Mending the Gaps in International Law to Protect Forcibly Displaced Climate Migrants

A thesis presented by
Roxie Miles

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I. Introduction

Figure 1: Hurricane Iota in Honduras.¹

It is a common but mistaken assumption that the climate change-driven "refugee" crisis will be an event of the future; that we can presently only imagine global warming so severe that it leaves regions of the earth uninhabitable and scatters entire countries’ populations around the world. This is not the case. People around the world have already been forced out of their homelands because of climate change. The photo in Figure 1 depicts Hurricane Iota survivors in Honduras in 2020, which is just one of a series of current-day forced climate migration cases that this thesis examines.² For over thirteen

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years now, environmental threats, including those that can be partially attributed to climate change, have caused higher rates of human displacement than conflict.³

Climate change causes sea levels to rise, and extreme weather events to occur more frequently and with greater severity.⁴ In 2020, most of the people who were displaced from their homelands were forced to migrate due to the type of severe weather events attributable to climate change: floods, wildfires, droughts, and heat waves.⁵ These headlines are familiar. In the past few years, people have fled increasingly severe floods in Bangladesh, newly barren farmlands in El Salvador, desertification, floods, and food scarcity in Africa’s Sahel region, droughts in Guatemala and Honduras, and frequent hurricanes in the Caribbean.⁶

Over 200 million people are predicted to be displaced before 2051 by severe environmental events and gradually-occurring environmental changes. Approximately 50 million of these people will leave their home countries and seek shelter abroad.⁷ They will need legislation that recognizes the reality of the threat they are fleeing and their need for shelter abroad, to support their legal admittance into a new country.

II. Climate "Refugees"

⁷ Lavelle, “By 2050.”
At the moment, there is no codified legal definition for environmentally displaced refugees. The general definition of “refugee,” in the 1951 Refugee Convention, excludes environmental sources of displacement:

“[O]wing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, [a refugee is either (1)] outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or... [[(2)] not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’.”

Since people forcibly displaced across international borders by climate change are not fleeing persecution at all, no matter how severe the environmental factors are that are driving their migration, they do not count as "refugees" under the 1951 Refugee Convention. As McAdam succinctly explains, therefore, “[i]n law, the term ‘refugee’ has a precise meaning and it is erroneous to speak of ‘climate refugees’.” The fact that, under international law, the definition of “refugees” cannot account for people forced to seek refuge because of climate displacement matters beyond the issue of terminology, however; critically, because climate-displaced people do not legally count as "refugees," they cannot receive protection from refugee law.

Under the legal definition of “refugees” environmental migrants could be granted the legal protection of “refugee” status, not because of the imminent threat of a climate event, but only if there were a

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11 McAdam, *Climate Change*, 3.
12 McAdam, *Climate Change*, 3, 87-88.
secondary qualifying threat that could be related to the event, such as if “their government has consciously withheld or obstructed assistance in order to punish or marginalise them on one of the five Convention grounds.” If someone were displaced by a climate event and were simultaneously discriminated against by government aid because of their “race, religion, nationality, membership of a particular social group or political opinion,” their need for refuge would be twofold, and without question related both to the threat of climate change and the targeted discrimination. Critically, however, any asylum protections they might receive would only be on the basis of their need for relief from the discrimination they faced, and would be extended to them solely to offer relief from that persecution. The 1951 Convention, then, clearly provides inadequate legal protection for people who do not experience the accounted-for forms of persecution, and are seeking asylum solely for relief from the environmental elements barraging their homelands.

III. Three Dimensions of Climate-Driven Displacement

In order to proceed with this thesis, it is necessary to establish which experiences are captured within the label of climate migration, if we choose not to formally refer to people in this group as “refugees.” Roger Zetter, the former Director of the University of Oxford’s Refugee Studies Centre, offers an expansive and intuitive definition of the motivations and resultant actions of climate-displaced groups:

> “persons or groups of persons who, for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.”

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12 McAdam, *Climate Change*, 87-88.
13 McAdam, *Climate Change*, 87-88.
This definition highlights three important dimensions of migrants’ experiences, which must be fully accounted for by any adequate form of legal protection.

First, this proposed definition acknowledges the time scale of the displacement event. The rate at which their lived environment becomes uninhabitable can be gradually progressing (as in the case of sea level rise) or “sudden” (such as a hurricane).\textsuperscript{16} Integral to this dimension, further, is the range of possible consequences from different natural disasters: whether the environment is progressing slowly toward complete, permanent, uninhabitability, and/or whether the region is threatened repeatedly by quickly- or slowly-occurring natural disasters that may leave people only “temporarily” displaced for the duration of the climate event.\textsuperscript{17} Second, this definition also considers that these displaced populations could be able to move elsewhere within their country’s borders, therefore experiencing \textit{internal displacement} and not requiring asylum protections abroad, or could instead be displaced across country borders as international migrants.\textsuperscript{18} Third, it aptly recognizes that this evacuation includes some degree of choice. Although this definition requires that groups leave because of detrimental, if not absolutely dangerous, environmental conditions related to climate change, it is not clear that people will \textit{only} opt to leave when their homes have been rendered completely unlivable. Instead, a study of environmentally-driven displacement, with an awareness of particularly slowly occurring displacement events, must account for the possibility that people may anticipate the destruction of their homeland and choose to leave beforehand.\textsuperscript{19}

1) \textbf{Rate and Duration of Uninhabitability:}

It is essential that the legal protections available for people fleeing climate change are responsive to variations in the rate and duration of different environmental displacement events, because, intuitively,
these factors are critical determinants of the different ways people are driven to migrate. People living in a region where an environmental event occurs suddenly and causes significant (but temporary) destruction to their infrastructure, such as a hurricane or wildfire, will likely be forced to flee because their homes have vanished practically overnight. Critically, though, this displacement may be temporary, because although climate change could make their home region more susceptible to similar environmental disasters in the future, it is nevertheless possible for their homes to be rebuilt, and for them to one day return to live there. Alternatively, people whose homelands will be irreparably transformed, such as in regions that are slowly submerged by ocean waters, will be forced out of their homes more gradually according to their ability to withstand the initial stages of the environmental siege, but will all eventually be forced elsewhere, and will never again be able to return.

How quickly an event transforms the local landscape, and how long it affects the region, are completely unaffected by which legal doctrines are available to respond to its harms. The following two sections, on the national or international span of displacement and the voluntary or involuntary nature of leaving home in the face of an environmental disaster, are legally drawn distinctions rather than immutable facts. The time horizon and permanency of the different sources of environmental displacement provide the foundation upon which the second and third conditions follow; these factors are critical determinants of whether communities are displaced nationally or internationally, and crucially affect the perceived willingness of their movement.

2) Distance of Displacement

Internal displacement can occur during both slowly- and quickly-occurring environmental events, but for instantaneous disasters, far more people are displaced within a country’s borders than beyond them. Although there currently are no refugee protections for environmentally displaced people seeking asylum abroad, there are codified protections for “internally displaced persons” (IDPs) who

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20 Zetter, Protecting, 11, 14.
relocate within their country’s borders. These protections are made evident through 1998 UN Guiding Principles on Internal Displacement, which establish a classification of IDPs that unequivocally includes environmental displacement:

According to the treaty, IDPs are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of... natural or human-made disasters, and who have not crossed an internationally recognized State border.”

Although the Guiding Principles are not themselves legally binding legislation, they are regarded with significant international legal authority because they are known to “reflect and [be] consistent with binding human rights law.” Importantly, the Guiding Principles do not restrict their protections to natural disasters that occur along a specified time horizon, and accommodate both environmental and anthropogenic sources of displacement. This means that the Guiding Principles protect people displaced by both naturally occurring environmental disasters and those that occur as a consequence of climate change, without making protection contingent on evidence that a particular environmental event was a result of climate change.

Although the Guiding Principles cannot remedy the lack of available protections to internationally displaced climate migrants under current refugee law, they illustrate the critical role that international human rights law can play in responding to this humanitarian crisis. The Guiding Principles enumerate 30 core human rights protections, which they apply to IDPs using the aforementioned definition. Most relevantly to the concepts of state responsibility and persecution introduced in the legal definition of “refugees,” Principle 18 establishes the requirement that state-run recovery and

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22 McAdam, Climate Change, 86-87.
23 McAdam, Climate Change, 86-87.
24 McAdam, Climate Change, 93.
25 McAdam, Climate Change, 86-87.
evacuation efforts must guarantee IDPs’ “safe access to essential food and potable water, basic shelter and housing, appropriate clothing and essential medical services.” Importantly, the Guiding Principles are fairly inflexible on the issue of voluntary movement in response to an environmental event, and require that IDPs’ movement be “forced or obliged.” Principle 28, however, specifies that if the displacement is temporary, IDPs “forced or obliged” to leave their home territory must later have the voluntary choice between returning to their homes, staying in the new region they have moved to, or relocating to a new area within the country.

3) Voluntary vs Forced Displacement:

We have the evidence to predict what the environmental effects of climate change will be, how many people are currently threatened, and the number of people at risk of displacement. Importantly, however, we cannot reliably predict when people will actually be displaced by these disasters, or what degree of uninhabitability will leave populations “forcibly displaced.” This is where the third condition considered, voluntary movement, is relevant. There may be a legal distinction in how asylum applications are received if there is an indication of “voluntarily” having left, as opposed to having had no other option. What conditions, and what degree of inhabitability motivates people to leave their homes can vary wildly from person to person. This may create legal challenges in (1) anticipating the rate/timing at which people will be displaced by a climate event, even if the timing and scale of the event itself is more predictable, (2) interpreting how “voluntarily” people leave a location threatened by climate change, and (3) determining what legal protections they are owed as climate migrants, even if they may not be unequivocally forcibly displaced.

27 McAdam, Climate Change, 92-93.
28 McAdam, Climate Change, 86-87.
29 McAdam, Climate Change, 86-87, 92-93.
30 McAdam, Climate Change, 1.
31 McAdam, Climate Change, 1-2
32 Zetter, Protecting, 11.
33 McAdam, Climate Change, 1-2.
Consider residents of a country experiencing gradually intensifying heat waves that do not last the entire year. Although, at first, their experience may be merely that of an unusually warm summer, residents may grow concerned by continued periods of unusual heat, particularly if their regional infrastructure is not built to adequately respond (such as with air conditioning). Experiencing high temperatures for short periods of time likely won’t be life-threatening for most inhabitants of the region, but some people may anticipate the weather becoming worse in coming years and elect to leave before the country is completely unlivable. People fleeing a gradual, invisible climate disaster like this one, who seem to be moving voluntarily before their lives are at risk, may not be recognized as a group in urgent need of residency abroad. Nevertheless, if the heat waves progressively rise in temperature or frequency to such an extreme that the region truly is uninhabitable and everyone in the country must seek residency elsewhere, then the population is clearly left in need of legal grounding to pursue refuge abroad. Intuitively, people living amidst a progressively developing climate disaster should not only have access to legal protection after their homeland becomes absolutely uninhabitable. It is the task of any adequate legal apparatus targeting forced climate migration, then, to effectively determine at what point voluntary movement, in anticipation of a disaster, becomes forced evacuation.34

In order to respond to the likely incremental migration away from a location experiencing gradual environmental degradation that will eventually leave it uninhabitable, Zetter proposes a framework of progressively available rights protections based on the habitability of the location they are fleeing. According to Zetter, such legislation could offer one form of protection to people leaving initially, whose movement may be regarded as more voluntary, and then make a secondary form of rights protection available to people who have no choice but to leave their homelands.35

IV. What Kind of International Law?

34 McAdam, Climate Change, 1-2.
35 Zetter, Protecting, 4-5, 14.
Although IDPs are protected by the Guiding Principles, there is no legislation specifically addressing people voluntarily or forcibly immigrating internationally because of environmental threats. In further considering what rights protections could be available to these groups, it is helpful to consider how different fields of law interact with the issue of climate displacement.

**Environmental Law**

The current consensus in the field is that environmental legislation would not be the most effective method of guaranteeing legal protections to groups seeking asylum abroad. Instead, the prominent legal scholars Walter Kälin and Roger Zetter both agree that the optimal way for environmental law to assist with the issue is through its preventative capacities to limit the extent of the environmental degradation, to thereby slow down and diminish the effects of climate change. Both scholars instead advocate for expanded interpretations, modifications, or additions to human rights and/or refugee treaties to provide the needed rights protections.

Importantly, preventative environmental legal mechanisms can also focus on preventing climate-change-driven displacement, in addition to seeking to prevent climate change from progressing further. The Paris Agreement established the Task Force on Displacement (TFD) in 2015 to specifically study the issue of climate-propelled migration. By 2018, the TFD had produced recommendations for the United Nations Framework Convention on Climate Change for ways it could mitigate migration propelled by climate change, *in advance* of wide-scale mass displacement. The TFD was approved to continue its work in 2018, and is still responsible for focusing on what can be done within the UNFCCC and at the UN-level to reduce the threat communities face from

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36 McAdam, *Climate Change*, 3, 86-88.
37 McAdam, *Climate Change*, 82, Zetter, *Protecting*, 12-13. Kälin is an international law professor and a former Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (McAdam, *Climate Change* 87-88).
climate-driven displacement. Importantly, the UNFCCC approved the recommendations of the TFD, but has not taken further action to implement them.

Although environmental law does not currently present any legal protections for people displaced by climate change, it is significant that it has acknowledged that climate displacement is an *environmental* issue, and that it has begun preliminary work through TFD to respond to climate migration in conjunction with other international humanitarian mechanisms, like the International Organization on Migration, UN Development Program, and UN High Commissioner for Refugees.

**Refugee Law**

The 1951 Refugee Convention requires that asylum-seekers be fleeing persecution and not environmental disasters, although the overall conditions of fleeing a newly unlivable territory for safety abroad seem so compatible between the two cases that the term “climate refugee” makes intuitive sense. Refugee law *could* plausibly be extended to provide asylum protections for displaced people fleeing the environmental effects of climate change in a way that mirrors the intuitively similar case of asylum protections for displaced people fleeing persecution for the identity factors protected under the 1951 Convention, but no such protections have currently been established.

There are two distinct reasons why the persecution condition of the existing refugee law excludes people migrating *solely* because of climate changes’ destruction of their homelands. First, the 1951 Convention protects people from persecution on the basis of particular facets of their identities, and the harms of climate change are levied against an entire region without regard to the inhabitants’ racial,

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40 UNFCCC, “Task Force on Displacement.”
41 Lavelle, “By 2050.”
42 McAdam, *Climate Change*, 87-88, 96.
44 McAdam, *Climate Change*, 2-3, 87-88.
45 McAdam, “Environmental Migration,” 163.
religious, or social identities, and regardless of their national or political affiliations.\textsuperscript{46} Second, it is practically impossible to identify a specific persecuting agent in the case of an environmental disaster. It is difficult to establish that any one environmental event is a direct consequence of climate change, and much harder still to identify an individual country’s contributions to greenhouse gas emissions as \textit{singularly responsible} for an environmental disaster. In the absence of a particular entity conducting the persecution, and a targeted group experiencing persecution for a protected identity category, current refugee law \textit{cannot} provide legal recourse for environmentally displaced migrants seeking shelter abroad.\textsuperscript{47}

**Nationality Law**

When migrating populations are legally designated as “stateless,” they lose the rights associated with their former nationality. This threat is particularly salient for populations fleeing a country that, due to climate change, has \textit{disappeared}, such as in the case of an island swallowed completely by the sea. Critically, however, even in the total absence of their home country, migrants’ nationalities are not necessarily in jeopardy; nationality law could offer some protection. The continued legal recognition of environmental migrants’ nationalities depends on their country’s maintenance of \textit{some} territory, however small, and continued governmental functioning. This has led the Maldives to consider acquiring territory outside of their country’s current borders, so that even if the entire country landmass were lost to climate change, their citizens would not become stateless.\textsuperscript{48} If they did this, the Maldives and other countries taking similar action would still be parties to UN conventions, and would still have legal obligations to their citizens.\textsuperscript{49} Nationality law offers one further protection, specifically for climate displacement events spanning multiple generations: even if a set of parents are

\textsuperscript{46} McAdam, “Environmental Migration,” 163, McAdam, \textit{Climate Change}, 87-88.
\textsuperscript{47} McAdam, “Environmental Migration,” 163.
\textsuperscript{48} McAdam, \textit{Climate Change}, 101-102.
\textsuperscript{49} McAdam, \textit{Climate Change}, 96, 101-102.
legally stateless, the 1961 Convention of the Reduction of Statelessness can be used to protect their children against sharing their “stateless” status.\textsuperscript{50}

**Human Rights Law**

Human rights law currently offers the strongest protections for people displaced due to climate change. Human rights law establishes baseline legal protections guaranteed to all migrants, as human beings, the violation of which could constitute a legal reason to seek asylum abroad.\textsuperscript{51} Under prominent human rights treaties, including the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1981 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the 1989 Convention on the Rights of the Child, all migrants, and forced climate migrants among them, have a protected right to life, as well as the right to certain life-sustaining needs, like food security, housing, and physical health. These basic needs must be met, in order to honor their human rights, and facilitate their survival. They must also be granted the freedom to move, including going to, from, inside of, and between migrant camps. In practice, this means that they cannot be *imprisoned* in a particular location: migrant groups cannot be forced into a particular migrant camp, and must be free to come and go from any migrant camp, as they would like.\textsuperscript{52}

The life-threatening effects of climate change, critically, can violate a person’s recognized right to life.\textsuperscript{53} More than just threatening people’s lives in the most literal sense, climate change also poses an immediate threat to people’s employment prospects, economic security, and ability to safely live within the natural environment, all of which can be interpreted as constitutive of their right to life.\textsuperscript{54}

\textsuperscript{50} *Climate Change, Environmental Degradation and Migration* (Geneva, Switzerland: International Organization for Migration (IOM), 2012), 31.


