.³⁸ This suggested that the right to life could be invoked only "where all hopes are gone, when it is clear that the nation island's future is doomed".³⁹ Opined Committee member Duncan Laki Muhumuza: "[i]t would indeed be counterintuitive to the protection of life, to wait for deaths to be very frequent and considerable; in order to consider the threshold of risk as met".⁴⁰

The 'individualised' nature of human rights protection presents yet another challenge for climate migrants' rights. The UN Human Rights Committee (HRC) has noted that States must refrain from returning individuals to countries in which there are substantial grounds for a real risk: 'Such a risk must be personal in nature and cannot derive merely from the general conditions'.⁴¹ However, the impact of climate change is never 'personal in nature', leaving one to wonder whether this body of law is indeed appropriate in these circumstances.⁴² The UNHCR Secretariat has explicitly commented on this issue, in part,

The fact that many or all members of a community are impacted does not undermine the validity of any individual member's claim In some cases, the adverse effects of climate change and disasters on an entire community may strengthen rather than weaken the evidence that justifies the fear of an individual being persecuted.⁴³

The Right to Physical and Mental Health for Climate-Induced Migrants

Part II reviewed the legal framework addressing climate-induced migration. The following section will amplify the discussion on the context of the right to physical and mental health.

The Human Right to Physical and Mental Health

The 1946 World Health Organization's Constitution defines 'health' as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".⁴⁴ It adds that "[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of

every human being without distinction of race, religion, political belief, economic or social condition”.⁴⁵ The 1948 Universal Declaration of Human Rights further consolidated the notion,

[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁴⁶

Article 12(1) of the 1966 International Covenant on Economic, Social and Cultural Rights similarly states that “[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.⁴⁷ The right to health is enshrined in a multitude of international documents,⁴⁸ and, as noted in a OHCHR Fact Sheet, “every State has ratified at least one international human rights treaty recognizing the right to health”.⁴⁹

The right to health has also been recognized in several UNFCCC decisions. Most prominently, the preamble to the Paris Agreement calls on the member states to take action ‘to address climate change, respect, promote and consider their respective obligations on human rights, the right to health’.⁵⁰ Decision 3/CP.25 further acknowledges that as “climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health”.⁵¹

There is ample research that demonstrates the link between health considerations and climate-induced migration in both the pre and post migration stages.⁵²

Pre-Migration Phase: Health Considerations as Push Factors or Migration

The impact that climatic changes have on humans’ health has been thoroughly addressed in a number of authoritative sources, including in the 2014 Intergovernmental Panel on Climate Change (IPCC) report⁵³ and the 2020 Lancet Countdown on Health and Climate Change report.⁵⁴ Climate change is affecting human health in a number of ways due to extreme weather events, heat waves, flooding, infectious diseases, air quality, undernutrition, reduced food availability, availability of water, poverty and more.⁵⁵

With respect to the impact on mental health, the Lancet Countdown report noted that “[c]orrelating climate change and mental health is challenging for several reasons, including local and global stigma and under-reporting, differences in health systems, and variations in cultural understandings of wellbeing”.⁵⁶ The IPCC report nevertheless noted that

[f]looding and storms may have profound effects on peoples’ mental health [FN omitted]. The prevalence of mental health symptoms (psychological distress, anxiety, and depression) was two to five times higher among individuals who reported flood water in the home compared to non-flooded individuals.⁵⁷

The IPCC report further describes how “floods, droughts and heat waves tend to increase the stress on all those who are already mentally ill [. . .]”. Post-traumatic stress responses, “generalized anxiety, depression, aggression and complex psychopathology [. . .]” are all known stress reports. Prolonged slow-onset events increase the risk of suicide. Extreme weather conditions threaten agricultural productivity, fishing, forestry and other economic activities. The impact on cities with high concentrations of mentally ill persons will be destructive. In addition, as

stated by the IPCC, “there may be a distressing sense of loss, known as ‘solastalgia’, that people experience when their land is damaged (Albrecht et al., 2007) and they lose amenity and opportunity”.⁵⁸

