

# CLIMATE JUSTICE AND CLIMATE DISPLACEMENT: EVALUATING THE EMERGING LEGAL AND POLICY RESPONSES

CARMEN G. GONZALEZ\*

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## INTRODUCTION

Climate change is one of the most widespread manifestations of environmental injustice facing humankind. Caused primarily by the high consumption patterns of the world’s most affluent countries (the “Global North”), climate change is wreaking death and destruction first and foremost on vulnerable communities in poor and middle-income countries (the “Global South”).<sup>1</sup> Among the cruelest of these harms is the

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\* Professor of Law, Seattle University School of Law.

<sup>1</sup> See generally Ruth Gordon, *Climate Change and the Poorest Nations: Further Reflections on Global Inequality*, 78 U. COLO. L. REV. 1559 (2007). This article uses the term “Global North” to refer to wealthy, industrialized nations, including the United States, Canada, Australia, New Zealand, Japan, and the member states of the European Union. The term “Global South” refers to

anticipated displacement of up to two hundred million people by 2050 due, in large part, to climate-related disasters and slow-onset events (such as sea level rise, drought, and desertification).<sup>2</sup>

In 2015, governments of the world entered into historic agreements to mitigate climate change and promote sustainable development that may succeed in linking climate and migration policies. The Paris Agreement, which was adopted in December 2015 as a protocol to the United Nations Framework Convention on Climate Change (UNFCCC), seeks to hold global temperature increases to no more than 2°C in excess of pre-industrial levels.<sup>3</sup> The Paris Agreement also contains a loss and damage provision designed to avert and address displacement.<sup>4</sup> In September 2015, the United Nations (UN) member states approved a new 2030 Agenda for Sustainable Development consisting of 17 Sustainable Development Goals (SDGs) and 169 Targets, several of which address climate change.<sup>5</sup>

That same year, unprecedented increases in cross-border migration raised serious questions about the willingness of the Global North to address the plight of displaced people.<sup>6</sup> “The influx of refugees and migrants to Europe reached staggering new levels . . . , dominating

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relatively less prosperous nations located primarily in Asia, Africa, and Latin America (including China, India, Brazil and South Africa). Despite the heterogeneity of the Global South, and the existence of North-North and South-South conflicts and tensions over environmental and economic law and policy, the countries of the Global South share a common “history of Northern economic and political domination” and “have often negotiated as a bloc (the Group of 77 plus China) to demand greater equity in international economic and environmental law.”; See Sumudu Atapattu & Carmen G. Gonzalez, *The North-South Divide in International Environmental Law: Framing the Issues*, in INTERNATIONAL LAW AND THE GLOBAL SOUTH 1-5 (Shawkat Alam et al. eds., 2015) (describing the North-South divide in virtually all areas of environmental concern).

<sup>2</sup> See Norman Myers, *Environmental Refugees: A Growing Phenomenon of the 21<sup>st</sup> Century*, 357 PHIL. TRANSACTIONS ROYAL SOC’Y LONDON. 609, 611 (2002).

<sup>3</sup> See *Historic Paris Agreement on Climate Change: 195 Nations Set Path to Keep Temperature Rise Well Below 2 Degrees Celsius*, UNITED NATIONS CLIMATE CHANGE (Dec. 13, 2015), <https://unfccc.int/news/finale-cop21>.

<sup>4</sup> See Paris Agreement to the United Nations Framework Convention on Climate Change, ¶¶ 48–50, Dec. 12, 2015, 1771 U.N.T.S. 107. [hereinafter Paris Agreement] (including the Warsaw International Mechanism for loss and damage in the Paris Agreement and instructing the mechanism’s Executive Committee to “develop recommendations for integrated approaches to avert, minimize, and address displacement related to the adverse impacts of climate change”).

<sup>5</sup> See G.A. Res. 70/1, Transforming our world: the 2030 Agenda for Sustainable Development (Sept. 25, 2015).