\textsuperscript{53} McAdam, “Environmental Migration,” 164.

Importantly, there is some past international consensus that environmental harms can violate the right to life, as Malaysia, Nauru, and the Solomon Islands, have all made this argument before the International Court of Justice.\footnote{Zetter, Protecting, 17.}

**Indigenous Land Rights**

For indigenous communities displaced from their ancestral land by climate change, human rights law offers further assertions of their right to land use, in recognition of its particular significance for them culturally and historically.\footnote{Zetter, Protecting, 18, McAdam, “Environmental Migration,” 164.} This means that *indigenous* environmental migrants may be able to assert the legal claim that the human rights guaranteed to them to use and connect with their land, such as that established under Article 29 of the Declaration on the Rights of Indigenous Peoples, were violated by their displacement following an environmental disaster.\footnote{Zetter, Protecting, 18.} Furthermore, their established human right to engage in their cultural practices must be upheld, to the extent that they are non-site-specific, by any country where they are granted asylum.\footnote{McAdam, “Environmental Migration,” 164.}

In a significant legal case from September 2022, the UN Human Rights Committee (HRC) ruled that an indigenous group’s right to culture *had* in fact been violated by the effects of climate change they had suffered, and their home country’s inadequate response to protect them.\footnote{“Australia Violated Torres Strait Islanders’ Rights to Enjoy Culture and Family Life, UN Committee Finds,” United Nations OHCHR, 23 September 2022, https://www.ohchr.org/en/press-releases/2022/09/australia-violated-torres-strait-islanders-rights-enjoy-culture-and-family, Plano, Ryan, “UN Decision on Torres Strait Islanders a Major Win for Indigenous Peoples and Climate Justice,” Climate Refugees, 30 September 2022. https://www.climate-refugees.org/spotlight, Sinclair-Blakemore, Adaena, “Teitiota v. New Zealand: A Step Forward in the Protection of Climate Refugees under International Human Rights Law?” Oxford Human Rights Hub, 28 January 2020, https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/} Due to rising sea levels and changing weather events, the indigenous group, the Torres Strait Islanders, were restricted in their ability to cultivate crops and practice location-specific cultural rituals, and even had their historic
burial grounds interfered with. Although these threats were *entirely environmental*, the HRC found that Australia had violated the Islanders’ human rights to indigenous cultural practice and privacy, as protected by Articles 17 and 27 of the International Covenant on Civil and Political Rights. Australia was responsible for these climate impacts, they found, because it had failed to sufficiently protect them from these events by constructing seawalls or reducing its carbon emissions. This was a landmark case, because it is the first time a country’s carbon emissions and, separately, lack of climate change preparedness, were found to be a *human rights violation*. This case signals that, in practice, indigenous groups’ recognized cultural rights can be used to protect environmentally displaced communities.\(^{60}\)

**Non-refoulement**

Displaced communities have important human rights relating to their migration that have been recognized in law, independently of the source of their displacement. They have the right not to be collectively forced out of a particular country, and the right to one day return to their home regions.\(^ {61}\) A critical additional legal right, of *non-refoulement*, asserts migrants’ right not to be forced to return to a dangerous place.\(^ {62}\) Non-refoulement is particularly relevant to people fleeing climate disasters. In the 2020 case *Teitiota v. New Zealand*, the UN Human Rights Committee (HRC) decided that climate migrants, although not granted formal refugee protections, are protected under the principle of non-refoulement and therefore cannot be forced to return to the region they have fled.\(^ {63}\)

Ioane Teitiota applied for refugee status for himself and his family in New Zealand, *as climate refugees*. He argued that their former residence in Kiribati had been rendered unliveable due to climate change-driven pollution and sea level rise, and had forced them to seek asylum abroad.\(^{64}\) New Zealand’s Immigration and Protection Tribunal, High Court, Court of Appeal, and even Supreme Court, after

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60 Plano, “UN Decision.”
61 *Environmental Degradation and Migration*, 31
63 Sinclair-Blakemore, “Teitiota v. New Zealand.”
successive appellate efforts, all unanimously ruled against his application. He brought his case, further, to the HRC, on the grounds that New Zealand’s decision to force him to return to a land that climate change had left uninhabitable violated his protected right to life.\textsuperscript{65} Although the HRC also ruled against his application, their ruling established two important decisions for future climate “refugees.”\textsuperscript{66} First, their ruling set a standard of requiring that the threat a climate migrant faced, in order to be protected, must be proven to be “imminent,” or in the wording discussed earlier in this essay, must be immediately threatening enough to force someone to move, rather than a voluntary decision to avoid anticipated future harm.\textsuperscript{67} Second, they made the critical decision that non-refoulement rights apply to climate migrants, in language that specifically grounded this right in the recognition of climate change’s threat to the right to life: they ruled that nations “may not deport individuals who face climate change-induced conditions that violate the right to life.”\textsuperscript{68}

Importantly, in international law individual rulings do not create legal precedents. This means that the HRC’s decision that forcibly displaced climate migrants have a protected right to non-refoulement, in this ruling, is not binding international law. Despite not establishing protection for all climate migrants, however, it still provides a strong indication that the same right could be recognized for similar groups in future cases.\textsuperscript{69} And, further, if a population were to be forced out their country due to an “imminent” climate threat that endangered their right to life and were deemed to be, therefore, entitled to the right to non-refoulement, then they could not be forced to go back to their country of origin, and could instead, even without refugee eligibility under the 1951 Convention, receive the official status of “complementary refugee protection” in their destination country. The HRC’s key decision in this case that forced climate migrants could have an inviolable right to non-refoulement offers critically-needed legal support, by indicating their potential eligibility for complementary refugee protection.\textsuperscript{70}

\textsuperscript{65} Sinclair-Blakemore, “Teitiota v. New Zealand.”
\textsuperscript{67} Sinclair-Blakemore, “Teitiota v. New Zealand, McAdam, Climate Change, 1-2.
\textsuperscript{68} Lavelle, “By 2050.”
\textsuperscript{69} Lavelle, “By 2050.”
V. Proposals for Additional Forms of Legal Protection

Soft Law

Both the International Organization for Migration (IOM), and Jane McAdam, a leading scholar on the issue of climate change-induced migration, advocate for a legal response to this issue through non-binding soft law, rather than binding international law.\textsuperscript{71} Because individual nations are incentivized not to admit refugees by the perceived threat of their borders subsequently being overrun with a greater influx of people than they can adequately support or provide shelter for, a collective action problem arises. States would not agree to a binding international treaty requiring them to take action, because they have no guarantee that other countries would agree to the treaty as well, and do not know whether the “burden” of the refugee population that they would be legally required to support would be distributed across multiple signatory countries. Additionally, countries do not want to be the first to use similarly binding domestic law to recognize climate-displaced population’s right to asylum, because of similar concerns that it would be the sole country doing so and therefore risk needing to host all of the world’s climate “refugees.” Countries are further disincentivized from taking individual action, out of concern that showing any degree of amenability to the migrants’ plight could risk establishing a binding, customary legal responsibility to grant refugee protections for people forcibly displaced by climate change.\textsuperscript{72} At least for now, while there is still no global indication of countries’ willingness to collectively accept climate-displaced communities, states may only be willing to agree to environmental migrant protections enshrined in soft law.\textsuperscript{73}

There are two forms of existing soft law that could be used as the basis to incrementally achieve such an international consensus of mutual willingness to accept climate-displaced populations.\textsuperscript{74} First, the

\textsuperscript{71} Environmental Degradation and Migration, 32, McAdam, “Environmental Migration,” 161-162.
\textsuperscript{72} McAdam, “Environmental Migration,” 161.
\textsuperscript{73} McAdam, “Environmental Migration,” 161, Environmental Degradation and Migration, 32, Lavelle, “By 2050.”
\textsuperscript{74} McAdam, “Environmental Migration,” 161, Environmental Degradation and Migration, 32, Lavelle, “By 2050.”
IOM and Roger Zetter both propose that the UN Guiding Principles on Internal Displacement ought to be used as a model, from which a similar but international migration-oriented list of human rights principles could be formulated.75 Because, as discussed in an earlier section of this chapter, the Guiding Principles explicitly offer protection for people internally displaced by climate change, their structure could be used to expand the current legal understanding of international migrants to explicitly include environmentally-driven displacement across national borders. Directly mirroring the structure of the Guiding Principles to establish nonbinding legal standards of protection for international migrants could also engender respect and commitment to the new legislation, because of the strength of the Guiding Principles’ reputation.76

The second form of existing soft law that could be expanded and used as a foundation for further legal protections is the Protection Agenda, which specifically targets people forcibly displaced by climate change.77 In 2011, Norway and Switzerland developed the Nansen Initiative, which is geared toward working, country-by-county, to establish collective willingness to act on the issue of climate displacement, and to decide on a course of action.78 The Nansen Initiative produced the Protection Agenda to serve as this plan. It was signed by 109 countries in 2015, and in doing so captured crucial broad-scale willingness to adopt measures to protect climate-displaced people.79 The following year, it generated the Platform on Disaster Displacement project, which encourages the signatories to the Protection Agenda to adopt policies that achieve four goals: (1) mitigate their citizens’ risk to climate displacement, (2) facilitate means of mass migration that uphold the migrants’ human rights, (3) grant humanitarian visas or officially recognized temporary protection to climate migrants displaced to a signatory country, and (4) strengthen regional country networks’ ability to respond to cross-border

75 Environmental Degradation and Migration, 32, Zetter, Protecting, 21.
76 McAdam, Climate Change, 86-87, 93, Environmental Degradation and Migration, 32, Zetter, Protecting, 21.
77 Lavelle, “By 2050.”
79 Lavelle, “By 2050.”
climate displacement in the region.\textsuperscript{80} The Global Compact for Safe, Orderly and Regular Migration, which was officially endorsed by the U.N. General Assembly in 2018, is also non-binding, and encourages states to sign on to the Protection Agenda and take national action to develop legal protection pathways for climate-displaced populations.\textsuperscript{81}

**Model International Mobility Convention**

The Model International Mobility Convention is a theoretically developed international law that would offer protection beyond the scope of the existing 1951 Refugee Convention and the present use of complementary refugee status protections. This model proposes offering asylum protections to people displaced from their homelands for a much broader set of reasons than are currently accounted for, such as the threat of torture, arbitrary imprisonment, or climate-change driven environmental disruption. Unlike the 1951 Convention, this model is intended recognize the variety of reasons why people are motivated to leave their homelands to protect themselves, their families, or their continued access to employment, and the range of ways in which people travel across borders, including as forcibly displaced migrants, to rejoin their families, and on labor- and student visas. Without changing the presently binding 1951 Convention, the Model International Mobility Convention proposes creating asylum rights, as well as employment rights \textit{as strong as a citizen’s}, for an expanded category of “forced migrants” that would include the climate-displaced communities. Importantly, the Model International Mobility Convention’s more expansive asylum protections would still be available to the legal “refugees,” as defined by the 1951 Convention, in addition to the added groups.\textsuperscript{82}

**Moral Tort Liability and Labor Visas**

\textsuperscript{81} Lavelle, “By 2050.”
\textsuperscript{82} Doyle and Francis, interview.
Michael Doyle, a professor of international law at Columbia Law School who contributed to the Model International Mobility Convention, also advances a second theoretical framework through which to understand the global politics surrounding climate-driven migration: what he calls “Moral Tort Liability”. He employs this theory to argue that countries with the highest carbon emissions ought to be held *mora l ly liable* for their *tort*, of contributing to climate change, as a causal factor underlying forced displacement. He argues further that the number of people who have currently been displaced disproportionately receive refugee status in a neighboring country to their nation of origin, which also tend to be impoverished and ill-positioned to support them. Instead, Moral Tort Liability asserts that countries have a moral obligation to accept displaced people in proportion to that country’s contributions to global carbon emissions. A country like the U.S., as a prominent contributor to global warming, would be required by Moral Tort Liability to *also* be a leader in accepting populations forcibly displaced by the ensuing climate events.

Citing his practical experience in international negotiation while working at the United Nations, however, Doyle also emphasizes the improbability of getting countries to take action to redress the harms of a theoretical tort they have merely been held *morally* responsible for. He proposes that high-carbon-emitting countries like the United States could instead be motivated to accept the number of climate migrants they are morally obligated to take in through a labor visa system that would prioritize forcibly displaced migrants in need of shelter abroad. Doyle argues that it is in the United States’ best interest economically to take advantage of the climate crisis as an opportunity for an influx of skilled immigrant labor, to reinforce and reinvigorate domestic job markets.

Importantly, using labor visas cannot *on their own* relieve a state like the U.S. of its moral responsibility to account for its contributions to climate change, because they would only secure residency for people able to work, which would exclude the very young and very old, as well as people who are physically

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83 Doyle and Francis, interview.
84 Doyle and Francis, interview.
85 Doyle and Francis, interview.
impaired. Labor visas can only be an effective remedy to country’s Moral Tort Liability insofar as they align with international human rights protections for laborers, do not exploit the labor of the highly vulnerable displaced populations, and work in cohort with other methods of providing asylum for those who need it, such as through humanitarian visas.  

Regional Free Movement Agreements

There is another way in which countries’ economic interests can be used to strategically promote legal protections for communities displaced by climate change: facilitating migration through established free movement agreements (FMAs). FMAs already exist, and are formed between a small number of countries in a particular region of the world to facilitate the transit of trade, products, and workers among the participating countries, to the economic benefit of all nations involved. Although individual free movement agreements may not include a large number of countries, they are prominent international networks, as approximately 120 countries around the world are part of a local free movement agreement. Importantly, FMAs’ codified trade pathways are not exclusively restricted to labor-driven human migration; their protections can extend to climate migrants as well, as a recently established free movement agreement in East Africa explicitly named climate-displaced communities as eligible to participate in free movement between its member countries.

VI. Methodology

This thesis assesses whether international law is currently capable of protecting all of the people who are currently being forcibly displaced across national borders by climate change, or who will one day experience this displacement, across the myriad forms of environmental events that climate change will propel globally. Each of the following three chapters is focused on one of the following case studies, examining an environmental disaster causing cross-border displacement that either is a direct

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86 Doyle and Francis, interview.
87 Doyle and Francis, interview.
consequence of climate change, or mirrors the type of event that will become increasingly common due to climate change. In order to illustrate the range of the humanitarian impact climate change will spur, I have deliberately chosen case studies that highlight three different kinds of environmental disasters, and differ along the three identified dimensions of climate displacement identified earlier: the rate and duration of uninhabitability, the amount of people displaced within and beyond the country’s borders, and the degree to which the responsive migration could be perceived as voluntary or forced.

Repeated Hurricanes

This thesis first examines the coupled impact of Hurricanes Eta and Iota on the residents of Honduras in the fall of 2020, as in instance of a sudden environmental disaster that leaves the land temporarily uninhabitable. Some survivors of the hurricanes were displaced within the country, but, fleeing the disasters and influenced in part by the governments’ poor environmental management policies and violence against environmental activists, others have sought shelter abroad. Because these disasters happened so suddenly in succession and caused total destruction without warning, people are fleeing after their homes have become completely uninhabitable, and will unquestionably be regarded as having been forced to flee.

Severe Drought

The second case study focuses on the devastation caused by the current drought in Ethiopia. The effects of a drought are relatively slow-moving, and will likely displace people for long periods of time, if not permanently. The drought in Ethiopia has been ongoing since 2020, demonstrating the extended duration of such an environmental event. The geographic scope of this issue is so expansive that it could not possibly be an issue of internal displacement within a single country. The entire Horn of Africa region has been affected by the drought, and the people displaced in Ethiopia have been joined

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88 Zetter, Protecting, 16.
89 Zetter, Protecting, 4-5, 11, 14, McAdam, Climate Change, 1-2, 86-87, 92-93.
90 Pindado, “When It Rains It Pours.”
by similar flight from the drought-affected parts of the neighboring countries Somalia and Kenya. Furthermore, the drought has progressed to such severity that the U.N. Office for the Coordination of Humanitarian Affairs (OCHA) reported it presented “the immediate threat of starvation,” which explicitly invokes the conditional demands for forced displacement established in Teitiota v. New Zealand.

**Rising Sea Levels**

The third case study focuses on the present and future threat of sea level rise, and its impact on the island country of the Maldives in particular. Sea level rise will progress slowly and continue to affect the country with gradual severity, and given that 80% of the territory is at an elevation less than one meter above sea level, the long-term consequences of climate change threaten to be catastrophic and irreversible. Because it is an island country, and so much of the land is so close to sea level, most of the displacement will likely lead people to move internationally, rather than within the country’s borders. Critically, because the country has not yet been left uninhabitable by climate change, people who chose to leave the country at this current moment, in anticipation of future territorial loss and threats to their residences, could be regarded as voluntarily electing to leave, rather than being forced to flee without an available choice to remain.

**Legal Analysis**

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Since there currently is no binding international treaty that *explicitly* stipulates the legal protections available to the communities around the world who have been forcibly displaced by climate change, this thesis analyzes whether the current international human rights laws available, including the indigenous rights to land use and culture, the right to life, the right to non-refoulement, and complimentary refugee protection can be applied to *real cases of climate displacement* to assemble, in a piecemeal way, adequate legal protection for the displaced groups.  

This thesis also considers whether the displaced populations could potentially receive protection through existing regional free movement agreements.