The health dangers do not arise only from heat and water. In the colder regions of the world, climatic changes have been described as “an emerging mental health challenge for Circumpolar Indigenous populations”.⁵⁹ Climate-related impacts will affect the ability to hunt, travel and maintain a traditional way of life. Such impacts, it is explained, may cause a variety of mental health problems, including anxiety, stress and grief.⁶⁰ Another notable concern relates to the deteriorating state of existing infrastructure and living conditions: “these added stressors may contribute to mental health impacts associated with anxiety and distress from current or anticipatory loss and displacement”.⁶¹ Other climate-related impacts, such as prolonged droughts, economic impacts, the effect of certain adaptation and mitigation efforts and more, are also identified in the literature as potentially leading to a variety of mental health-related problems.⁶²

All of these impacts adversely affect living conditions and could potentially contribute to one’s decision to migrate. These factors, if severe enough, could be enough to directly push individuals to migrate, or alternatively, contribute – alongside other social and economic factors – to the overall deteriorating human experience, eventually leading to migration.

Post-Migration: The Impact of Climate-Induced Migration on Individuals’ Physical and Mental health

Access to Health Services and Support Abroad (No Right to Cross a Border)

As stated earlier, one of the main gaps in the legal framework addresses climate migrants’ lack of a legal right to cross a border and to (legally) stay in their host state. The lack of a clear legal right to cross a border and reside in the host state could affect migrants’ access to health services in two meaningful ways. The first is in the case of internal displacement, where health services are unavailable, and the only way to access health services is via cross-border migration. The lack of a right to cross borders in these cases naturally implies limitations on the ability to enjoy a right to physical and mental health.

The second scenario addresses the situation where the individual has already crossed a border, but their access to health services is impaired due to the lack of a legal right to stay in the host country. The need to secure migrants’ access to health services was explicitly addressed by the Global Compact for Migration (GCM) in many different contexts. For example, in the context of unaccompanied and separated children, it asks states to “provide access to health care services, including mental health”.⁶³

Lack of Access to Health Services in the Home Country as a Reason to Delay Return (No Right to Cross a Border and Legally Reside in Host States)

Another related issue addresses the situation of those who have already crossed a border, but due to the lack of legal right to stay (i.e., no refugee status) might be sent back to their home countries, which may not be able to protect their right to health. An interesting case study relates to the situation of the 2010 Haiti earthquake, following which many Haitians sought refuge in neighboring states. The UNHCR and the OHCHR co-evaluated the possibility of returning them to Haiti. The two organizations concluded that the home state’s inability to provide *inter alia* health services should stop host countries from conducting returns.⁶⁴

Another important clarification on this topic (and more related to the specific context of climate change) was made by the UNHCR's Secretariat, in a document titled 'Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters'.⁶⁵ The Secretariat explained in this document that where conditions are bad enough to affect the protection of human rights, "affected populations may be exposed to a risk of human rights violations that amount to persecution within the meaning of the 1951 Convention".⁶⁶ In other words, where the human right to health is unprotected, it could be that a claim to deny return to the country of origin could be sustained.

The Financial Gap: Resources for Supporting the Provision of Health/Mental Health Services (The Finance/Funding Gap)

As stated earlier, the effective protection of rights often requires resources. This point has been stressed in policy documents, *inter alia* the UNFCCC Task Force Report and the Nansen Protection Agenda.⁶⁷ This financial gap has also been emphasized by many of the authors who have proposed regulatory frameworks for the protection of climate migrants, most of which address the need to link such proposed frameworks with a dedicated fund.⁶⁸

Another point concerning resources links the protection of the right to mental health to the ability to exercise other rights, notably to apply for refugee status. The UNHCR's 'In Harm's Way' study reports on Haitians seeking refuge in Latin American countries following the 2010 earthquake. The report mentions – in several places – the difficulties of those suffering from trauma due to the environmental disaster that they have just faced, when applying for visas/refugee status in their host countries: "assessing claims within the criteria of the Refugee Convention was difficult because Haitians were suffering from serious psychosocial harms and struggling to articulate coherent claims".⁶⁹ Allocating resources for supporting these individuals seems necessary in order to allow them to exercise their rights.