<sup>6</sup> See Leisha Beardmore, *Displacement and Development*, UNITED NATIONS ASS’N-U.K. (Mar. 1, 2016), <https://www.sustainablegoals.org.uk/displacement-and-development/>.

headlines and prompting stormy political debate.”<sup>7</sup> Fleeing war and persecution, approximately one million refugees arrived on European shores in 2015 alone, and thousands lost their lives in transit.<sup>8</sup> The years 2014 and 2015 also marked the beginning of an ongoing exodus of Central American families to the United States to escape widespread violence.<sup>9</sup> This migration continues to make national and international headlines. In October 2018, for example, a caravan of several thousand Central Americans crossed into Mexico in a desperate attempt to reach the United States.<sup>10</sup>

The number of people displaced from their homes due to persecution, conflict, environmental disasters, and socio-economic marginalization continues to grow.<sup>11</sup> According to the United Nations High Commissioner for Refugees, approximately 68.5 million people were forcibly displaced worldwide at the end of 2017.<sup>12</sup> Of these 68.5 million people, 25.4 million crossed national borders<sup>13</sup> and 40 million fled their homes but remained within their country of origin.<sup>14</sup> Using different methodologies, another study concluded that in 2017, 18.8 million people were displaced internally as a direct result of

<sup>7</sup> See William Spindler, *2015: The Year of Europe's Refugee Crisis*, UNHCR TRACKS (Dec. 8, 2015), <http://tracks.unhcr.org/2015/12/2015-the-year-of-europes-refugee-crisis/>.

<sup>8</sup> See *id.* (discussing the causes of migration). *Migrant crisis: One million enter Europe in 2015*, BBC (Dec. 22, 2015), <https://www.bbc.com/news/world-europe-35158769> (providing details on the number of migrants, their countries of origin, and their migration routes).

<sup>9</sup> See Kirk Semple, *Fleeing Gangs, Central American Families Surge Toward U.S.*, N.Y. TIMES (Nov. 12, 2016), <https://www.nytimes.com/2016/11/13/world/americas/fleeing-gangs-central-american-families-surge-toward-us.html>; David Nakamura, *Beyond the photos: A border crisis that's bigger than any president*, SEATTLE TIMES (June 23, 2018), <https://www.seattletimes.com/nation-world/beyond-the-photos-a-border-crisis-thats-bigger-than-any-president/>. Azam Ahmed, *Flow of Central American Children Headed to U.S. Shifts but Doesn't Slow*, N.Y. TIMES (Oct. 6, 2015), <https://www.nytimes.com/2015/10/07/world/americas/honduras-el-salvador-guatemala-mexico-us-child-migrants.html>.

<sup>10</sup> See José Alejandro García & David Agren, *Caravan of 3000 Central American Migrants Crosses into Mexico*, THE GUARDIAN (Oct. 18, 2018), <https://www.theguardian.com/world/2018/oct/19/mexico-caravan-migrants-prepares-us-border-crossing-latest>.

<sup>11</sup> See André Bank & Christiane Frölich, *Forced Migration in the Global South: Reorienting the Debate*, GER. INST. OF GLOB. & AREA STUDIES, 2 (June 2018), [https://www.giga-hamburg.de/en/system/files/publications/gf\\_global\\_03\\_en.pdf](https://www.giga-hamburg.de/en/system/files/publications/gf_global_03_en.pdf).

<sup>12</sup> See UNITED NATIONS HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2017, 2 (2018), <http://www.unhcr.org/5b27be547.pdf> [hereinafter GLOBAL TRENDS].

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

environmental disasters, including floods, hurricanes, wildfires, landslides, and drought.<sup>15</sup>

The harsh response of the European Union, Australia, and the United States to the ongoing refugee crisis has kept the issue of migration squarely on the international agenda and may foreshadow responses to climate-induced displacement. European efforts to reduce migration by turning back migrant ships and cracking down on the major routes used by smugglers have increased the refugee death toll, “as smuggling networks employ more dangerous routes and methods using smaller, overcrowded vessels that are not seaworthy.”<sup>16</sup> Australia’s indefinite detention of migrants (including asylum-seekers) in offshore processing centers located in Nauru and Manus Island has resulted in “violent deaths, horrific acts of self-harm and abuse, and mass protests” among the detainees,<sup>17</sup> leading Amnesty International to denounce the conditions inside the processing centers as “a human rights catastrophe.”<sup>18</sup> In the United States, the Trump administration’s practice of criminally prosecuting migrants, separating migrant children from their families, and holding thousands of children in detention facilities (some in metal cages) has provoked widespread national and international condemnation.<sup>19</sup>

This article examines the implications of the Paris Agreement and the SDGs for persons who are forced to flee their homes due to climate change. It defines climate-displaced persons as those who are

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<sup>15</sup> See INTERNAL DISPLACEMENT MONITORING CTR., GLOBAL REPORT ON INTERNAL DISPLACEMENT 7 (2018), <http://www.internal-displacement.org/sites/default/files/publications/documents/2018-GRID.pdf>.