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97 Doyle and Francis, interview.
Chapter Two: Hurricanes

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I. Introduction

Tropical cyclones are one kind of environmental displacement event that will become increasingly more prevalent as climate change progresses. In this kind of event, entire communities are made extremely vulnerable very suddenly. Depending on the geography of the terrain in the path of the hurricane, people may also be displaced beyond the borders of their country. As climate change becomes more severe, it is absolutely critical that there are legal opportunities for every person forced from their homeland to be able to safely find shelter abroad.

Although the effects of climate change affect people without regard to their identity characteristics, climate change events occur in societies that differentiate people based on these characteristics, and where power is inequitably distributed along these intersectional divisions. This leaves some people more vulnerable in the face of a climate disaster than others. International refugee law and indigenous rights law recognize the structural vulnerability of certain people, and offer them identity-specific rights protections; these legal protections extend to some climate displaced people on the basis of facets of their identities, and are critical legal routes for people to apply for human-rights-based asylum abroad. It is the work of this chapter to investigate whether, and in which circumstances, people displaced by hurricanes are left behind by the present legal channels for emergency migration.

II. Hurricanes Eta and Iota as Climate Displacement Events

Meteorological Impacts of Climate Change

This thesis uses a set of three case studies to represent the breadth of ways climate change manifests around the world and propels people to leave their home countries. Climate change affects the

temperature of the air and oceans around the world to drastic, devastating effect.¹⁰⁰ Warmer ocean waters and higher quantities of atmospheric moisture also provoke more intense tropical cyclones that develop more quickly, leaving affected areas with a shorter period in which to flee, or prepare to protect themselves.¹⁰¹ Rather than abstract meteorological predictions painting a future of extreme, uncontrolled natural disasters, as has been the prevailing tone in climate change discussions and has permeated dystopian science fiction imaginings, we must understand these events as happening now.

A concentration of stronger, more frequent, and more quickly developing storms has been measured in the Atlantic Ocean.¹⁰² In November of 2020, Hurricane Eta and Hurricane Iota struck the Atlantic coast of Honduras within two weeks of each other.¹⁰³ It is useful to examine the combined impact of these two hurricanes as representative of the kind of meteorological impacts climate change will cause, because of each hurricane’s severity, and their occurrence in rapid succession.¹⁰⁴ Scientists have claimed, further, that Hurricanes Eta and Iota were not merely representative of the kinds of hurricane behavior that climate change will cause, but were themselves driven by climate change: Central America had never before experienced two hurricanes hitting so quickly in such a short period of time, and Hurricane Eta was historic for developing to a severe Category 4 level over the span of just 36-hours.¹⁰⁵ Identifying Hurricanes Eta and Iota as driven by climate change is also consistent with the

¹⁰¹ US EPA, “Tropical Cyclone Activity.”
¹⁰⁴ Rubi & Gaynor, “In Honduras,” Ernst, “Scientists Link.”
¹⁰⁵ Ernst, “Scientists Link.”
Intergovernmental Panel on Climate Change (IPCC)’s finding that the effects of climate change on the coastline of Central America are likely to include severe weather events.106

III. Displacement Analysis

Figure 2: Migration Map of the Impact of Hurricanes Eta & Iota.107

Voluntary vs. Forced Displacement

The eastern coast of Honduras, where it meets the Caribbean, is frequently hit by hurricanes (UNHCR). Although these hurricanes may be exacerbated by climate change, as in the case of Eta and Iota, if coastal residents decide to move solely because it is prone to hurricane activity and they will likely be affected by future hurricanes, they are deemed to be moving voluntarily.108 Although the hurricanes are the driving force leading them to move, voluntarily displaced people are leaving to avoid the possibility of experiencing a hurricane, and are not fleeing the aftermath or looming threat of a specific hurricane.

106 Rubi & Gaynor, “In Honduras.”
This chapter looks specifically at the way people were displaced after Hurricanes Eta and Iota. Hurricane Eta developed into a Category Four level storm unusually quickly, but the governments of Nicaragua and El Salvador still had time to issue warnings to residents in the path of the storm to evacuate or shelter at home, depending on their level of risk. People in Honduras did not receive any emergency notices and were “completely unprepared,” in the words of a medical first responder to the disaster, when Hurricane Eta struck on November 3rd. The international airport was left unusable, and the routes into and out of several cities were left completely inaccessible by flooding. On November 18th, Honduras was hit by Hurricane Iota, another Category Four storm, which had winds as fast as 155 miles an hour and caused over two feet of additional rainfall.

The residents of Honduras who had to leave their homes after these back-to-back natural disasters were clearly forcibly displaced. There was no advance warning given by country officials before Hurricane Eta hit, leaving residents without time to evacuate. And, because of the damage to transportation infrastructure caused by Hurricane Eta, it was difficult for people who had already suffered damages to escape the second storm coming with the same intensity, from the same direction. Referencing communities whose homes were destroyed by the hurricanes, César Ramos, an aid worker, put it clearly: “People aren’t migrating; they’re fleeing.”

110 Collins, “Dispatch from Honduras.”
111 Collins, “Dispatch from Honduras.”
112 Rubi & Gaynor, “In Honduras.”
113 Collins, “Dispatch from Honduras.”
**Distance of Displacement**

An evacuation alert was instituted ahead of Hurricane Iota, but it was put in place for the entire country. No matter where you were in Honduras, Hurricane Iota posed such a high risk to you that you were told you needed to flee. This full-country evacuation order critically establishes the need of all residents of Honduras to seek safety abroad.\(^{115}\)

Not everyone who needed to flee the country had the opportunity. According to a UN report, over four million people were affected by the disaster, which amounts to almost half of the national population.\(^{116}\) 900,000 people were displaced by Eta and Iota, and the official national metric reports 247,000 internally displaced persons (IDPs), although this metric does not distinguish between people who were displaced within the country by the hurricanes, or by other threats, such as gang violence.\(^{117}\)

In December, following the two hurricanes, there were 90,000 IDPs whose homes had been destroyed and who were temporarily living in shelters.\(^{118}\) Thousands more people were left living in make-shift camps outdoors, near roads and bridges.\(^{119}\)

The numbers of people who sought safety abroad are less clear. 15,440 Honduran citizens applied for asylum in Mexico in 2020.\(^{120}\) Because the hurricanes occurred at the end of the year, this number likely does not reflect the full amount of hurricane survivors seeking asylum in Mexico, and likely includes a high number of asylum applications from people fleeing events and circumstances that predate the hurricanes.\(^{121}\) In order to get to Mexico from Honduras, displaced people had the difficult task of

\(^{115}\) Collins, “Dispatch from Honduras.”

\(^{116}\) Rubi & Gaynor, “In Honduras,” Kitroeff, “We Are Doomed.”


Rubi & Gaynor, “In Honduras.”

\(^{118}\) Collins, “Dispatch from Honduras.”


\(^{120}\) Cuffe, “The ‘Spiraling Crisis’.”

\(^{121}\) Cuffe, “The ‘Spiraling Crisis’.”
entering and moving through Guatemala (NYT, Al Jazeera).\footnote{Kitroeff, “We Are Doomed,”} In January, 4,800 Hondurans had attempted to enter Guatemala and were turned back by border officials.\footnote{Cuffe, “The ‘Spiraling Crisis’,”} Some people made the journey, nevertheless, and moved northward in pursuit of safety. In December, 10,351 Hondurans were caught attempting to illegally cross the U.S.-Mexico border to gain entry into the United States.\footnote{Collins, “Dispatch from Honduras,”}

Even though the precise numbers of people who were displaced internally and internationally are unclear, the available evidence clearly demonstrates that the combined devastation of Eta and Iota drove Hondurans to seek shelter abroad, and those who did not leave the country likely had few alternatives to remaining as IDPs.\footnote{Rubi & Gaynor, “In Honduras,” USAID & Norwegian Refugee Council, “Nowhere is Safe,” 5-9, Collins, “Dispatch from Honduras,” Cuffe, “The ‘Spiraling Crisis’.”}

**Rate and Duration of Uninhabitability**

The *rate* of the disaster is clear: Hurricane Eta and Iota created nearly instantaneous, widespread destruction. From the sudden, combined impact of the two hurricanes, many Hondurans’ homes were quickly completely destroyed, or rendered uninhabitable.\footnote{Collins, “Dispatch from Honduras.”} It is less clear how long their homes, and the especially severely affected areas of Honduras will be uninhabitable.

Because Hurricanes Eta and Iota occurred just over two years ago, it is helpful to compare this event with a case where more long-term recovery information is available, and in a country where environmental displacement can be isolated from economic migration and internal displacement driven by violence. Hurricane Katrina, another Category 4 storm, left New Orleans flooded for 43 days in the fall of 2005, and caused over $160 billion USD in damage.\footnote{Rafferty, John P, “Hurricane Katrina Aftermath,” *Encyclopaedia Britannica*, https://www.britannica.com/event/Hurricane-Katrina/Aftermath.} After successive evacuations before
and after the storm, at the lowest point only 10,000 city residents were still there.\textsuperscript{128} Even after the
flood water was pumped out, the damage to the community and to the city’s physical infrastructure
was extreme, and has taken more than 14 years to rebuild.\textsuperscript{129} Even after some residents returned to the
city, the permanent population continued to decline for six years following the storm.\textsuperscript{130} Residents
report concerns that the progression of climate change will cause more hurricanes the size of Katrina to
strike the region again in the future.\textsuperscript{131} Some residents who fled the disaster may never return, even
after the city is fully rebuilt. As of 2020, the city’s population is still 20\% lower than it was in 2000, before the storm.\textsuperscript{132}

Even after the flooding abates, it is clear that the impact of a severe hurricane persists. It is reasonable to
expect that, similarly to Katrina, the damage to houses and regional infrastructure from Eta and Iota
could take years to recover.\textsuperscript{133} Unlike Katrina, Hurricanes Eta and Iota also had a severe agricultural
impact. The storms harmed nearly 75\% of the agricultural production in the country, damaging the
livelihoods as well as the homes of the country’s farmworkers, who make up nearly 30\% of the national
population.\textsuperscript{134} Including these agricultural damages, Hurricanes Eta and Iota were responsible for the
loss of 9.2\% of Honduras’ gross domestic product (GDP), or $2.1 billion USD of products.\textsuperscript{135} For
reference as to the relative size of this economic impact, if the U.S. were to lose 9.2\% of its GDP, it
would be a $1.92 trillion loss.\textsuperscript{136} Honduras experienced another severe hurricane, in 1998, with
similarly extensive agricultural losses. More than two decades later, banana crops, one of the country’s

\textsuperscript{128} Rafferty, “Hurricane Katrina Aftermath.”
\textsuperscript{129} Rafferty, “Hurricane Katrina Aftermath,” Santos, Nicolette, “Fourteen Years Later, New Orleans is Still Trying to
Recover from Hurricane Katrina,” \textit{Environmental and Energy Study Institute}, 26 April, 2019,
\textsuperscript{130} Rafferty, “Hurricane Katrina Aftermath.”
\textsuperscript{131} Santos, “Fourteen Years Later.”
\textsuperscript{132} Rafferty, “Hurricane Katrina Aftermath.”
\textsuperscript{133} Santos, “Fourteen Years Later,” Collins, “Dispatch from Honduras.”
\textsuperscript{134} Berg, Ryan C., Henry Ziener, and Michael Estopinan. “Financing Small-Scale Agriculture in Honduras: A Case
\textsuperscript{136} Solidaridad, “Crowdfunding Supports Recovery.”
primary agricultural sectors, had only recovered to 50% of pre-storm levels.\textsuperscript{137} Because of the extent of these financial losses, many Hondurans may feel forced to migrate in search of economic opportunity, as a consequence of their intense and potentially long-term financial vulnerability.

IV. Legal Analysis

In discussing Hondurans’ legal pathways for migration, it is important to note that there were a number of social circumstances that were \textit{already} driving Hondurans to seek asylum prior to the hurricanes. Gang violence and poverty were prevalent in the country, and organized crime was so powerful that the President at the time had been accused of being associated with drug trafficking.\textsuperscript{138} Because this thesis investigates whether there are sufficient legal protections to support the migration of climate-displaced populations, this case study exclusively focuses on the factors driving migration that were exacerbated or produced by Eta and Iota.

Refugee Eligibility Under the 1951 Refugee Convention

The 1951 Refugee Convention, under which migrants can apply to be officially recognized as ‘refugees’ and granted asylum abroad, applies to people who are threatened by persecution because of their race, religion, nationality, social group membership, or political affiliation. Transgender Hondurans, households led by single mothers, children who are vulnerable to being recruited into gangs, and indigenous groups vulnerable to ethnic persecution all of whom are likely to have been affected by the hurricanes, are eligible for refugee protection under the 1951 Convention.\textsuperscript{139}

\begin{footnotesize}
\begin{enumerate}
\item[137] Collins, “Dispatch from Honduras.”  
\item[138] Kitroeff, “We Are Doomed.”  
\end{enumerate}
\end{footnotesize}
Vulnerability of Transgender Hurricane Survivors

These protections were important for the transgender people who were made vulnerable to violence or harassment when they were left unhoused after the hurricanes. Trans people and other LGBTQ people were already socially and economically vulnerable in the country, where discrimination is frequent. When houses were destroyed by the storms and entire communities, including trans people, were forced to seek shelter in temporary encampments or shelters, the gender segregation for these residences did not abide by trans people’s gender identity. Trans women were forced into the men’s quarters, where they were highly vulnerable to violence.\textsuperscript{140} This threat to trans people, though not actively led by the government, was facilitated by its failure to consider the social position of LGBTQ residents in its response to the disaster.\textsuperscript{141} This threat of violence is a credible threat of persecution on the basis of a protected identity: “membership of a particular social group,” and there is no evidence to believe that the Honduran government will take action to correct the situation.\textsuperscript{142} Because trans people are demonstrably threatened by persecution for their gender identity, any trans people who were displaced by Hurricanes Eta and Iota are eligible to apply for refugee protections abroad under the 1951 Refugee Convention.\textsuperscript{143}

Victims of Targeted Gang Violence

\textsuperscript{140} Amnesty International. “When It Rains.”
\textsuperscript{141} Amnesty International. “When It Rains.”
\textsuperscript{142} UNHCR, “Convention and Protocol Relating to the Status of Refugees.”
Honduras has significant gang-related violence in the cities of Tegucigalpa, the capital, and San Pedro Sula, as well as across its northeastern region. Along with most of the country, these areas were all affected by Hurricanes Eta and Iota. The two major gangs are *Mara Salvatrucha* (MS-13), and *Mara 18* (M-18), or the “18th Street Gang,” which are active in both urban and rural areas. San Pedro Sula is the site of territory disputes between the two gangs, as well as predatory violence against city residents. In 2019, it was the 11th-most dangerous city in the world, measured by the rate of homicides. That year, the New York Times produced the following map of the gang control of the

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146 IOM, “Map: Subnational Impact.”

147 Immigration and Refugee Board of Canada, “Areas of Operation.”

city, where each color represents a different gang’s territory. MS-13 control appears in yellow, and M-18 territory is in orange.\textsuperscript{149}

“\textquote{The borders surround us like a noose},” explained a nineteen-year old boy living in the city.\textsuperscript{151}

It is of particular concern that all of the hurricane-driven flooding occurred in the coastal regions with waterways: north of San Pedro Sula and in the easternmost “department”, or territory.\textsuperscript{152} These regions have high rates of gang violence, necessarily compounding the vulnerability of the people in the region, barraged by environmental forces and forced from their homes, amidst great violence. People fleeing the coast, where the hurricanes first struck, may have been driven to evacuate toward the south and center of the country, and potentially into unfamiliar gang territory.\textsuperscript{153}

\begin{itemize}
\item[149] Ahmed, “Inside Gang Territory.”
\item[150] Ahmed, “Inside Gang Territory.”
\item[151] Ahmed, “Inside Gang Territory.”
\item[152] IOM, “Map: Subnational Impact.”
\end{itemize}
The internally displaced people who were forced by the storms into gang-controlled areas were forced under threat to make payments to the gangs and young migrants were forced to join their ranks. This control reportedly extends to when and along which routes people are permitted to walk the streets, who they are allowed to speak to, what they are permitted to speak about.

If they were targeted by the gangs because of one of the identity categories protected under the 1951 Refugee Convention, Hondurans displaced by the storm into areas of extreme violence have the legal grounding to apply for refugee protections abroad. Gang violence targeting protected identity categories includes acts of sexual violence, the harm caused to children by putting them in a violent environment and exposing them to criminal conduct, and that which targets people because of their ethnicity or race, for engaging in religious conduct too often or too little, and families made vulnerable because they are led by single mothers.

For people applying for refugee protection due to gang violence, the UNHCR also advises that their cases demonstrate the lack of protection available from the national government, to protect them from this targeted persecution. The New York Times reporters in San Pedro Sula reported unequivocally that residents could not rely on the government for protection from gang violence. Drawing lines between the corruption of the Honduran government and police forces and those in other nearby Central American countries, the reporters described a “climate of impunity,” where “in some countries... more than 95 percent of homicides [are left] unsolved.”