Loss of Homeland, Culture, Communities, Identity (Statehood, Loss and Damage)

The legal analysis presented here discusses terms such as 'statehood' and 'loss and damage'. In the more extreme examples (e.g., sinking nation islands) the loss of a state's statehood may lead to certain legal questions and consequences, such as, *inter alia*, the possible statelessness of its citizens and the loss of sovereignty over territory and natural resources. In most cases, however, the existence of the state will not be in question, as the state will not disappear. Rather, parts of its territory will be degraded and the environment will gradually change. All these changes – from the complete loss of state to the more common degraded environment – could affect an individual's mental health.

The experience of climate-induced migration inherently embeds a sense of loss; the migrant's homeland has often been changed – degraded enough to induce displacement. Authors are increasingly discussing terms such as 'solastalgia'⁷⁰ or 'ecological grief',⁷¹ essentially reflecting the impact of environmental change, degradation and loss on local communities.

Certain case-studies report the mental health impacts that are associated with climate-induced migration. With respect to the Alaskan Iñupiat community, it was noted that "[m]ental health impacts related to safety and security concerns as well as a sense of loss due to changing sociocultural and environmental conditions have also been reported".⁷²

Moreover, the loss of homeland could mean a variety of incidental losses that may exacerbate the aforementioned sense of grief and its impact on an individual's mental health. For example,

Adger et al. link displacement with loss of culture: “[w]hen people are displaced from places that they value, there is strong evidence that their cultures are diminished, and in many cases endangered”.⁷³ A different study examining the impacts of climate change on mental health commented on the impacts of acculturation in the case of migration.⁷⁴

Other authors have focused on the mental health impacts associated with the disruption of social ties resulting from climate-induced migration.⁷⁵ In short, the loss of homeland, even if not complete and extreme, may lead to a line of adverse effects on one’s community, culture, way of life, landscapes, sense of security and certainty and more. These situations are all common to climate migrants and can all affect their mental health.

Notes

- 1 Jesse Bell and others, ‘Changes in Extreme Events and the Potential Impacts on Human Health’ (2018) 68(4) *Journal of the Air & Waste Management Association* 265.
- 2 E.g., Amir Reza Khavarian-Garmsir and others, ‘Climate Change and Environmental Degradation and the Drivers of Migration in the Context of Shrinking Cities: A Case Study of Khuzestan Province, Iran’ (2019) 47 *Sustainable Cities and Society*; Stephen Sherwood and Matthew Huber, ‘An Adaptability Limit to Climate Change Due to Heat Stress’ (2010) 107(21) *Proceedings of the National Academy of Sciences of the United States of America* 9552.
- 3 E.g., Virginie Duvet and others, ‘Risks to Future Atoll Habitability from Climate-driven Environmental Changes’ (2021) 12(3) *WIREs Climate Change* 1–28.
- 4 UK Government Office for Science, *Foresight: Migration and Global Environmental Change* (2011) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf>.
- 5 See for example Arne Harms, ‘Under the Climate Radar: Disaster and Displacement in the Bengal Delta’ in Ali Nobil Ahmad (ed), *Climate Justice and Displacement in the Global South* (Heinrich Boll Foundation 2020) 150.
- 6 See for example the case of Ioane Teitiota and his family – residents of Kiribati – who asked to seek refuge in New Zealand, claiming that the impacts of climate change on their home country will pose a risk to their lives. Mr Teitiota’s case was litigated before New Zealand Courts, and eventually before the UN Human Rights Committee, UN Human Rights Committee (HRC), *Ioane Teitiota v New Zealand* (advance unedited version now available: 23 September 2020) UN Doc CCPR/C/127/D/2728/2016 (7 January 2020).
- 7 Alan Taylor, ‘Alaska’s Climate Refugees’ *The Atlantic* (7 July 2015) <<https://www.theatlantic.com/photo/2015/07/alaskas-climate-refugees/397862/>>.
- 8 See for example the USA-Marshall Islands Compact of Free Association, which allows citizens of the Marshall Islands to immigrate to the USA.
- 9 See for example UN Human Rights Council Resolutions 7/23 (2008), 10/4 (2009), 18/22 (2011), 26/27 (2014), and, importantly, the Paris Agreement (2015).
- 10 Notably, Decision 1/CP.16 (2010) (the Cancun Agreements) states: ‘Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability’.
- 11 John Knox, ‘The Paris Agreement as a Human Rights Treaty’ in Dapo Akande and others (eds), *Human Rights and 21st Century Challenges: Poverty, Conflict, and the Environment* (OUP 2020).
- 12 Attempts to address the human elements were made in different forms/areas; see for example the negotiations over the establishment of the Sustainable Development Mechanism – the successor of the Kyoto Protocol – and the calls to incorporate human rights mechanisms in this market-based legal instrument. See for example John Knox, ‘Human Rights and Safeguards in the New Climate Mechanism Established in Article 6, Paragraph 4 of the Paris Agreement’ 3 May 2016 <https://www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf>.
- 13 UNFCCC Decision 1/CP.16, para 14(f).