<sup>16</sup> Priyanka Boghani, *The “Human Cost” of the EU’s Response to the Refugee Crisis*, FRONTLINE (Jan. 23, 2018), <https://www.pbs.org/wgbh/frontline/article/the-human-cost-of-the-eus-response-to-the-refugee-crisis/>; see Michael Birnbaum, *Could the flow of migrants to Europe be stopped?*, WASH. POST (Oct. 3, 2017), [https://www.washingtonpost.com/world/europe/could-the-flow-of-migrants-to-europe-be-stopped/2017/10/02/e76ac66e-a2ce-11e7-b573-8ec86cdf1ed\\_story.html?utm\\_term=.02f8a17f221f](https://www.washingtonpost.com/world/europe/could-the-flow-of-migrants-to-europe-be-stopped/2017/10/02/e76ac66e-a2ce-11e7-b573-8ec86cdf1ed_story.html?utm_term=.02f8a17f221f).

<sup>17</sup> See Helen Davidson, *Offshore detention: Australia’s recent immigration history a ‘human rights catastrophe’*, THE GUARDIAN (Nov. 12, 2016), <https://www.theguardian.com/australia-news/2016/nov/13/offshore-detention-nauru-immigration-history-human-rights>.

<sup>18</sup> See *id.*

<sup>19</sup> See Nick Cumming-Bruce, *Taking Migrant Children From Parents is Illegal, U.N. Tells U.S.*, N.Y. TIMES (June 5, 2018), <https://www.nytimes.com/2018/06/05/world/americas/us-un-migrant-children-families.html>; Associated Press, *Separation at the border: children wait in cages at south Texas warehouse*, THE GUARDIAN (June 17, 2018), <https://www.theguardian.com/us-news/2018/jun/17/separation-border-children-cages-south-texas-warehouse-holding-facility>; Editorial, *Trump ends family separations – by locking kids up with their parents instead*, L.A. TIMES (June 20, 2018), <http://www.latimes.com/opinion/la-ol-enter-the-fray-trump-ends-family-separations-by-1529526171-htmlstory.html#nt=card>.

displaced (temporarily or permanently) within their own country of residence or who cross international borders due to three types of climate change-related events: disasters, significant environmental damage, or slow-onset environmental deterioration (such as drought and rising sea levels). The article proceeds in three parts. Part I introduces the concepts of climate justice and climate displacement and explains how these are addressed in the UNFCCC and the Paris Agreement. Part II describes and critiques the leading approaches to climate displacement and the legal frameworks that implement these approaches. Part III examines how the SDGs address the plight of climate-displaced persons. The article concludes that the Paris Agreement and the SDGs do not articulate coherent policies on climate displacement. It then proposes an approach to climate-induced migration that promotes climate justice and respects, protects, and fulfills the human rights of climate-displaced persons.

## I. CLIMATE JUSTICE AND DISPLACEMENT: FRAMING THE ISSUES

Climate displacement is an extreme manifestation of climate injustice. This Part provides the theoretical foundation for the article by defining climate justice (including its relationship to environmental justice and human rights), and by examining its implementation in the UNFCCC and the Paris Agreement.