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156 UNHCR & Maggio Kattar Nahajzer Alexander, “Representing Asylum-Seekers.”
157 UNHCR & Maggio Kattar Nahajzer Alexander, “Representing Asylum-Seekers.”
158 UNHCR & Maggio Kattar Nahajzer Alexander, “Representing Asylum-Seekers.”
159 Ahmed, “Inside Gang Territory.”
For displaced families with children facing gang recruitment, families led by single mothers, and people facing ethnic persecution for belonging to indigenous groups, the 1951 convention offers some relief from the dangerous scenes of gang violence they faced after the hurricanes without the hope of government protection.\textsuperscript{160}

**Human Rights Law: Indigenous Rights**

As is common with Latin American countries, 92\% of Hondurans are \textit{mestizos}, claiming both indigenous and Spanish heritage, and the remaining exclusively indigenous communities represent a much smaller portion of the population.\textsuperscript{161} The Garifuna, a community of 300,000 people living on the Caribbean coast of Honduras, have both African and indigenous Honduran ancestry.\textsuperscript{162} Because the Garifuna and the Miskito, another indigenous group, live directly on the coast, they are threatened by changes in the ocean tides and land-bound hurricanes of any size.\textsuperscript{163} When Hurricanes Eta and Iota struck Honduras along its northern coast, they hit the Garifuna particularly hard.\textsuperscript{164}

The devastation the Garifuna community faced after the storms had been foreseen: for twenty years, the coastline had been eroding, and it was known that this would leave both the Garifuna and Miskito even more exposed to hurricanes arriving ashore.\textsuperscript{165} Critically, the government had not taken any action to secure their safety or continued access to their land, and neither did they commit to combatting the

\begin{itemize}
\item \textsuperscript{165} Gies, “COP21 Dooms Indigenous Communities.”
\end{itemize}
primary threat against them: climate change. Miriam Miranda, an activist for Garifuna rights in Honduras said bleakly, “... we are doomed to becoming environmentally displaced people.”

Similarly to the Torres Strait Islanders, who proved to the UN Human Rights Committee that the harm they faced after an environmental disaster was a violation of their protected cultural rights as an indigenous community, the Garifuna have clear evidence that their legal right to engage in their traditional cultural practices has been violated by Eta and Iota. The damage from the storms, and the prior erosion of the coastline, by forcing them out of their homelands, additionally prevented them from engaging in traditional agricultural or fishing practices, and any cultural practices specific to their homelands. Honduras formally committed to protecting indigenous groups’ right to use their ancestral land, by its adoption of the UN Declaration on the Rights of Indigenous Peoples.

Furthermore, it is clear that, just as the state was a persecuting agent in the case of the Torres Strait Islanders, the government in Honduras is similarly responsible for some of the harm that befell the Garifuna people because it did not build seawalls, engage in coastline restoration work, or commit to policies that would mitigate the effects of climate change, the absence of which lead to the devastation they faced during Hurricanes Eta and Iota.

Importantly, however, this human rights violation was recognized by a higher court in international law, the UN Human Rights Committee, through a case-specific ruling; this is not a standing statute that the Garifuna can cite on applications for asylum abroad, and although they would have strong evidence supporting their claim, it is not guaranteed that the Garifuna’s cultural rights will be found to have been violated by the national government.

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166 Gies, “COP21 Dooms Indigenous Communities.”
Labor Migration

After the hurricanes, 75% of the agricultural production was damaged, decreasing the availability of locally-grown food, and cities were cut off entirely from external access by flooding, which meant that no external food could be brought to them. Critically, the federal government did not initiate an effective response to provide food for the survivors of the disaster. Although some food deliveries were arranged in San Pedro Sula by the local government, this aid did not extend nationally. Two weeks after the storms, residents reported that they had not received emergency assistance of any kind, reporting that “There’s no food, nowhere to bathe, no electricity...”

Entire neighborhoods were flattened by the hurricanes, and even months afterward, houses were still left underwater. Again, the federal government did not provide a coordinated response to house the citizens whose homes had been destroyed. People were living in temporary shelters, outdoor encampments, and the structures that remained standing. One hurricane survivor reported, “We received nothing from the government, not even a sheet of metal to replace our roof.”

For all Hondurans of working age, the threat of such absolute poverty and the unavailability of public resources to sustain yourself would offer strong motivation to preserve your life, by seeking work opportunities abroad through official work visas or through illicit channels. Unfortunately, there are no codified legal routes to pursue work in other Central American countries, so Hondurans must individually apply for work visas abroad, or migrate (legally or illegally) and then pursue informal or unreported work in their destination country.

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172 Amnesty International. “When It Rains.”
173 Kitroeff, “We Are Doomed.”
175 Kitroeff, “We Are Doomed.”
Hondurans migrating to the nearby countries of El Salvador, Nicaragua, and Guatemala can do so under the Central American Single Visa, or C-4 visa, but not as legally recognized labor migrants. Although traveling illegally or under the C-4 visa would restrict them to working in the informal sector, where there is typically worse job security, lower pay, and few benefits, some people may nevertheless choose to do so because of the high risk of starvation if they were to remain in the country.

V. Assessment

Number of Displaced People Eligible for the Identified Migration Routes

This chapter has identified routes to seek asylum or labor opportunities abroad for the following four groups of Hondurans displaced by the hurricanes:

1) Transgender people;
2) People facing gang violence or recruitment as a young child, and/or as the member of a family headed by a single mother;
3) A member of the Garifuna whose home on the coast was destroyed by the storm;
4) Or someone facing extreme poverty, who is of an age where they are able to work.

900,000 people were displaced by Hurricanes Eta and Iota. Of that number, it’s likely that the concentration of transgender people, children, single mothers, and people of working age was consistent with that of the national population. Although, because of the high rates of discrimination and targeted violence against transgender people in the country, there is no reliable count of the number of transgender-identifying individuals in the country, it is reasonable to expect that in

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180 USAID, Norwegian Refugee Council, “Nowhere is Safe.”
Honduras, as is true globally, between 0.1 to 1.1% “reproductive-aged” people are transgender.\textsuperscript{181} Adjusting for the number of people in this age group, between 0.04-0.45% of Hondurans displaced by the hurricanes are likely to be transgender.\textsuperscript{182} The people in this group are likely to experience targeted violence in the makeshift shelters for storm survivors, and if they do, will have legal grounding to apply for refugee protections abroad.\textsuperscript{183}

19.68\% of the people displaced were likely under 15 years old, based on the national concentration of children, and were therefore especially vulnerable to being harmed by exposure to gang violence and criminal activity.\textsuperscript{184} Additionally, it’s likely that 7.37\% of the people forced out of their homes by the storms were single mothers, who, if they migrated to regions with intense gang violence, would likely be targeted by the gangs.\textsuperscript{185}

Because the Garifuna, a community of 300,000 people, were likely all affected by the storms because of their position on the coast, we can count the entire population as displaced by the storm.\textsuperscript{186} Subtracting the number of the Garifuna community who were included in the previous count of total displaced children, 26.77\% of the people displaced by the storm were likely members of the Garifuna community, and could potentially seek asylum abroad if the storm was found to violate their protected rights to engage with their ancestral land.\textsuperscript{187}

\textsuperscript{184} World Bank, “Population,” UNHCR & Maggio Kattar Nahajzer Alexander, “Representing Asylum-Seekers.”
\textsuperscript{186} OHCHR, “Honduras Must Stop,” Gies, “COP21 Dooms Indigenous Communities.”
The final category eligible for protection, then, is the number of people “of working age” who could apply for labor visas to work abroad, who I am counting as the total displaced population between 15 and 64 years old. Subtracting from this number the total number of single mothers and the adult Garifuna population, as well as the highest estimated number of transgender people who were displaced, up to 32.19% of the remaining displaced population, who were unable to pursue refugee or asylum protections abroad, could instead pursue labor migration opportunities.\textsuperscript{188}

Importantly, the total number of transgender people, children, single mothers, Garifuna, and people of working age only amounts to 86.46% of the total displaced population.\textsuperscript{189} Importantly, this number unrealistically assumes that every single mother and child who were displaced were victimized by gang violence, so the number of people who were displaced by the storm and who have no legal recourse to legally migrate abroad is likely even higher than the identified 13.54%, or 121,860 displaced people.\textsuperscript{190}

\textbf{Successful Asylum Applications}

It is also critical to note that merely being able to \textit{submit} a legal claim for asylum abroad is not a guarantee that you will receive refugee status and be able to migrate to that country. The three countries with the highest numbers of accepted Honduran refugees in 2021, the year after the November hurricanes, were Mexico, the U.S., and Spain, in that order.\textsuperscript{191} Asylum applications to

\begin{itemize}
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Mexico had a 84.9% success rate, but only 23.6% of those to the United States were approved, and only 11.8% of the Honduran refugee applications were approved in Spain.\textsuperscript{192}

**Successful Labor Visa Applications**

For labor visa applications, the success rate of applicants is not publicized, but both the U.S. and Mexico report the number of labor migrants they accept per calendar year, and under which visa scheme they were admitted.\textsuperscript{193} In 2020, the United States granted permanent resident status to 861 Honduran-born labor migrants, and approved temporary visas for 2,427 Honduran citizens, who were either migrating to conduct temporary work, or the family member of a short-term labor migrant.\textsuperscript{194} In 2021 in Mexico, alternatively, 122 Hondurans were approved for temporary work permits, and 317 people were approved for temporary permits on “familia” grounds, which may include both family reunification and the families of people approved for temporary work permits. 344 Honduran additional labor migrants were approved for permanent residency in Mexico.\textsuperscript{195}

**Inadequacy of the Available Protection**

I am not arguing that every application for refugee protection a labor visa ought to have been awarded, as there may have been issues with individual applicants’ eligibility that prevented the approval of their migration. Instead, I have sought to make clear two means by which the current legal channels offer

\textsuperscript{192} These numbers and success rates are useful to reference as approximate figures, but the source where they are reported does not guarantee their accuracy. WorldData.info, “Asylum Applications.”


\textsuperscript{194} DHS, “Immigration Statistics.”

\textsuperscript{195} Gobierno de México, “Boletín Mensual: Estadísticas de Emigratorias.”
inadequate people to the Hondurans forced from their homes by the double hurricanes. First, the number of displaced people who are potentially eligible to apply for asylum protection or a labor visa does not account for the full number of people displaced: 13.54% of the Hondurans who were displaced by the droughts are ineligible for all of the identified routes for legal migration Second, of the displaced people who submit a claim to legally leave the country, the numbers of approved applications in the two major destination countries, the United States and Mexico, clearly fall short of the full number of people who likely need asylum, and/or opportunities to provide for themselves and their families.

Of all the people displaced by the hurricanes, 32.19% are eligible for work visas, and none of the other, stronger immigration routes. Even if every Honduran person who was granted a work visa had been displaced by the hurricanes, the number of visas granted in the US in 2020 or in Mexico in 2021 represent just 0.3% percent of the Honduran population displaced by the hurricanes. An additional 54.27% of the displaced Honduran population is eligible to apply for refugee protection abroad. Even if this entire population applied for refugee protection in Mexico, which has the highest rate of refugee acceptances from Honduras, just 46.12% of the displaced population would be likely to receive

refugee protection.\textsuperscript{202} Between the refugee protection and labor migration pathways, then, only 46.15% of the people who need shelter abroad will be able to legally receive it.\textsuperscript{203}

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Chapter Three: Drought

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I. Introduction

One of the most prominent effects of climate change is in making heat waves hotter, more frequent, and more geographically wide-spread.205 More intense periods of heat cause more moisture to evaporate from land and terrestrial bodies of water, causing severe droughts.206 This chapter examines

205 US EPA, “Weather and Climate.”
the ongoing drought in the Horn of Africa as one case of the prolonged, severe droughts that will become more common as climate change worsens.\textsuperscript{207}

Through an in-depth study of the impact of this drought on the population of Ethiopia, it becomes clear that droughts affect regional migration differently than other forms of climate change.\textsuperscript{208} As a drought progresses, a large geographic region gradually becomes uninhabitable, as the local vegetation withers and the water supply dries up.\textsuperscript{209} While their homeland is becoming more difficult to live in and the urgency grows to migrate elsewhere, the local population is physically weakened by the drought’s effect on their access to food and water, and it simultaneously becomes more difficult for them to physically migrate.\textsuperscript{210} And, because a drought affects such a large expanse of territory, environmentally displaced people are forced to migrate particularly far distances to reach safer land.\textsuperscript{211} Drawing from the 1951 Refugee Convention, a regional free movement agreement in East Africa, and the two recent UN Human Rights Council (HRC) rulings on climate-driven displacement, this chapter examines whether the Ethiopians suffering from the distinct effects of drought-driven displacement are protected in their pursuit of shelter abroad.\textsuperscript{212}


\textsuperscript{210} USA for the UNHCR, “Ethiopian Families Struggle to Survive Amid Record Drought.”

\textsuperscript{211} UNHCR, “UNHCR’s Drought Response in Ethiopia, Kenya and Somalia.”

II. The Current Ethiopian Drought as a Climate Displacement Event

Globally, temperatures have risen by an average of 0.14 °F per decade since 1880, with the pace of the temperature increase rising sharply in the early 1980s, to an average of 0.32 °F per decade. Ethiopia has outpaced this global average, with an average temperature increase of 0.18 - 0.72 °F per decade since 1960. Ethiopia has been in a severe drought since 2020, which marks a series of five rainy seasons in a row during which the expected rains have not come.

Although the northeastern and southeastern parts of Ethiopia have long been the country’s driest regions, the drought has extended further westward to its Oromia region, which has historically expected heavy rains. A lifelong resident of the region reported to the International Organisation for Migration (IOM), “I’ve lived here for nearly eight decades and I’ve seen many things in my life. I used to fear nothing; this has changed that. It’s the worst drought I’ve seen in my entire life – it’s terrifying.” The severity and duration of this historic drought, and its partial attribution to the country’s atypically warm temperatures, all designate the drought as a consequence of climate change’s gradual emergence in global weather events. Because of the country’s particularly rapidly increasing average temperatures, irregular rainfall, and ongoing drought, Ethiopia was ranked 161 out of 182 countries for its vulnerability to the effects of climate change.

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215 USA for the UNHCR, “Ethiopian Families Struggle to Survive Amid Record Drought,” IRC Crisis Watch, “Ethiopia.”


217 Viray, Kaye, “Water and Hope Quickly Drying Up.”

218 Norwegian Institute of International Affairs (NUPI) & Stockholm International Peace Research Institute, “Climate, Peace, and Security Fact Sheet: Ethiopia.”

III. Displacement Analysis

Voluntary vs. Forced Displacement

Ethiopia is a particularly drought-prone country. If Ethiopians chose to leave their homeland before the current drought had begun, for the sake of avoiding potential future droughts, their climate-motivated migration would be entirely voluntary. Droughts progress slowly, however, with initially-bearable changes in plant health and water access that, after years, eventually render the landscape uninhabitable. This presents a difficulty in determining any single point at which people migrating away from the effects of the drought are no longer doing so because they choose to, and are instead being forced to flee.

When the current drought began, its effects were recognizable to most Ethiopians; the country had just undergone a series of brief droughts in the prior decade, with a drought in 2011 that threatened 11 million Ethiopians’ access to food, and another that lasted from 2016 to 2017, and threatened 15 million Ethiopians’ food access. The country’s population increased by nearly 9 million people between 2017 and 2020, but just 1.2% of that population increase was due to immigration. So, approximately 92% of the country’s population had been alive and living in Ethiopia during the previous drought. When the current drought began, at the end of 2020, the same 92% of Ethiopians likely expected it to be similar to the two droughts that had preceded it; at first, it looked the others, where unusually warm weather and low levels of rain threatened agriculture and the grasslands used to

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220 World Food Programme (WFP), “More Than a Decade of Drought.”
222 World Food Programme (WFP), “More Than a Decade of Drought.”
223 This is based on the World Bank’s reporting that 109,142 more people immigrated into the country than emigrated out of it between 2017-2020. World Bank, “DataBank,” 2022, https://data.worldbank.org/indicator/SP.POP.TOTL?locations=ET.
224 World Bank, “DataBank.”
graze livestock, and lead to water shortages and an increase in the cost of food. Everyone living in Ethiopia knew with certainty that another drought had begun, because drought warning systems, which had been implemented after the earlier decade’s droughts, were used to alert residents.

It takes a tremendous amount of resources to be able to uproot your life and move elsewhere. Ethiopians who had survived the two recent droughts likely did not plan on immigrating internationally at the onset of this drought, and would not take on the difficulty of leaving unless it were outweighed by the severity of their suffering amidst the drought. Although no information is available about the number of people who voluntarily chose to leave Ethiopia at the beginning of the drought, the emigration rate at the beginning of the drought reflects low levels of voluntary movement: 10,000 fewer people left to seek asylum abroad in 2020, at the onset of the drought, than had the previous year, before the drought began.

People living in the eastern, drought-afflicted parts of Ethiopia had no way of knowing how long this drought would interrupt their access to water, ability to grow crops, and their ability to feed their livestock. Eventually, the drought became unendurable. For most of the migrants interviewed by the Mixed Migration Centre, this point came between the 4th and 5th rainy season in a row in which rain had failed to appear. A year after the drought began, 14,139 Ethiopians left to seek shelter abroad, and 4,993 people left the year after that. By October of 2022, 1.8 million people had left the regions

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226 World Food Programme (WFP), “More Than a Decade of Drought.”
227 I only focused here on people moving internationally as asylum-seekers, rather than people who were applying to transit as refugees, because there was also a conflict in the country at the time, and people who were leaving the country because of violence were much more likely to be able to qualify as refugees than people fleeing the drought, who would instead be forced into the legally nebulous category of “asylum seekers.” United Nations High Commissioner for Refugees (UNHCR), “Refugee Data Finder,” 2022, https://www.unhcr.org/refugee-statistics/download/?url=Qrd3K8.
230 UNHCR, “Refugee Data Finder.”
of Ethiopia that had been struck by the drought, and 8 million people in the country were in critical need of food.\textsuperscript{231} By December, the number in need of food had swelled to almost 10 million, and as of 2023, 20 million people in Ethiopia do not have sufficient access to food.\textsuperscript{232} When people migrate under the imminent threat of starvation or death by dehydration, it’s clear that they are being \textit{forced} to leave, to save their own lives.