- 14 See developments within the UN General Assembly (notably the Global Compacts), and other institutions such as the IOM, the PDD, Red Cross, and more.
- 15 UNFCCC Decision 1/CP.21, para 49.
- 16 UNFCCC, 'Task Force on Displacement – Membership' <<https://unfccc.int/process/bodies/constituted-bodies/WIMExCom/TFD/membership>>.
- 17 Task Force on Displacement, 'Report of the Task Force on Displacement' (17 September 2018) <https://unfccc.int/sites/default/files/resource/2018_TFD_report_17_Sep.pdf>.
- 18 Simon Behrman and Avidan Kent (eds), *Climate Refugees: Global, Local and Critical Approaches* (CUP 2022).
- 19 Elin Jakobsson, 'Lessons from the Past: Momentum Going forward. Norm Dynamics and the Process of Protection for Climate-induced Migration and Displacement' in Behrman and Kent (eds) (n 18) 85.
- 20 The reader should be aware that many of these legal instruments are limited in one way or another. For example, some are 'soft laws', while others are limited in terms of memberships/geographic coverage. These issues were all discussed elsewhere and are beyond the scope of this chapter's discussion.
- 21 A number of authors have mapped the variety of legal instruments that are addressing climate-induced migration; see for example Kälin and Schrepfer (n 23); Sumudu Atapattu, 'A New Category of Refugees?' in Simon Behrman and Avidan Kent (eds), *Climate Refugees: Beyond the Legal Impasse?* (Routledge 2018) 34; Avidan Kent and Simon Behrman, *Facilitating the Resettlement and Rights of Climate Refugees* (Routledge 2018) 9.
- 22 Sumudu Atapattu, 'Climate Change, Human Rights, and Forced Migration: Implications for International Law' (2009–2010) 27 *Wisconsin International Law Journal* 607.
- 23 Walter Kälin and Nina Schrepfer, 'Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches' (2012) UNHCR Legal and Protection Policy Research Series <<https://www.unhcr.org/uk/media/no-24-protecting-people-crossing-borders-context-climate-change-normative-gaps-and-possible>>; Behrman and Kent (n 18).
- 24 Article 1(A)2, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.
- 25 UNHCR, 'Legal Considerations Regarding Claims for international protection made in the context of the adverse effects of climate change and disasters' (2020) <<https://www.refworld.org/docid/5f75f2734.html>>.
- 26 Camilla Schloss, 'The Role of Environmental Disasters in Asylum Cases: Do German Courts Take Disasters into Account?' in Behrman and Kent (eds) (n 18) 243.
- 27 Nansen Protection Agenda (Vol 1, 2015), 18–19; Task Force Report (n 17) 30–32; Katrina Miriam Wyman, 'Response to Climate Migration' (2013) 37 *Harvard Environmental Law Review* 167, 181.
- 28 See full analysis of the relevant legal situation in Kent and Behrman (n 21).
- 29 Ori Sharon, 'Tides of Climate Change: Protecting the Natural Wealth Rights of Disappearing States' (2019) 60(1) *Harvard International Law Journal* 95.
- 30 Scott Leckie, *Finding Land Solutions to Climate Displacement: A Challenge Like Few Others* (Displacement Solutions 2013).
- 31 Sharon (n 29).
- 32 ILC, 'Sea-level Rise in Relation to International Law' (2018) A/73/10 <https://legal.un.org/ilc/reports/2018/english/annex_B.pdf>.
- 33 This protection is provided whether via the key human rights conventions, *inter alia* International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), The International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Importantly, certain human rights are universally protected under customary international law; see Olivier De Schutter, *International Human Rights Law* (CUP 2019) 59.
- 34 For example, The Global Compact for Safe, Orderly and Regular Migration (GCM) states that it is 'based on international human rights law and upholds the principles of non-regression and non-discrimination. By implementing the Global Compact, we ensure effective respect for and protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia

and intolerance, against migrants and their families’. Global Compact for Safe, Orderly and Regular Migration, para 15(f).

- 35 Walter Kälin and Rhodri Williams, ‘Introduction’ in Walter Kälin and others (eds), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges* (ASIL/Brookings 2010) <<https://www.refworld.org/pdfid/4b6c164e2.pdf>> at 6.
- 36 Jane McAdam, ‘Climate Change Displacement and International Law: Complementary Protection Standards’, UNHCR background paper (May 2011) <<http://www.unhcr.org/4dff16e99.pdf>> 50–52.
- 37 Human Rights Committee, ‘Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2728/2016’, 7 January 2020, para 9.12.
- 38 See dissenting views by Duncan Laki Muhumuza and Vasilka Sancin, Human Rights Committee (n 6).
- 39 Simon Behrman and Avidan Kent, ‘Prospects for Protection in Light of the Human Rights Committee’s Decision in *Teitiota v New Zealand*’ (2021) Polish Migration Review 6, 24–35.
- 40 Dissenting views by Duncan Laki Muhumuza, Human Rights Committee (n 6).
- 41 Human Rights Committee, ‘General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life’ (30 October 2018) CCPR/C/GC/36, para 30.
- 42 It should be noted on the other hand that the HRC did leave an opening, allowing an ‘except in the most extreme cases’ exception to the personalization requirement.
- 43 UNHCR Legal Considerations (n 25) Para 8.
- 44 Constitution of the World Health Organization (1946), Preamble.
- 45 *ibid*.
- 46 Universal Declaration of Human Rights (1948), Article 25.
- 47 International Covenant on Economic, Social and Cultural Rights (1966), Article 12(1).
- 48 For a thorough review, see Margaretha Wewerinke-Singh and Melina Antoniadis, ‘Climate Displacement and the Right to Mental Health’ in Simon Behrman and Avidan Kent (eds), *Climate Refugees: Global, Local and Critical Approaches* (CUP 2022) 146.
- 49 OHCHR and WHO, ‘The Right to Health’ (2008) Fact Sheet No 31 <<https://www.ohchr.org/documents/publications/factsheet31.pdf>> 1.
- 50 Paris Agreement (2015), Preamble.
- 51 UNFCCC, Decision 3/CP.25 ‘Enhanced Lima work programme on gender and its gender action plan’ (2019) FCCC/CP/2019/13/Add.1.
- 52 Wewerinke-Singh and Antoniadis (n 48).
- 53 See for example IPCC Fifth Assessment Report (2014), Chapter 11 (Human Health: Impacts, Adaptation, and Co-Benefits’ <https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap11_FINAL.pdf>; IPCC, ‘Global Warming of 1.5°C’ (2018), chapter 3 (Impacts of 1.5°C global warming on natural and human systems) <<https://www.ipcc.ch/sr15/>>.
- 54 Nick Watts and others, ‘The 2020 Report of the Lancet Countdown on Health and Climate Change: Responding to Converging Crises’ (Lancet 2020).
- 55 See review in Kirstie Ebi and others, *The 1.5 Health Report: Synthesis on Health & Climate Science in the IPCC SR1.5* <https://www.who.int/globalchange/181008_the_1_5_healthreport.pdf>.
- 56 Watts and others (n 54) 142.
- 57 IPCC 2014 (n 53) 722.
- 58 *ibid* 732.
- 59 Ashlee Cunsolo Willox and others, ‘Examining Relationships between Climate Change and Mental Health in the Circumpolar North’ (2015) 15 Reg Environ Change 169, 171.
- 60 *ibid*.
- 61 *ibid* 176.
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