### A. ENVIRONMENTAL JUSTICE, CLIMATE JUSTICE, AND HUMAN RIGHTS

The concept of climate justice draws its inspiration from the environmental justice movement, which emerged in the United States in the 1980s to combat the siting of polluting industries in low-income communities and communities of color.<sup>20</sup> Environmental justice scholars and activists identified four distinct but inter-related dimensions of

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<sup>20</sup> See David Schlosberg & Lisette Collins, *From environmental to climate justice: climate change and the discourse of environmental justice*, 5 WIREs CLIMATE CHANGE 359, 362–64 (2014); LUKE W. COLE & SHEILA R. FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* 19–33 (N.Y. Univ. Press 2001); Karin Mickelson, *Beyond a Politics of the Possible? South–North Relations and Climate Justice*, 10 MELB. J. INT’L L. 411, 412–13 (2009).

environmental injustice.<sup>21</sup> They alleged: distributive injustice, in the form of disproportionate exposure to environmental hazards (such as toxic wastes and polluting facilities);<sup>22</sup> procedural unfairness, due to the exclusion of underrepresented groups from governmental decision-making;<sup>23</sup> corrective injustice, in the form of inadequate enforcement of environmental laws in low-income and minority communities;<sup>24</sup> and social injustice, because environmental degradation is closely linked with broader social ills (such as poverty and racism).<sup>25</sup> While US environmental justice activists were influential in forging the link between environmental and climate justice at the international level, the US Congressional Black Caucus played an important role in highlighting the domestic injustice of climate change.<sup>26</sup> In 2004, the Congressional Black Caucus Foundation released a report on the disproportionate impact of climate change on African Americans (including health impacts from heat waves and increased pollution) and their relatively minimal contribution to the problem given their lower-than-average greenhouse gas emissions.<sup>27</sup> The following year, Hurricane Katrina devastated New Orleans, laying bare the ways that pre-existing injustices (including poverty, segregation, and substandard housing) magnify the impacts of storms and flooding, which will only grow worse with climate change.<sup>28</sup> Climate justice soon became central to environmental justice scholarship and activism in the United States.<sup>29</sup>

At the international level, the climate justice movement developed as a coalition of environmental justice, religious, policy, and advocacy groups, which mobilized during successive Conferences of the Parties (COPs) to the UNFCCC.<sup>30</sup> In 2002, these groups published the

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<sup>21</sup> See Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ENVTL. L. REP. 10681, 10683–702 (2000).

<sup>22</sup> See *id.* at 10683–88.

<sup>23</sup> See *id.* at 10688–93.

<sup>24</sup> See *id.* at 10693–98.

<sup>25</sup> See *id.* at 10698–702.

<sup>26</sup> See Schlosberg & Collins, *supra* note 20, at 362.

<sup>27</sup> See CONG. BLACK FOUND. INC., *AFRICAN-AMERICANS AND CLIMATE CHANGE: AN UNEQUAL BURDEN* 2–3 (2004), [http://www.sustainlex.org/BlackCaucusfull/CBCF\\_REPORT\\_F.pdf](http://www.sustainlex.org/BlackCaucusfull/CBCF_REPORT_F.pdf); Schlosberg & Collins, *supra* note 20, at 362.

<sup>28</sup> See Schlosberg & Collins, *supra* note 20, at 362.

<sup>29</sup> See *id.* at 362–63.

<sup>30</sup> See *id.* at 362, 366–67; see also United Nations Framework Convention on Climate Change art. 7, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC]. The UNFCCC, like most environmental treaties, creates institutions responsible for the clarification and implementation of the parties' legal obligations. One of these institutions is the Conference of the Parties (COP),

Bali Principles of Climate Justice—the first major articulation of the idea of climate justice by a transnational social movement.<sup>31</sup> These coalitions were solidified with the formation of the Climate Justice Action Network prior to the 2009 UNFCCC COP13 meetings in Copenhagen.<sup>32</sup> The Bali Principles were supplemented in 2010 by the Universal Declaration of the Rights of Mother Earth, which emerged from the World People’s Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia.<sup>33</sup> These documents refine the concept of climate justice by critiquing the growth-based model of economic development that has produced the climate crisis; emphasizing the inequitable impact of fossil fuel production on vulnerable communities; calling for procedural and participatory justice; and demanding corrective justice through the transfer of resources from those with historic responsibility for climate change to those most vulnerable to its consequences.<sup>34</sup>

Drawing upon the four dimensions of environmental injustice discussed above and upon the principles articulated by the climate justice movement, this article adopts a four-part definition of climate justice consisting of: distributive justice, procedural justice, corrective justice, and social justice. Climate change raises issues of distributive justice because the Global North is responsible for the vast majority of historic greenhouse gas emissions and maintains an enormous average per capita carbon footprint relative to that of Southern nations.<sup>35</sup> Despite their smaller contribution to climate change, many countries and marginalized communities in the Global South bear a disproportionate share of the consequences of climate change due to their vulnerable geographic locations and limited resources for climate change adaptation and disaster response.<sup>36</sup> Climate change is fraught with procedural injustice

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which constitutes the “supreme body” of the UNFCCC and is authorized to make the decisions necessary to “promote the effective implementation of the Convention.”