But not everyone can leave, even when they need to. A 40-year-old mother living in central Ethiopia told the International Rescue Committee, “The drought has affected all of us severely. We used to have 405 goats, but now we just have ten. We are afraid to send our children to look after them and look for grass because many of our animals perish during the journey. We’re not sure if our children, let alone our livestock, will make it back. We only have access to water once every four days, which is insufficient. And we’re expecting the worst.”\textsuperscript{233}

\textbf{Distance of Displacement}

For Ethiopians going without drinking water and facing starvation, a journey of any distance is difficult. Few animals are able to survive the journey to the regional encampments for internally displaced persons (IDPs), and those that survive are too thin and frail to be resold. One mother walked over 160 miles with other people from her village in the easternmost region of the country, reporting, “I can’t count the number of people that were displaced with us. Nearly everyone in the village had left.”\textsuperscript{234} A farmer reported beginning his journey to an IDP site with 445 goats and sheep. Only 190 of his livestock survived, cutting the value of his worldly possessions by more than half.\textsuperscript{235} One man now living at a different IDP site, Abdullahi Gedi, had to leave his family behind because he was the only one who could survive the long journey to the encampment.\textsuperscript{236}

\textsuperscript{231} IOM, “Ethiopia Crisis Response Plan 2023.”
\textsuperscript{232} Viray, Kaye, “Water and Hope Quickly Drying Up,” IRC Crisis Watch, “Ethiopia.”
\textsuperscript{233} IRC Crisis Watch, “Ethiopia.”
\textsuperscript{234} USA for the UNHCR, “Ethiopian Families Struggle to Survive Amid Record Drought.”
\textsuperscript{235} USA for the UNHCR, “Ethiopian Families Struggle to Survive Amid Record Drought.”
\textsuperscript{236} USA for the UNHCR, “Ethiopian Families Struggle to Survive Amid Record Drought.”
511,812 Ethiopians have been recorded as internally displaced by the drought since the start of 2022.\textsuperscript{237} IOM services have been able to coordinate bringing water to eight IDP encampments, just one of which has as many as 5,300 inhabitants.\textsuperscript{238} The number of people internally displaced by this drought in Ethiopia significantly outnumber the number of people displaced internationally.\textsuperscript{239}

Figure 6: Map of the Drought, in Pink, Across Ethiopia, Somalia, and Kenya\textsuperscript{240}

\textsuperscript{237} UNHCR, “UNHCR’s Drought Response in Ethiopia, Kenya and Somalia.”

\textsuperscript{238} Viray, Kaye, “Water and Hope Quickly Drying Up.”


\textsuperscript{240} The labels of this map have been slightly modified, and the national border for Ethiopia has been added. UNHCR, “UNHCR’s Drought Response in Ethiopia, Kenya and Somalia.”
People living in IDP sites in eastern Ethiopia have little hope of relief by migrating to the nearest eastern and southern borders: the effects of the drought are felt far into both Kenya and Somalia.\textsuperscript{241} Through 2022 and during the first month of 2023, 1,479 people were displaced by the drought from Ethiopia into Kenya, and 2,693 people were displaced from Ethiopia into Somalia.\textsuperscript{242} During this same period, 96,592 people were displaced from Somalia into Ethiopia, greatly outnumbering the number of Ethiopians fleeing into Somalia.\textsuperscript{243}

There are two primary routes by which people migrate out of Ethiopia: eastward, through Eritrea or Djibouti, and then northward through Yemen and into Saudi Arabia, or the much longer journey southward, sequentially passing through Kenya, Tanzania, Malawi, Mozambique, and Zimbabwe, before arriving and applying for asylum in South Africa.\textsuperscript{244} It is likely that the 1,479 recorded Ethiopian immigrants fleeing the effects of the drought to Kenya planned to take the Southern Route, with the ultimate goal of transiting to South Africa.\textsuperscript{245} This route is dangerous, and is made even more difficult by the drought’s impact in Kenya.\textsuperscript{246} 95% of the people transiting along the Southern Route are making the journey illegally, and must rely on smugglers and the acquiescence of corrupt law enforcement officers to enter Kenya. Although Ethiopians have traveled along this route since the 1990s, the journey has only become more difficult in the 21st century as Kenya, Tanzania and Malawi all implemented stricter border enforcement procedures to stem the flow of migration along this route, and South Africans have become increasingly hostile to Ethiopian immigrants.\textsuperscript{247}

\textsuperscript{242} UNHCR, “Drought Situation.”
\textsuperscript{243} UNHCR, “Drought Situation.”
\textsuperscript{245} UNHCR, “Drought Situation,” Adugna, “Once Primarily an Origin.”
\textsuperscript{246} Adugna, “Once Primarily an Origin,” UNHCR, “UNHCR’s Drought Response in Ethiopia, Kenya and Somalia.”
\textsuperscript{247} Adugna, “Once Primarily an Origin.”
Those that choose to take the Northern Route weigh a shorter journey, and more opportunities to migrate legally for work in Jordan, Qatar, Saudi Arabia, and the United Arab Emirates, against even more stringent criminalization of illegal immigration and the risks posed by transiting through Yemen. Despite the ongoing civil war in Yemen, Ethiopians have continued to migrate en masse along the Northern Route; of the 138,000 recorded immigrants entering Yemen in 2019, 92% of them were Ethiopian.\(^{248}\) Even for people able to make it through Yemen, asylum and employment are not guaranteed, especially for people attempting to migrate without legal support. In 2022, over 71,000 Ethiopians were deported from Saudi Arabia.\(^{249}\) Nevertheless, the significance of the Northern Route’s relatively short distance cannot be overstated, especially when Ethiopians are struggling to make it even as far as the internal IDP sites.\(^{250}\)

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\(^{248}\) Adugna, “Once Primarily an Origin.”

\(^{249}\) IOM, “Ethiopia Crisis Response Plan 2023.”

\(^{250}\) Adugna, “Once Primarily an Origin,” USA for the UNHCR, “Ethiopian Families Struggle to Survive Amid Record Drought.”
Rate and Duration of Uninhabitability

The rate of Ethiopia’s uninhabitability progressed along two fronts: the severity of the aridity during each failed rainy season, which affects the available drinking water at any one point in time, as well as the cumulative effect over time on the plant growth in the area, which affects farmer’s profits from agriculture, and regional food availability. The map in Figure 7, from the World Food Programme, shows that while Ethiopia has not been entirely without rain during each biannual March-May and October-December rainy season, eastern and central regions of the country have oscillated from “normal” levels of rainfall to extremely dry since the spring of 2020. Although the most severe period of this drought has been during the March-May rainy season of 2022, these maps make clear that the drought did not progress from slight aridity to “extremely dry” terrain; rather, the drought was immediately impactful during the fall of 2020, and since then has been consistently active, to a varying

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251 World Food Programme (WFP), “More Than a Decade of Drought,” p. 4
degree. There is no singular point, measured solely by the level of rainfall, at which point the country was no longer habitable.

Charting the health of the vegetation across the country better represents the impact of the drought over time. Although the preliminary stages of the drought reduced some agricultural growth in southern Ethiopia to less than 90% of its normal productive capacity, the higher levels of rainfall in the east in the spring of 2021, though still below “normal” rainy season levels in the center of the country, staved off the agricultural impact until December of that year. The 2021 fall rainy season, approximately one year into the drought, marks the clear point when Ethiopians’ food access based on regional crop growth began to decline. Since then, approximately 50% or more of the plant growth across southern and eastern Ethiopia has been consistently limited to between 50-90% of its regular capacity. Currently, 85% of Ethiopians financially rely on agricultural production, and more than half of the country’s GDP is based on small-scale farming, most of which is rain-dependent. These farmers, as well as the 12 million Ethiopians who financially rely on farming livestock, are severely threatened by the drought. Although the rainfall in Ethiopia during the 2023 spring rainy season was predicted in February to be higher than “normal” levels, it is not projected to be enough to end the drought. If the current negative trend in rainfall continues until 2050, Ethiopia’s agricultural production will experience an annual decline of 6%.

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252 World Food Programme (WFP), “More Than a Decade of Drought,” p. 4
253 World Food Programme (WFP), “More Than a Decade of Drought,” p. 5
254 Norwegian Institute of International Affairs (NUPI) & Stockholm International Peace Research Institute, “Climate, Peace, and Security Fact Sheet: Ethiopia.”
256 Norwegian Institute of International Affairs (NUPI) & Stockholm International Peace Research Institute, “Climate, Peace, and Security Fact Sheet: Ethiopia.”
If carbon emissions continue at their current levels, Ethiopia is expected to be between 1.08 - 2.7 °F hotter by 2039, and between 2.16 - 4.68 °F hotter by 2059. This is projected to correspond with a significant variation in rainfall from the current norm: by 2039 there is expected to be between 0.57 inches less rainfall than normal in some regions and 0.83 inches more than normal in others, and by 2059, there is expected to be 0.68 inches less rainfall than normal in some places and 1.08 more than normal in other parts of the country. If emissions remain consistently high, global temperatures rise by 5.4 °F, and the African continent experiences both high levels of population growth and low levels of development until 2050, the currently drought-affected parts of central Ethiopia will remain so uninhabitable that 750,000 more people will be displaced.

IV. Legal Analysis

Refugee Eligibility Under the 1951 Refugee Convention

The 1951 Refugee Convention allows people to apply for the protection of refugee status abroad, but only if they can substantiate evidence that they have been persecuted or are at risk of being persecuted due to their race, religion, nationality, social group membership, or political affiliation. For Ethiopians suffering because of the drought, the 1951 Refugee Convention may offer some protection if they are vulnerable to drought-affected regional violence on the basis of one of these protected identity categories.

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261 UNHCR & Maggio Kattar Nahajzer Alexander, “Representing Asylum-Seekers.”
Some pre-existing violence along the Ethiopia-Kenya border and in the northern Afar region of Ethiopia, motivated in part by tensions over accessing land to graze livestock, have been exacerbated during the drought, as the contested natural resources have been driven to greater scarcity. The drought has also more directly heightened violence between regional groups that financially depend on different kinds of land-based work, whether agricultural, pastoral, or both. Additionally, drought-driven internal migration, both by IDPs fleeing their uninhabitable homelands and by nomadic herders forced to adapt their migration routes during the drought, has heightened the long standing conflicts in the regions they enter into. IDP-escalated conflict has been observed after recent

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migration to the Amhara and Tigray regions, which geographically overlaps with the country’s greatest source of conflict: armed political violence in the northern Afar, Amhara and Tigray regions.266

The timeline of the political conflict, between the Ethiopian government and the Tigray People’s Liberation Front (TPLF), has mirrored that of the drought. Although its origins are unrelated to the lack of rainfall during the active rainy season, the conflict began in November of 2020, and an official peace deal was brokered exactly two years later.267 The timing of the conflict aligning with the first two years of the drought is likely coincidental, but a correlation has been found between the drought and politically-motivated conflict, and armed groups tend to take action more frequently amidst drought conditions.268

Although this political violence has been concentrated in the Tigray region, which has been relatively unaffected by the drought, its national influence has generated further conflict in drought-stricken regions.269 The local army in Oromia, a geographically central territory that has been severely affected by the current drought, has officially pledged its support for the TPLF.270 This has put ethically Oromo migrants who might seek to flee the regional impact of the drought by migrating north to Afar and Amhara at risk in those regions, where armed groups target noncombatants they perceive as at all affiliated with the TPLF.271 The Afar region, which borders Tigray to the west, has also experienced the drought particularly severely, and since the summer of 2021, has had the civil war cross over onto its

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269 Center for Preventative Action, “War in Ethiopia.”
271 Center for Preventative Action, “War in Ethiopia.”
borders. Both sides in this conflict have been found to have engaged in violence against children, sexual violence against women, and violence targeting ethnic groups, whose territories align with the state’s regional borders.

Even without concrete information about the specific ways that the drought may have contributed to regional violence throughout the country, there is sufficient evidence available on the interactions of climate-driven suffering and violence for the 1951 Refugee Convention to potentially extend some refugee protections to people who have been displaced by the drought. Ethiopians from the regions of Oromia and Afar undergoing severe drought, and who are additionally at risk of targeted violence on the basis of their ethnicity, gender, or age because of the civil war and other regional conflicts, could apply for refugee protection abroad. Because the federal government forces have been found responsible for perpetuating massacres and mass bombings domestically, these persecuted climate migrants are further eligible for refugee protection because it is clear that they cannot appeal to their own country’s government for relief.

**Human Rights Law**

Although human rights law could potentially be used to protect the groups whose human rights have been violated during the civil war between the Ethiopian government and the Tigray People’s Liberation Front (TPLF), only one of the relevant legal principles this thesis uses to connect human rights law with climate displacement offers protection to the Ethiopians displaced by the drought.

**Non-Applicability of Indigenous Land Rights**

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273 Center for Preventative Action, “War in Ethiopia.”

The first case this thesis examines, in which the UN Human Rights Committee (HRC) found the effects of climate change to violate the Torres Strait Islanders’ protected land rights as an indigenous group, relies on two necessary conditions. First, some facet of climate change must be affecting an indigenous group so severely that, due to the environmental change, they can no longer in their traditional, land-specific cultural practices.275 This is true for the recognized indigenous groups living in each of the regions most severely affected by the drought; the Afar, Oromo, and Somalis, whose traditional pastoral practices across the respective regions of Afar, Oromia and Somali are threatened as the vegetation and bodies of water they have traditionally use to care for their herds have disappeared during the drought.276

The ruling also set the second condition that the national government be found guilty of perpetrating the human rights violations against the indigenous group, because its policy inaction on climate change directly contributed to the conditions that had violated their cultural rights.277 The Ethiopian government, critically, has made strong commitments to climate action in recognition of the country’s high vulnerability to climate change. In the updated nationally determined contribution (NDC) the government published on July 23, 2021, amidst both the civil war and drought, Ethiopia committed to a more stringent reduction of its carbon emissions by 68.8%, outlined a plan for a compliance monitoring system in line with the recommendations of the Paris Agreement, and committed to a budget with the majority of funding contingent on meeting its stated goals.278 So, despite the clear violation of the Afar, Oromo and Somalis’ cultural rights during the drought, the UN HRC’s ruling in

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275 Plano,“UN Decision.”
277 Plano,“UN Decision.”
278 The 68.8% reduction is measured relative to what the emissions level would be in 2030, if the country’s current emissions rate continued. Dagne Belay, Abiyot, Cynthia Elliott and Muluneh G. Hedeto, “Ethiopia’s Updated NDC Underscores its Focus on Climate Action,” World Resources Institute (WRI), 26 July, 2021, https://www.wri.org/insights/ethiopia-updated-ndc-climate-action.
the Torres Strait Islander case cannot offer them protection, because Ethiopia is not perpetuating the climate forces that are violating their human rights.279

**Non-refoulement**

In the second ruling, *Teitiota v. New Zealand*, the UN HRC extended the legal right of non-refoulement, a situational prohibition against deportation, to climate migrants whose lives would be threatened if they were forcibly returned to regions left uninhabitable by climate change.280 Ethiopians who migrated abroad have been forcibly returned to regions of the country affected by the drought. In 2021, the Ethiopian government reached an agreement with Saudi Arabia that allowed the country to deport an average of 2,100 Ethiopians a day, which amounted to 41,180 people in the less than three week span between June 26th and July 15th.281 The 11,311 people returned to Oromia during this period may not have migrated solely because of the drought, but the drought’s effects are nevertheless of great concern in their forced return to the region.282

Critically, however, *Teitiota v. New Zealand* set a high standard for the threat posed by climate change, requiring that climate migrants must have fled an “imminent” threat, such that they were unequivocally forced to flee.283 The recorded deportations to Oromia from Saudi Arabia occurred before the agricultural production in the country was measurably hindered, so the threat posed by the drought, while notable, does not obviously qualify as “imminent[ly]” life-threatening.284 So, considering only the threat posed by the drought and not the conflict, it is not clear that the extension

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281 IOM Ethiopia, “Flash Report.”

282 IOM Ethiopia, “Flash Report.”


of non-refoulement to climate migrants from *Teitiota v. New Zealand* can be applied to the Ethiopians deported to Oromia in the summer of 2021.\(^{285}\)

Since this wave of deportations, the drought has progressed to the point of clearly posing an “imminent” threat to Ethiopians’ lives in drought-affected regions.\(^{286}\) Although the impact of the drought alone may still not be enough to prove that deporting Ethiopians to *any part* of the country would pose an “imminent” threat to their human rights, since the drought does not extend across the entire country, the combined threats of the drought and the ongoing regional conflict clearly make a forced return to *any part* of Ethiopia highly dangerous.\(^{287}\) Ethiopians’ desert of non-refoulement protection on this basis was legally recognized in October 2022, when the U.S. Department of Homeland Security officially recognized Ethiopians’ eligibility for Temporary Protected Status (TPS), a U.S. policy that unilaterally made all Ethiopian citizens residing in the U.S. eligible for temporary work permits, and ensured that no Ethiopians could be deported from the country until April 20th, 2024.\(^{288}\)

Now that the U.S. has extended TPS to Ethiopian citizens in recognition of the dual threat of both the civil war and drought, it is possible that other countries will make similar rulings regarding Ethiopians who have been recently displaced into their territory.\(^{289}\) The availability of non-refoulement protections offers crucial security for Ethiopians who have migrated internationally after being displaced by the drought, but it is significant for other cases of drought-induced migration that, unlike


\(^{289}\) Al Jazeera, “Ethiopians in US Shielded From Deportation.”
the decision in *Teitiota v. New Zealand*, this non-refoulement protection has not been extended solely because of the threat posed by climate change.290

**Labor Migration**

The devastating economic impact of the drought could likely drive Ethiopians to seek labor opportunities elsewhere, if they are capable of making the journey.291 The drought poses a critical threat to the more than 102 million Ethiopians who are employed in the agricultural sector, as well as that of some of the citizens who have been recently driven to shift from formal to informal employment, as 94% of agricultural workers globally conduct their work informally.292 Likely due to the combined impacts of the conflict and the drought, employment in the formal sector has decreased by 30% between February 2020 and February 2023, while employment in the informal sector has increased by 13%.293 This economic pressure has also driven 25% of the people who had previously been unemployed and not seeking work, likely as a stay-at-home caregiver, to instead pursue employment.294 As Ethiopians’ incomes and ability to afford food have been threatened, inflation rose as high as 37.7% in May 2022, increasing the price of food. Although inflation has since decreased, the cost of food was still high by early March 2023, which has left 20 million Ethiopians currently unable to afford the food they need.295

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291 IRC Crisis Watch, “Ethiopia.”
293 ILO, “Comprehensive Assessment” p. 35
294 ILO, “Comprehensive Assessment.” p. 35
295 IRC Crisis Watch, “Ethiopia.”
The Intergovernmental Authority on Development (IGAD), a Regional Economic Community (REC) established between Ethiopia, Eritrea, Djibouti, Somalia, Kenya, Uganda, South Sudan and Sudan, could support the flow of drought-affected labor migrants out of Ethiopia. The Protocol on the Free Movement of Persons was adopted on June 24, 2021 by the IGAD Council of Ministers, and was signed by all the IGAD member countries except Uganda on January 12, 2022. The Protocol permits the free movement of citizens between the IGAD member countries without a visa, and specifically protects people migrating in pursuit of labor opportunities. Ethiopians migrating in search of employment in a non-drought-affected country, such as Djibouti, are eligible for the same employment rights as the citizens of their destination country, including the Protocol-protected rights to join a union and receive social security benefits. Importantly for Ethiopian migrants, however, their employment opportunities may not be significantly better in most of the other Protocol signatory countries, as Eritrea, Somalia, Kenya, South Sudan, and Sudan are all also currently experiencing either domestic conflict or a climate disaster, or both.

V. Assessment

Number of Displaced People Eligible for the Identified Migration Routes

This chapter has identified legal routes to seek refugee protection or employment abroad for the following four groups of Ethiopians forced by the drought to migrate elsewhere:

1) Women and children living in Afar, a region threatened by both the drought and civil war, who are vulnerable to targeted violence;301

2) Residents of Oromia who were displaced by the drought and migrated elsewhere within the country, where they are vulnerable to ethnic or politically-motivated violence;302

3) People of working age in Afar, who are able to travel to the region’s border with Djibouti and seek employment there under the IGAD Protocol on the Free Movement of Persons;303

4) Or people of working age in other drought-affected regions of the country, who cannot travel to Djibouti as easily304

As of March 1, 2023, 31.9 million people in Ethiopia have been affected by drought.305

An estimated 2.09 million people live in Afar.306 The Afar region is one of the regions of Ethiopia that has been hit the hardest by the drought, and its inhabitants are known to practice pastoral lives.307 It is

305 IRC Crisis Watch, “Ethiopia.”
likely, then, that all 2 million of its inhabitants’ lives and livelihoods have been threatened by the

drought. 308 Assuming that the gender and age demographics in Afar are consistent with Ethiopia’s

national population, it’s likely that 1,040,525 of those residents are female, and an additional 431,766

are male children under 14 years old.309 Because violence from the civil war between the Tigray People’s

Liberation Front (TPLF) and the Ethiopian government has affected the Afar region, and the

combatants on both sides are known to engage in violence that targets women and children, all the

women and children living in Afar are eligible to apply for refugee protection to escape from the

targeted persecution they face.310 4.61% of the Ethiopians affected by the drought are eligible to apply

to migrate abroad through this route.311

At least 200,000 people have been displaced from Oromia into Amhara as of February 2023, and

although the cause of their migration is not given, it is likely due to the combined factors of the

drought, regional conflict associated with the civil war, and a cholera outbreak, the extent of which has

been attributed to the effects of the drought.312 As there is a demonstrated record of

ethnically-motivated violence targeting Oromo residents in Amhara during the ongoing conflict, all of

the IDPs forced to flee from Oromia to Amhara are eligible to apply for refugee protection because of
the imminent threat of ethnic persecution.313 These refugee applications for Oromo IDPs in Amhara

308 IOM, “Ethiopia Crisis Response Plan 2023,” Norwegian Institute of International Affairs (NUPI) & Stockholm


Peoples in Africa are Impacted,” UNICEF, “Afar Regional Brief.”


Asylum-Seekers,” Center for Preventative Action, “War in Ethiopia.”


“War in Ethiopia,” IRC Crisis Watch, “Ethiopia.”


Asylum-Seekers.”
would support the migration of 0.63% of the total population affected by the drought across Ethiopia.  

If the demographic trends of the entire country are also true of the Afar region, then 1,193,359 people living in Afar are of working age. Because the drought-stricken Afar region shares a border with Djibouti, and traveling significant distances has been made highly difficult by the drought, the residents of Afar most likely to be able to migrate to Djibouti to seek out work opportunities under the IGAD Protocol on the Free Movement of Persons. Importantly, only the 596,689 working-aged men in this group are not included in the aforementioned drought-affected groups who are eligible for a protected route to immigrate internationally, as all women living in Afar, working-aged or not, are all eligible to apply for refugee status. This means that an additional 1.87% of Ethiopians affected by the drought are potentially able to flee to Djibouti as labor migrants.

Furthermore, if the age distribution of the Ethiopians affected by the drought are demographically the same as the whole country, there may be as many as 18.18 million people of working age who are affected by the severe drought, and may be able to immigrate out of the country as labor migrants. This population, excluding those of working age in Afar and the proportional number of working-aged Oromo migrants, represents an additional 52.9% of the Ethiopians affected by the drought who could possibly pursue a codified legal route of migration.

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In total, of the 31.9 million people affected by the devastating drought in Ethiopia, only 60.01% of them are eligible for refugee protection abroad, or are potentially able to pursue work in a safer country. Of that number, 52.9% are only the correct age to potentially leave the country as labor migrants, and do not live in a region that borders a safer country where they do not need a work visa. The 39.99% of Ethiopians who are not eligible for the identified legal routes of migration are either too young or too old to work, and live in areas that have been affected by the drought, but where they are not imminently threatened by the conflict. Importantly, this is likely a conservative estimate of the people who cannot be labor migrants, as it does not account for the likely high number of Ethiopians of working age who are severely disabled, and/or who have been so physically weakened by the drought that they cannot work.

**Successful Asylum Applications**

In 2021, 24,485 Ethiopians applied for refugee protection abroad, only 55.2% of whom were successful. This rate, importantly, does not distinguish between the Ethiopians who were fleeing the war and those that were fleeing the drought. The success rate of these applications is also inflated,

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325 These numbers and success rates are useful to reference as approximate figures, but the source where they are reported does not guarantee their accuracy. WorldData.info, “Asylum Applications and Refugees from Ethiopia,” https://www.worlddata.info/africa/ethiopia/asylum.php#:~:text=24%2C485%20people%20from%20Ethiopia%20fled,refugees%20in%20Djibouti%20and%20Kenya.
326 Center for Preventative Action, “War in Ethiopia,” WFP, “More Than a Decade of Drought.”
because it includes those awarded refugee status in the other Intergovernmental Authority on Development (IGAD) member countries, among which the average refugee acceptance rate was 97.19%. Other than the IGAD member countries, approximately 2,000 Ethiopians applied for refugee protection in Yemen, where none of them were accepted, and in the United States, where 66.8% were accepted. Of the early 850 applicants to the United Kingdom, 45.6% were granted refugee protection. Approximately 720 Ethiopians each applied for refugee protection in Germany and France, which approved their applications at the respective rates of 35.8% and 29.1%. As the war in Ethiopia has continued through at least the end of 2022, it’s likely that refugee acceptance rates for Ethiopians stayed consistent through 2022.

Because all the Ethiopians granted refugee protection, whether they were fleeing the war and the drought, or only the war, were in “imminent” danger in their homeland, they should be protected under the standard of non-refoulement. For the approximately 66.8% of Ethiopians who were successfully granted refugee protection in the United States in 2021 and until the fall of 2022, this right to non-refoulement has been recognized, and offers them a temporary guarantee of protection from deportation.

Successful Labor Migration

<table>
<thead>
<tr>
<th>Month</th>
<th>Emigration Due to Economic Reasons</th>
<th>Forced Climate Migration Out of</th>
<th>Named Destination Countries, Ranked by Most to Least Common</th>
<th>Percent Immigrating to an IGAD Member</th>
</tr>
</thead>
</table>

327 WorldData.info, “Asylum Applications,” ILO, “Regional Economic Communities (RECs).”
328 WorldData.info, “Asylum Applications.”
329 WorldData.info, “Asylum Applications.”
330 WorldData.info, “Asylum Applications.”
332 Although the active threats these Ethiopian refugees face seem as though they ought to qualify for non-refoulement protections, this does not mean that they will necessarily receive them. Al Jazeera, “Ethiopians in US Shielded From Deportation,” Sinclair-Blakemore, “Teitiota v. New Zealand,” McAdam, Climate Change, 1-2.
<table>
<thead>
<tr>
<th>Month</th>
<th>Total</th>
<th>Unrest</th>
<th>Top Destinations</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2021</td>
<td>12,638</td>
<td>186</td>
<td>Saudi Arabia (48.9%), Djibouti (13.3%), Kenya (12.6%), Somalia (5.4%), South Africa (4.8%), United Arab Emirates (3.3%), Yemen (2.6%)</td>
<td>31.3%</td>
</tr>
<tr>
<td>May 2021</td>
<td>14,532</td>
<td>327</td>
<td>Saudi Arabia (50.2%), Kenya (14.6%), Djibouti (13%), South Africa (4.6%), Somalia (3.6%), United Arab Emirates (3%), Yemen (2.3%)</td>
<td>31.2%</td>
</tr>
<tr>
<td>June 2021</td>
<td>13,649</td>
<td>322</td>
<td>Saudi Arabia (47.2%), Kenya (14.5%), Djibouti (13.3%), South Africa (5%), United Arab Emirates (3.5%), Somalia (2.9%), Sudan (2.7%)</td>
<td>33.4%</td>
</tr>
<tr>
<td>July 2021</td>
<td>17,181</td>
<td>229</td>
<td>Saudi Arabia (49.3%), Djibouti (13.7%), Kenya (5.7%), United Arab Emirates (5.5%), Sudan (5.2%), South Africa (3.8%), Qatar (2.8%)</td>
<td>24.6%</td>
</tr>
<tr>
<td>August 2021</td>
<td>18,676</td>
<td>202</td>
<td>Saudi Arabia (45.4%), Kenya (15%), Djibouti (12%), South Africa (5.8%), United Arab Emirates (4.2%), Qatar (2.4%)</td>
<td>27%</td>
</tr>
<tr>
<td>September 2021</td>
<td>16,330</td>
<td>285</td>
<td>Saudi Arabia (50.4%), Djibouti (14.8%), Kenya (11.5%), South Africa (4.8%), United Arab Emirates (3.8%), Qatar (2.3%)</td>
<td>26.3%</td>
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<tr>
<td>October 2021</td>
<td>11,317</td>
<td>325</td>
<td>Saudi Arabia (34.8%), Kenya (21.6%), South Africa (9.2%), Djibouti (9.2%), United Arab Emirates (5.1%), Qatar (3.5%)</td>
<td>30.8%</td>
</tr>
<tr>
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<td>12,353</td>
<td>202</td>
<td>Saudi Arabia (42.3%), Kenya (15.7%), Djibouti (15.5%), South Africa (6.5%), United Arab Emirates (3.5%), Qatar (2.4%)</td>
<td>31.2%</td>
</tr>
<tr>
<td>December 2021</td>
<td>13,980</td>
<td>283</td>
<td>Saudi Arabia (39.7%), Kenya (18.4%), Djibouti (15.4%), South Africa (6%), Somalia (4%), United Arab Emirates (3.8%)</td>
<td>37.8%</td>
</tr>
<tr>
<td>January 2022</td>
<td>15,486</td>
<td>183</td>
<td>Saudi Arabia (43.8%), Kenya (16%), Djibouti (15.8%), South Africa (5.6%), Somalia (4.6%), United Arab Emirates (3.1%)</td>
<td>36.4%</td>
</tr>
<tr>
<td>February 2022</td>
<td>14,612</td>
<td>577</td>
<td>Saudi Arabia (43.7%), Djibouti (17%), Kenya (15%), South Africa (4.9%), United Arab Emirates (4.4%), Somalia (3.9%)</td>
<td>35.9%</td>
</tr>
<tr>
<td>March 2022</td>
<td>16,325</td>
<td>634</td>
<td>Saudi Arabia (42%), Kenya (16.7%), Djibouti (14.2%), Sudan (5.3%), United Arab Emirates (5%), South Africa</td>
<td>39.5%</td>
</tr>
</tbody>
</table>

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334 ILO, “Regional Economic Communities (RECs),”
<table>
<thead>
<tr>
<th>Month</th>
<th>Total</th>
<th>Total%</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2022</td>
<td>668</td>
<td>36%</td>
</tr>
<tr>
<td>May 2022</td>
<td>1,684</td>
<td>31.8%</td>
</tr>
<tr>
<td>June 2022</td>
<td>2,047</td>
<td>34.8%</td>
</tr>
<tr>
<td>July 2022</td>
<td>1,737</td>
<td>31.8%</td>
</tr>
<tr>
<td>August 2022</td>
<td>2,067</td>
<td>31.6%</td>
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<tr>
<td>September 2022</td>
<td>1,379</td>
<td>33.2%</td>
</tr>
<tr>
<td>October 2022</td>
<td>1,263</td>
<td>36.1%</td>
</tr>
<tr>
<td>November 2022</td>
<td>1,301</td>
<td>36.1%</td>
</tr>
<tr>
<td>December 2022</td>
<td>1,411</td>
<td>38.2%</td>
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<tr>
<td>January 2023</td>
<td>1,467</td>
<td>40.4%</td>
</tr>
<tr>
<td>February 2023</td>
<td>1,441</td>
<td>45.7%</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>20,240</strong></td>
<td><strong>36.1%</strong></td>
</tr>
</tbody>
</table>
Table 1: Labor Migration Destinations Among Ethiopian Drought Survivors

After the drought began in the fall of 2020, 20,240 Ethiopians have been forcibly displaced internationally, by environmental forces. Table 1 begins in April of 2021, when migrants leaving Ethiopia first began reporting forced climate-induced displacement to International Organization for Migration (IOM) Officers at one of the IOM-monitored points of exit. The number of Ethiopians leaving the country for economic reasons greatly outnumber the number who report leaving for environmental reasons each month, but, because of the economic impact of the drought, it’s likely that all the forced environmental migrants reported in Table 1 were included in the total count of labor migrants. This count represents Ethiopians who were migrating out of economic need, and who do not necessarily have visas yet to support their journeys. Of the Ethiopians who immigrated out of the country during the drought period, an average of 33.96% per month went to countries that are signed members of the IGAD Protocol on the Free Movement of Persons, where their visa-free transit was


legally permitted after January 2022.\textsuperscript{340} Likely because of the active conflict and climate events concurrently threatening most of the other IGAD member countries, most Ethiopians did not use the IGAD Protocol on the Free Movement of Persons to support their migration.\textsuperscript{341} Instead, an average of 50.58\% of the Ethiopians leaving the country during each month of the drought planned to take the Northern Route, to Saudi Arabia, Qatar, Yemen, or the United Arab Emirates, which, though highly dangerous, is known to have more opportunities for legal labor migration than the Southern Route.\textsuperscript{342} Comparatively, very few Ethiopians chose to take the Southern Route to South Africa.\textsuperscript{343}

**Inadequacy of the Available Protection**

31.9 million people in Ethiopia have been affected by drought.\textsuperscript{344} 5.24\% of them are eligible for refugee protection, based on their vulnerability to gender-, age-, or ethnicity-based persecution.\textsuperscript{345} Out of all the Ethiopians who applied for refugee protection during one of the active years of the drought, however, just 55.2\% of the applications were approved.\textsuperscript{346}

A total of 54.77\% of Ethiopians affected by the drought were of working age, and potentially eligible on that basis to flee the drought as labor migrants.\textsuperscript{347} Since 1.87\% of that number live in the region of


\textsuperscript{342} IOM, Ethiopia — Flow Monitoring Dashboards 15-41, Adugna, “Once Primarily an Origin.”

\textsuperscript{343} IOM, Ethiopia — Flow Monitoring Dashboards 15-40.

\textsuperscript{344} IRC Crisis Watch, “Ethiopia.”


\textsuperscript{346} These numbers and success rates are useful to reference as approximate figures, but the source where they are reported does not guarantee their accuracy. WorldData.info, “Asylum Applications.”

Ethiopia closest to Djibouti, they could seek out labor under the IGAD Protocol on the Free Movement of Persons. Currently, however, only 0.12% of working-aged Ethiopians who have been affected by the drought have been able to migrate abroad in search of better economic opportunities.

Of the 31.9 million people in Ethiopia whose lives are threatened by the drought, due to the combined threats of the drought and the civil war, it is likely their safety could only be assured if they immigrated internationally. Importantly, 39.99% of the Ethiopians threatened by the drought are not eligible to immigrate internationally as refugees or labor migrants. And, although as many as 60.01% are potentially eligible to flee the drought as either refugees or labor migrants, only an estimated 2.96% of the total Ethiopians affected by the drought would actually be able to successfully leave the country through these routes. Although, as observed, the drought poses a significant challenge to Ethiopians’ ability to survive international immigration, it is clear that the available legal routes to migration are

352 To get the estimated percent of Ethiopians threatened by the drought that could realistically receive refugee protection (2.89%), I evaluated the total Ethiopian population threatened by the drought by the percentage of Ethiopians this chapter identifies as eligible for refugee protection, and by the success rate of refugee applications during the drought. I added that number (2.89%) to estimated the percent of Ethiopians threatened by the drought who would be able to leave the country as labor migrants (0.07%), which I found by evaluating the total number of Ethiopians whose lives are threatened by the drought by the total percentage of them that are likely of working age, and potentially able to conduct work, and by the percent of working-aged Ethiopians who were forcibly displaced by the drought and who reported to the IOM that they were immigrating internationally in search of economic opportunity. IRC Crisis Watch, “Ethiopia,” UNICEF, “Afar Regional Brief,” World Bank, “DataBank,” UNHCR, “Convention and Protocol Relating to the Status of Refugees,” UNHCR & Maggio Kattar Nahajzer Alexander, “Representing Asylum-Seekers,” Center for Preventative Action, “War in Ethiopia,” OCHA, “Ethiopia: Situation Report,” UNICEF, “Afar Regional Brief,” World Bank, “DataBank,” TRIDE-BAC, “Draft Protocol on Free Movement of Persons in the IGAD Region,” pp. 3-4, WorldData.info, “Asylum Applications.” ILO, “Regional Economic Communities (RECs),” UNHCR, “UNHCR’s Drought Response in Ethiopia, Kenya and Somalia,” IOM, Ethiopia — Flow Monitoring Dashboards 15-41.
insufficient to cover all of the Ethiopians affected by the drought whose lives depend on being able to temporarily live elsewhere.353

Chapter Four: Sea Level Rise

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   B. Distance of Displacement
   C. Rate and Duration of Uninhabitability

IV. Legal Analysis
   A. Refugee Eligibility Under the 1951 Refugee Convention
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V. Assessment
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   B. Successful Asylum Applications and Labor Migration
   C. Inadequacy of the Available Protection
I. Introduction

Perhaps the most frequently-discussed consequence of climate change is the threat warming ocean waters and atmospheric temperatures pose to glaciers and polar ice caps. Melting glaciers and arctic ice progressively release carbon dioxide and methane into the atmosphere, which exacerbates climate change. Through this cyclical process, climate change is expected to drive continued polar ice melt,

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which will cause sea levels to rise and threaten coastal communities and island inhabitants around the world.\textsuperscript{356}

As the ocean waters gradually close in on small island nations, climate change puts entire countries at risk of disappearing. Once sea levels are high enough, island countries will be left permanently uninhabitable, and their citizens will have no choice but to leave their homeland forever.\textsuperscript{357} This chapter focuses on the projected displacement due to sea level rise that will take place in the island country of the Maldives, which, as one of the countries with the lowest overall elevation, is imminently threatened by climate change.\textsuperscript{358} Unlike many other countries threatened by climate change, the government of the Maldives can afford to implement drastic climate adaptation measures to lessen the impact on its citizens.\textsuperscript{359} This chapter examines whether those measures will be sufficient to protect the country’s population from being forced to flee the rising sea levels, and investigates whether international refugee law and indigenous land rights protections will be sufficient to protect the Maldivians who have no other option but to migrate to safety abroad.\textsuperscript{360}


II. Rising Sea Levels in the Maldives as a Climate Displacement Event

Since the industrial revolution, humans have been burning coal as a source of fuel.\textsuperscript{361} The practice of burning coal has continually emitted carbon dioxide into the atmosphere, which has served as a catalyst for the myriad effects of climate change.\textsuperscript{362} As our planet warms, the temperature of the ocean rises, increasing the volume of the water already present in the ocean and additionally beginning to melt sea ice, which then adds more water to the ocean.\textsuperscript{363} In this way, anthropogenic climate change has driven sea levels to rise at an increasing rate.\textsuperscript{364} In the less than a century and a half following the industrial revolution, the global average sea level has risen by almost 8 inches.\textsuperscript{365} 2.8 inches of this increase has occurred over the past 25 years, and sea levels are currently rising at a pace of one centimeter (cm) every three years.\textsuperscript{366}

The Maldives is made of a series of 1,190 separate islands, spread across over 34,000 square miles of the Indian Ocean.\textsuperscript{367} The coral foundations of the islands emerge from the sea in 26 clustered formations called atolls, which are characterized by their circular arrangement, forming a central lagoon bordered

\textsuperscript{362} WEF, “Sea Level Rise.”
\textsuperscript{366} Climate Change Knowledge Portal for Development Practitioners and Policy Makers, “Country: Maldives.”
by the islands’ coral reefs. In some places, there are inner islands located within the atoll circle. 80 percent of the islands are approximately three feet or less above sea level, putting the Maldives at critical risk to climate-change-driven rising sea levels. In 2008 the then-president of the Maldives, Mohamed Nasheed, announced in a cry for climate action, “Global warming and environmental issues are issues of major concern to the Maldivian people. We are just about three feet above sea level... So any sea level rise could have a devastating effect on the people of the Maldives and their very survival.”

III. Displacement Analysis

Voluntary vs. Forced Displacement

Although the 0.33 cm annual increase in sea levels may not seem as though it constitutes an imminent threat to the Maldives, the 8-inch rise in ocean waters since the industrial revolution has had a tangible impact, and it is clear that the threat is progressing. An entire island has been gradually subsumed, and 90 percent of the islands experience flooding every year. The higher sea levels have been wearing away at the islands’ shores, 97 percent of which have experienced erosion, and 64 percent of which are experiencing severe erosion. In 2021, Former Maldivian President Mohamed Nasheed told COP26, “We are losing ground... This is happening now. It is upon us.”

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371 BBC News, “Plan for New Maldives Homeland.”
373 Watts, “Ex-Maldives President Tells COP26,” Behsudi, “No Higher Ground."
374 Watts, “Ex-Maldives President Tells COP26.”
According to a 2015 survey conducted among 192 citizens of the Maldives, however, the current impacts of rising sea levels on the Maldives have not yet driven its citizens to migrate elsewhere.\(^\text{377}\) The survey respondents, all of whom were Maldivian citizens, were between 16 and 63 years old and lived on 18 different islands within the country.\(^\text{378}\) As shown in Figure 10, nearly 70 percent of the respondents reported that the current level of “environmental degradation/erosion” was either “very” or “extremely” problematic, and approximately 50 percent also reported that the environmental issues they were facing made their lives “moderately” hard or harder.\(^\text{379}\) Still, approximately 60 percent of the respondents reported that climate change did not affect their daily lives, or did so only “slightly,” and

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35 percent reported that their daily lives were unaffected by sea level rise. The survey unequivocally reported that Maldivians were not yet considering migrating nationally or internationally because of the threat posed by climate change. They were in closer agreement about their expectations of the future: nearly 70% of the survey respondents said they expected their daily lives to be “very” or “extremely” affected by sea level rise in the future, and that their home island would be “very” or “extremely” affected by climate change.

Their consensus was clear: they knew the progression of climate change would likely force them to leave their homes at some point during their lifetimes, but did not feel presently forced to flee. Given that Maldivians have not yet been forced to migrate, any citizens who choose to leave the country due to the current flooding or erosion, or in anticipation of the encroaching sea levels someday reaching their homes, would be doing so voluntarily. Importantly, although the Maldivian citizens are aware of the threat of climate change, they are not deciding to voluntarily leave. Instead, they are planning to leave the country only when they must, because it is uninhabitable.

**Rate and Duration of Uninhabitability**

There are two ways in which the effects of climate change on the Maldives could force its citizens to migrate abroad: environmentally, climate change could make the islands will no longer safe to live on, and economically, the impact of climate change on the country’s infrastructure and ecology could eliminate the country’s tourism market, which supports over 35 percent of national employment. Because the Maldives is currently on track to become permanently uninhabitable both

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381 Speelman et al, “Contemporary Migration Intentions in the Maldives,” p. 16.
384 Speelman et al, “Contemporary Migration Intentions in the Maldives,” pp. 12, 16-17, Behsudi, “No Higher Ground.”
environmentally and economically, it is important to understand how the two threats are developing concurrently.\textsuperscript{388}

![Projected Rate of Sea Level Rise in the Maldives, 2008-2100\textsuperscript{389}](image)

**Figure 11: Projected Rate of Sea Level Rise in the Maldives, 2008-2100\textsuperscript{389}**

In 2017, the Intergovernmental Panel on Climate Change (IPCC) predicted that under Representative Concentration Pathway (RCP) 2.6, a scenario of strong climate change mitigation policy, the global average sea level would rise at a median rate of 0.17 inches per year, which would lead the average sea level to rise by 1.4 feet by 2100.\textsuperscript{390} Importantly, the rate of regional sea level rise is projected to differ from the global average rate.\textsuperscript{391} In the Maldives, the median estimate of sea level rise under the RCP 2.6


scenario is just over one foot by 2100. Higher sea levels, predictably, generate taller waves. Tidal patterns with waves that reach over two feet and three inches above sea level are currently expected once every 100 years, but in less than thirty years, they are predicted to occur yearly. Under the best-case scenario, RCP 2.6, these waves will be higher than 80% of the territory of the Maldives by 2088.

Under the RCP 8.5 projection, no actions will be taken to alter the current progress of climate change, and the average global temperature will rise by over 3.5 °F by 2100. The global sea levels will rise at a median pace of nearly half an inch a year, and in 2100, the average global sea level will have risen by 2.4 feet. Importantly, however, under the RCP 8.5 projection, melting Antarctic ice is projected to add approximately 3 feet and 7 inches to the global average sea level by the end of the century. If no climate action is taken, the median predicted sea level rise in the Maldives is two feet, and accounting for Antarctic ice melt, regional sea levels are on track to exceed the elevation of 80% of the islands in the Maldives by 2100. The nearly 8-foot tall waves will reach the same height as the highest point of the country.

Depending on the immediate climate action taken, the entire country may not disappear completely beneath the sea in this century. The land remaining, however, may nevertheless be left uninhabitable. In less than thirty years, the Maldivian islands lowest in elevation are predicted to become uninhabitable due to the increased frequency of flooding, and the likely salination of many sources of

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392 Climate Change Knowledge Portal, “Country: Maldives.”
freshwater.\footnote{402} Half of the houses in the Maldives are located within 350 feet of the shore, and are critically vulnerable to the encroaching ocean waters.\footnote{403}

Economically, climate change poses a second critical threat to the citizens of the Maldives. Although the Maldivian market for tourism is expected to grow through 2028, it is threatened long-term by coastal erosion, which will gradually eliminate the country’s currently tourist-laden beaches, and by the climate-driven loss of its coral reefs, which will threaten the fish population and visual appeal that drive tourists to scuba dive.\footnote{404} 80,500 people living in the Maldives have jobs that rely in some capacity on the tourism market.\footnote{405} Tourism has been highly lucrative for the country, and in 2019 represented 24.5 percent of the national GDP, and over 33 percent of the government’s total revenue.\footnote{406} In 2014, the Asian Development Bank projected that climate change would lead to a GDP loss of 2.3 percent in 2050 and 12.6 percent in 2100, but the economic impact may vary depending on the country’s capacity to adapt to rising sea levels.\footnote{407} If a significant portion of the country’s beaches and coral reefs were lost, or if regional infrastructure supporting tourism, like oceanfront hotels, were rendered unsafe, it would severely reduce government funding and could leave a significant number of Maldivians out of work.\footnote{408}

The Maldives cannot slow the rate of sea level rise.\footnote{409} Once an island is completely below sea level, or its entire territory is subject to frequent flooding by regular tidal inundation, it will become permanently

\footnotetext{402}{Voiland, “Preparing for Rising Seas in the Maldives.”}
\footnotetext{403}{Behsudi, “No Higher Ground.”}
uninhabitable. In order to extend the duration of the islands’ habitability, the Maldivian government has focused on strengthening the country’s natural defenses: its coral reefs. Considered the islands’ first line of defense against rising sea levels, strong, tall coral reefs can reduce the extent of tidal flooding. This has driven the national government to commit to implementing systems to protect 20% of the country’s ocean ecology, including the coral reefs, by the end of this decade. Nearly all of the Maldives’ 187 currently-inhabited islands also have climate-adaptive infrastructure intended to limit erosion and the impact of strong surges. Still, the Minister for Environment, Climate Change and Technology, Aminath Shauna, has made it clear that the coral reefs and current infrastructure are not sufficient to protect the islands against climate change: “...for us climate change is an existential threat. There’s no higher ground we can run to. ...most [coastal homes] really cannot withstand tidal floods, let alone tsunamis. Really, everything is at stake.”

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413 Behsudi, “No Higher Ground.”
414 Behsudi, “No Higher Ground.”
415 Behsudi, “No Higher Ground.”
Distance of Displacement

Figure 11: Regional Sea Level Rise of 1-3 Meters in the Maldives\textsuperscript{416}

If the sea level in the Indian Ocean were to rise by one meter, or just over three feet, 85 percent of the Maldives would be underwater.\textsuperscript{417} The difference in territorial loss between a one-meter rise in sea level and a three-meter rise, when nearly all of the country would be submerged, is shown in close detail in the Figure 11 map of the country’s capital, Malé, and the nearby islands in the North Malé Atoll.\textsuperscript{418}

The national population is concentrated in Malé; over 25 percent of the country’s population lives in the capital city, and over 70 percent of the two hundred inhabited islands have fewer than 1,000


residents.\textsuperscript{419} Currently, nearly all internal migration in the country charts a flow to Malé, or its neighboring island, Hulhumalé, from the outlying islands.\textsuperscript{420} Maldivian migrants take this route in search of greater economic opportunities, as many respondents to the 2015 migration opinion survey reported that Malé was the only island with opportunities for employment, education, and sufficient medical care.\textsuperscript{421} Malé has also been officially designated as the safest island in the Maldives as sea levels rise; critically, the island is equipped with breakwater infrastructure, which was built after flooding in 1987 to reduce the momentum of waves before they arrive onshore.\textsuperscript{422} It is possible that the disparity in quality of life between cities and sparsely populated islands will be exacerbated by continued sea level rise, and the associated flooding and erosion, if, as one migration survey respondent predicted, “Most islands will face mass erosion while cities will adapt.”\textsuperscript{423}

Under the country’s Safer Islands climate adaptation plan, the government has predicted that people living on outlying islands will be driven by sea level rise to migrate to the capital, as their home islands become uninhabitable, and while Malé remains livable and has housing available.\textsuperscript{424} In order to limit overcrowding and the overextension of resources in Malé, the government has been gradually constructing an artificial island approximately five miles from the city since 1997.\textsuperscript{425} The island, Hulhumalé, has been built out of reclaimed sand with an elevation more than 6.5 feet above sea level.\textsuperscript{426} By 1999, 1,000 people moved to Hulhumalé, and twenty years later, the island housed more than 50,000 people.\textsuperscript{427} Construction on the island is anticipated to be finished before 2026, and the

\textsuperscript{423} Speelman et al, “Contemporary Migration Intentions in the Maldives,” pp. 14, 16
\textsuperscript{426} Speelman et al, “Contemporary Migration Intentions in the Maldives,” p. 3, Miller, Norman, “A New Island of Hope.”
\textsuperscript{427} Miller, “A New Island of Hope.”
completed island will offer climate-defended housing to as many as 240,000 Maldivians.\footnote{Miller, “A New Island of Hope.”} Crucially, the government has mandated the construction of affordable housing units that are specifically intended for people forcibly displaced by climate change, as well as other vulnerable groups. A portion of the housing has also been designated as mid-way priced, and the government has set a price limit that applies to 60 percent of the mid-cost housing units.\footnote{Miller, “A New Island of Hope.”} To continue attracting foreign tourism, the government has also included luxury properties and a water park in the island’s design.\footnote{Miller, “A New Island of Hope.”}

In June 2022, the Maldives announced their plans to build a floating city, also off the coast of Malé.\footnote{Maldives Floating City, “Ministry of Tourism Permits Dutch Docklands Maldives to Run Floating City Development Based on the Integrated Tourism Model,” 25 June, 2022, https://maldivesoatingcity.com/wp-content/uploads/2022/06/PRESS-RELEASE-Ministry-of-Tourism-permits-Dutch-Docklands-Maldives-to-run-Floating-City-Development-based-on-the-Integrated-Tourism-Model.pdf.} Unlike the current islands of the Maldives, including Hulhumalé, the floating design of this city will allow it to rise in elevation along with the ocean waters, while remaining tethered to the ocean floor to keep it in place.\footnote{Mulhern, “Sea Level Rise Projection Map,” Globetrender, “The Maldives Plans to Build Floating City by 2030.”} The city will be protected from waves by its location on the inner-lagoon side of the North Malé Atoll, as well as artificially-grown coral reefs.\footnote{Maldives Floating City, “Ministry of Tourism,” Globetrender, “The Maldives Plans to Build Floating City by 2030.”} The design for the city includes 5,000 new homes, the smallest of which is just over 1,000 square feet, and will cost $250,000.\footnote{Maldives Floating City, “Ministry of Tourism.”} The floating city’s construction began in January 2023, and is planned to be finished by 2028.\footnote{Maldives Floating City, “Ministry of Tourism.”}
Approximately 188,000 people in the Maldives currently live outside of Malé and Hulhumalé.\footnote{I found this number by first calculating the total population of the country in 2023 (by the multiplying the national population in 2021 by the population growth rate between 2020 and 2021, and then by the number of years from 2021 to 2023), subtracting the current population of Malé, and subtracting the total population likely living in Hulhumalé (which was based on the total population of the island in 2019, multiplied by the same population growth rate, and multiplied again by four years). World Bank, “Data,” 2021, The Maldives, \url{https://data.worldbank.org/indicator/SP.POP.TOTL?locations=MV}, Permanent Mission of the Republic of the Maldives to the United Nations and Other International Organisations at Geneva, “Economic Profile,” Miller, Norman, “A New Island of Hope.”} By the time both Hulhumalé and the floating city are complete, that number will have grown to over 200,000 people, if the country’s current population growth rate remains constant.\footnote{Speelman et al, “Contemporary Migration Intentions in the Maldives,” pp. 3, 14, Maldives Floating City, “Ministry of Tourism,” Miller, “A New Island of Hope,” The World Bank Group & Asian Development Bank, “Climate Risk Country Profile: Maldives,” pp. 2-3, 8, 17, Climate Change Knowledge Portal, “Country: Maldives.”} It is likely that at some point after the completion of Hulhumalé and the floating city, this entire population will need to move to the islands with climate change-attentive infrastructure, once the islands they are currently living on are no longer safe.\footnote{Speelman et al, “Contemporary Migration Intentions in the Maldives,” p. 3, Miller, “A New Island of Hope,” World Bank, “Data,” The Maldives.} Assuming that the population of Malé is also growing, and because the city had an average of 130,000 people living in each square mile of the city in 2020, it is unlikely that people who are displaced from the outlying islands will be able to migrate into Malé.\footnote{Miller, “A New Island of Hope,” Warren, Karon, “How Big is 1,000 Square Feet: What To Expect When Renting,” Rent, 1 August, 2022, \url{https://www.rent.com/blog/how-big-is-1000-square-feet/}, Globetrender, “The Maldives Plans to Build Floating City by 2030,” World Bank, “Data,” The Maldives.} By the time the construction on the floating city is finished, the new city and Hulhumalé will be able to provide housing for up to 177,550 more people, excluding the people who were already living in Hulhumalé in 2019, and the amount that population is likely to have grown.\footnote{Globetrender, “The Maldives Plans to Build Floating City by 2030,” Miller, “A New Island of Hope.”} Importantly, not all of this new housing is priced at a level that would be affordable for the average Maldivian citizen.\footnote{Yet, even if the people living in the regions of the Maldives most susceptible to sea level rise were able to afford to move to Hulhumalé and the floating city in accordance with the country’s Safer Islands Plan, and, though unlikely, they moved as soon as both projects were finished, there would not be room for at least}
10,800 people.\textsuperscript{442} This remaining population, at a minimum estimate, will be forced by rising sea levels to migrate out of the country.\textsuperscript{443}

IV. Legal Analysis

Refugee Eligibility Under the 1951 Refugee Convention

The 1951 Refugee Convention extends refugee protection to people who have been persecuted, or who are at risk of being persecuted, on the basis of their race, religion, nationality, social group membership, or political affiliation.\textsuperscript{444} In the Maldives, it is illegal to have sexual intercourse with someone of the same gender.\textsuperscript{445} This law has been enforced as recently as 2022, and clearly constitutes persecution against gay people, who are a protected social group under the Refugee Convention.\textsuperscript{446}

Globally, an average of 11\% of a country’s population report experiencing some same-sex attraction.\textsuperscript{447} And, because of the number of countries where homosexuality is criminalized or otherwise repressed, the proportion of gay people in the world is likely higher than the number who felt comfortable self-reporting their sexuality. At least 11\% of the people living in the Maldives, then, are likely to be gay, and are put at great risk by the national laws that instruct that they be imprisoned or physically beaten for their sexuality.\textsuperscript{448}

\begin{footnotesize}


\textsuperscript{444} UNHCR, “Convention and Protocol Relating to the Status of Refugees.”


\end{footnotesize}
persecution could apply to receive refugee protection in a country that upholds the rights of gay people, in order to escape the violence they face in their homeland.\textsuperscript{449} Because rising sea levels will displace communities based on the elevation of their home islands and without regard to their identities, proportionally, it is likely that 11% or more of the Maldivian population forcibly displaced by rising sea levels will be gay, and will be eligible to apply for refugee protection abroad.\textsuperscript{450}

**Human Rights Law: Non-Applicability of Indigenous Land Rights**

The Giraavaru people have reportedly lived on Giraavaru Island in the North Malé Atoll since 400 B.C.E, and are indigenous to the Maldives.\textsuperscript{451} They lived and governed themselves autonomously, even after immigrants arrived on other islands in the atoll and established their governing authority over their newly acquired territory.\textsuperscript{452} In 1932, however, the powers that had granted themselves governing authority over the Maldives issued the country’s first constitution, which did not grant the Giraavaru people any formal rights to their land, or to self-governance.\textsuperscript{453} The Giraavaru were forced to leave Giraavaru Island in 1968, and were moved to Malé. Once in Malé, however, their cultural practices were lost between generations, and people with Giraavaru ancestry are no longer regarded as culturally distinct from the national population.\textsuperscript{454} The country’s current constitution, which was put into force in 2008, does not include any specific rights protections for indigenous groups.\textsuperscript{455}

\textsuperscript{453} Lynn, “History of Giraavaru Island.”
\textsuperscript{454} Lynn, “History of Giraavaru Island.”
Even when they were directly asked by the U.N. Special Rapporteur on the human right to a safe, clean, healthy and sustainable environment about how the country could offer targeted protections to groups especially vulnerable to environmental degradation, and the question specifically named indigenous people as one such group, the country’s representatives did not address the impact of environmental harms on indigenous people at all. Because the Giraavaru people have been erased within the larger population of the Maldives and are no longer living communally in a single region and engaging with the land in a culturally significant way, their present inability to engage in cultural practices in their historic lands will not be affected by climate change.

**Labor Migration**

As explained in the Displacement Analysis section of this chapter, the effects of climate change on the Maldives will threaten its beaches and coral reefs, both of which are relied upon to attract tourism. Because 37.4% of the job market in the country is supported by the tourism industry, if tourism declines as climate change progresses, a high portion of the country will be at risk of becoming unemployed, and a high number of people will need to leave the country as labor migrants. Because 56% of the population of the Maldives is of working age, and rising sea levels are likely to displace people indiscriminately across age groups, up to 56% of the displaced population could be eligible to apply to migrate abroad under a labor visa.

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Significantly, however, the present rates of unemployment in the country have not driven people to pursue work abroad: 28% of the national population are currently unemployed, but approximately 0.6% of Maldivians live out of the country, which includes other expatriate populations as well as labor migrants. Education rates are low among Maldivian workers, which likely presents a challenge in being granted a work visa, or finding employment abroad. There is also a second layer of difficulty: because the country is not part of any free movement agreements, Maldivian citizens have to apply for a work visa to work internationally.

V. Assessment

Portion of Displaced People Eligible for the Identified Migration Routes

An estimated 11% of the displaced population could be eligible for refugee protection, and an additional 49.8% of the displaced people will be of working age, and may be able to apply to move abroad as a labor migrant. In total, approximately 60.8% of the Maldivian population displaced by rising sea levels will be eligible to legally migrate out of the country using one of the two available legal routes for migration. Crucially, this leaves behind all of the people who are forcibly displaced from the Maldives and who are not eligible for refugee protection because they are experiencing an additional personal threat, and the people who are either too young or too old to work.

463 Plewa, “Migration in Maldives: A Country Profile.” 137-141
466 UNHCR, “Convention and Protocol Relating to the Status of Refugees.”
Successful Asylum Applications and Labor Migration

Very little data is available on the success rates of refugees and labor migrants leaving the Maldives, because people have not been forcibly displaced by climate change yet, and there are very few asylum-seekers and labor migrants leaving the Maldives. As previously mentioned, less than 0.6% of Maldivian citizens have migrated out of the country to work abroad. In 2016, only 57 Maldivian citizens were granted refugee protection abroad. There is no information available on how many people in the country applied for refugee protection and were denied, but it is difficult to extrapolate on the successful migration of just 57 people to estimate what refugee reception will look like when the number of Maldivian asylum-seekers rises, as the Maldivians who are eligible to apply for refugee protection are forced from their homes by rising sea levels.

Inadequacy of the Available Protection

Even without a precise estimate of how many Maldivians will realistically be able to receive protection abroad as refugees or labor migrants, it is clear that the available legal migration routes are insufficient to protect all of the people who will be forced out of the country by rising sea levels. Even if a high portion of the displaced Maldivians are able to migrate to a region of the country with infrastructure able to protect them from sea level rise, and, out of all of the people who must seek shelter abroad,

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everyone eligible for refugee protection or labor migration was able to successfully take that route, there would still be people remaining who had been displaced, and yet could not legally migrate elsewhere.\textsuperscript{471}

Chapter Five: Conclusion

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I. Introduction
II. Case Study Review
III. Proposed Solution: A New Protocol to the 1951 Refugee Convention
I. Introduction

Figure 12: Evacuations Following the Dual Impact of Hurricanes Eta and Iota in Honduras\textsuperscript{472}

Although this thesis has taken a deep and focused look into the consequences of climate change for communities in three specific country contexts, the findings in each case provide a strong indication that current international refugee law, human rights law, and regional free movement agreements will not provide a legal routes to migration for all of the people who are forcibly displaced by climate change, and whose lives will depend on their ability to migrate safely abroad.

In this concluding chapter, I compare each case study against the others, and discuss the extent to which these cases can be extrapolated to other instances of forced climate migration. Then, I argue that the best way to ensure that all of the people who are forced out of their homelands by climate change will have a protected legal route to migrate elsewhere is to expand the eligibility criteria of the 1951 Refugee Convention to explicitly include people who are critically threatened by environmental harm.

\textsuperscript{472} Pindado, “When It Rains It Pours.”
II. Case Study Review

In each of the three cases examined by this thesis, people were displaced within their country as internally displaced persons (IDPs) and internationally. Given that people were displaced internationally by varied kinds of climate events, across three differently-sized countries, and in disparate regions of the world, it is likely that forced displacement across national borders will continue to be a significant problem as climate change worsens, and these events become more frequent. None of the current legal frameworks are able to adequately protect forcibly displaced climate migrants: refugee protection based on persecution and labor migration only incidentally help some sectors of the population, and do not address the root cause driving the displacement of the entire regional population.


It is crucial then, not to merely understand what protections are available, but to fully address the protections that are needed, and when. After the hurricanes in Honduras and the drought in Ethiopia, displaced people needed a safe place to live temporarily, because their homelands could foreseeably return to a degree of habitability that would allow them to move back.476 In the case of rising sea levels in the Maldives, and for other countries slowly progressing toward permanent uninhabitability, however, it may be even more difficult for the displaced population to receive refugee protections or work visas abroad, because they will need to be able to live permanently in the new country.477

In Honduras, because the hurricanes struck so suddenly and the destruction was so severe, it was clear that all of the hurricane survivors attempting to migrate abroad had been forcibly displaced and needed asylum.478 With slowly-developing environmental disasters like droughts and sea level rise, alternatively, it is not evident exactly when the threat is severe enough that people moving away from the affected areas should be considered forcibly displaced, rather than voluntarily moving away from a situation that is unpleasant and worrying, but not unbearable.479 As the Maldivians reported, however, a community’s bond to their homeland is strong. Even when people are aware that the preliminary effects of climate change they are beginning to observe will one day displace them, it is not worth migrating and giving up a place that they know and love until staying in place will cost them their lives or livelihoods.480 When people who are experiencing some of the effects of a climate disaster leave their home countries, then, it is a sign that they have likely been forced out.

478 Collins, “Dispatch from Honduras.”
III. Proposed Solution: A New Protocol to the 1951 Refugee Convention

Article I of the 1951 Refugee Convention establishes the following definition of a refugee:

“[O]wing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, [a refugee is either (1)] outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or... [(2)] not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” 481

The Refugee Convention was amended once, through the 1967 Protocol, which extended the applicability of the treaty’s protections to include refugees seeking protection after World War II, and to people fleeing from anywhere in the world, not just Europe. 482 I believe the Convention’s coverage must be expanded for a second time, through a second Protocol that would create a legal designation for climate refugees. 483 This new Protocol should amend the first half of the definition of a refugee in Article I of the Convention to include a second clause:

“[O]wing to either:

(A) a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, or

(B) a well-founded fear of imminent harm due to environmental conditions that violate the right to life.

[a refugee is either (1)] outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or... [(2)] not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

As with the 1967 Protocol, the states that are parties to the 1951 Refugee Convention and the 1967 Protocol would not automatically be bound under the new Protocol.485 Instead, they would have the option to accede to this Protocol under the same procedure that they would accede to the Convention or 1967 Protocol.486 Importantly, as with the Convention, states that accede to the new Protocol would not have the option to submit a reservation concerning the established definition of a refugee. So, they would not have the option to accede to the new Protocol, but with the reservation that they refuse to be bound by item B, the new addition to the definition of a refugee.487

The language I propose to add would require that, in order to be eligible for refugee protections under the new Protocol, a person must be threatened by “environmental conditions” so severe that they constitute “imminent harm” and “violate the right to life.” The latter two conditions come directly from the UN Human Rights Council’s 2020 decision in Teitiota v. New Zealand that a person forcibly displaced by climate change could be eligible for one of the key refugee protections established in the 1951 Refugee Convention: the right to non-refoulement.488 Their eligibility for non-refoulement was premised upon the person facing an “imminent” threat due to “climate change-induced conditions

that violate the right to life.” So, although the Human Rights Council’s decision in *Teitiota* did not designate forced climate migrants as refugees, it established two clear conditions under which they could receive one of the benefits associated with refugee designation. For each of the case studies examined in this thesis, the populations displaced by climate change only sought to migrate once they faced an “imminent” threat. Unsafe environmental conditions and threats to a person’s financial security, which are clearly present in each of the case studies, have both been recognized as violations of the “right to life.”

Instead of using the language in the *Teitiota v. New Zealand* ruling that described the threat as “climate change-induced conditions,” I decided to instead set the less stringent requirement that the refugees protected under the new Protocol only be fleeing “environmental conditions.” This means that they will not have to prove that the environmental conditions that have left their homes uninhabitable were caused by climate change, and would not have occurred if the world were not currently undergoing climate change. In each of the case studies in this thesis, it is clear that each environmental disaster is among the kinds of events that are caused by climate change, but for the hurricanes and drought cases, it would be difficult to definitively prove that these particular events were “climate change-induced.” Whether or not the events occurred due to climate change, there is a clear and urgent need for people who have been forcibly displaced by an environmental disaster to become eligible to receive refugee protections based only on the severity of the environmental force driving them from their homelands.

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493 Lavelle, “By 2050.”
I also deliberately chose not to repeat the language of “persecution” in the added clause B in the proposed Protocol, because framing climate displacement as environmental persecution seems to necessitate the existence of an entity to be responsible for the persecuting force. 495 In the 2022 ruling introduced in Chapter One, the UN Human Rights Council found Australia responsible for indirectly violating the Torres Strait Islanders’ indigenous cultural rights, because environmental effects attributed to climate change had prevented them from engaging with their territory in culturally significant ways, and Australia had failed to curtail the extent to which the Torres Strait Islanders would be affected by climate change by building climate-adaptive infrastructure to protect their territory or reducing its carbon emissions. 496 Although Australia may be the exception, the drought and rising sea level cases in this chapter demonstrate that countries imminently threatened by climate change are likely to have strongly climate-adaptive policies. 497 If the new Protocol were to require that eligible environmental migrants must also be “persecuted” in order to receive refugee protection, and persecution were interpreted as it was in the Torres Strait Islander case, it would exclude the residents of any country that, conscious of its own vulnerability to climate change, implemented strong climate change-mitigation policies. 498

Some political scientists or legal scholars may contend that it is the wrong approach to establish protections for environmental migrants through a binding treaty. It is true that creating a new Protocol to the Refugee Convention could create a collective action problem where no country would be willing to accede to the Protocol, because doing so would risk being the sole country legally bound to admit environmentally displaced populations that meet the new eligibility requirements to receive

496 Plano, “UN Decision.”
refugee protection. The alternative would be to create an opportunity for countries to acknowledge the problem of climate change-driven displacement through non-binding soft law, which would encourage signatory countries to admit environmental migrants into their country, without legally obligating them to do so. This was successfully put into practice by the Nansen Initiative’s 2015 Protection Agenda, which has been signed by over 100 countries. Each of the cases of environmental displacement studied in this thesis occur after the Protection Agenda was enacted, however, and clearly demonstrate the soft law agreement does not sufficiently protect people who have been displaced by climate change.

Giving forced climate migrants a chance at a legal route to safety is not an impossible political goal. Immigration decisions are made on a case-by-case basis, and the proposed Protocol would not legally require countries to unilaterally admit all of the people who apply for refugee protection due to environmental threats. In fact, the new Protocol’s requirements that a climate event present an imminent danger that would violate the migrants’ protected right to life are sufficiently strict that the

499 Environmental Degradation and Migration, 32, McAdam, “Environmental Migration,” 161-162.
500 Lavelle, “By 2050,” Platform on Disaster Displacement Secretariat, “Platform on Disaster Displacement: Follow Up to the Nansen Initiative.”
501 Lavelle, “By 2050.”
*Teitiota v. New Zealand* ruling that established those conditions did not extend non-refoulement protection to the person who has applied for it.\(^{503}\) Because countries that accede to the new Protocol could still rule against admitting individual applicants for refugee protection, it is possible that the collective action problem could be overcome.\(^{504}\)

Ultimately, codifying refugee protections for environmentally displaced people in binding law is well worth trying. The only way to guarantee that any person displaced by climate change, independently of their identity, will have an opportunity to receive asylum abroad is through a legally-binding treaty, like the proposed Protocol.\(^{505}\)


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