<sup>31</sup> See *Bali Principles of Climate Watch*, CORP WATCH (Aug. 22, 2008), <https://corpwatch.org/article/bali-principles-climate-justice>; Schlosberg & Collins, *supra* note 20, at 366–67 (explaining the significance of the Bali principles, including the explicit link between environmental and climate justice).

<sup>32</sup> See Schlosberg & Collins, *supra* note 20, at 366–67.

<sup>33</sup> See *Rights of Mother Earth*, WORLD PEOPLE’S CONF. ON CLIMATE CHANGE & RIGHTS MOTHER EARTH, <https://pwccc.wordpress.com/programa/> (last visited Nov. 10, 2018).

<sup>34</sup> See Schlosberg & Collins, *supra* note 20, at 367–68.

<sup>35</sup> See generally Karin Mickelson, *Leading Towards a Level Playing Field, Repaying Ecological Debt, or Making Environmental Space: Three Stories about International Environmental Cooperation*, 43 OSGOODE HALL L.J. 137, 137–70 (2005).

<sup>36</sup> See Ruchi Anand, INTERNATIONAL ENVIRONMENTAL JUSTICE: A NORTH-SOUTH DIMENSION 128–30 (2004); see generally High-level Panel of the U.N. Sec’y-Gen. on Glob. Sustainability,

because the North dominates the institutions of global economic and environmental governance, such as the International Monetary Fund (IMF), the World Bank, the World Trade Organization (WTO), and multilateral environmental treaty regimes, and frequently ignores Southern perspectives and priorities.<sup>37</sup> Climate change gives rise to corrective injustice, such as the inability of indigenous peoples and small island states facing the imminent loss of their territories to obtain compensation for climate change-induced harms.<sup>38</sup> Finally, climate change is inextricably linked to broader social injustice, including the North-South power imbalances that perpetuate economic inequality and maintain an economic order that systematically exceeds the limits of the planet's finite ecosystems.<sup>39</sup>

Climate justice, like environmental justice more broadly, is grounded in human rights, including the rights to life, health, and cultural integrity; the right to a safe and healthy environment; the right to be free from race and sex discrimination; and the right to information, participation, and access to justice.<sup>40</sup> In January 2009, the United Nations Human Rights Council published a report detailing the human rights implications of climate change.<sup>41</sup> The report concluded that climate change poses direct and indirect threats to the rights to life, food, water, health, housing, and self-determination, and that its effects “will be felt more acutely by those segments of the population who are already in vulnerable situations due to factors such as gender, poverty, age, minority status, and disability.”<sup>42</sup>

Although most human rights treaties do not contain explicit environmental provisions, global and regional human rights tribunals

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*Resilient People, Resilient Planet: A Future Worth Choosing*, U.N. Doc. A/66/700 (Mar. 1, 2012).

<sup>37</sup> See Anand, *supra* note 36, at 132–33; Patrick Hossay, UNSUSTAINABLE: A PRIMER FOR GLOBAL ENVIRONMENTAL AND SOCIAL JUSTICE 191–98 (2006); Richard Peet, UNHOLY TRINITY: THE IMF, WORLD BANK AND WTO 200–04 (2003).

<sup>38</sup> See Maxine Burkett, *Climate Reparations*, 10 MELB. J. INT'L L. 509, 513–20 (2009); Rebecca Tsosie, *Indigenous Peoples and Environmental Justice: The Impact of Climate Change*, 78 U. COLO. L. REV. 1625, 1633–46 (2007).

<sup>39</sup> See generally J. Timmons Roberts & Bradley C. Parks, A CLIMATE OF INJUSTICE: GLOBAL INEQUALITY, NORTH-SOUTH POLITICS, AND CLIMATE POLICY (Nazli Choucri ed.) (2008).

<sup>40</sup> See Carmen G. Gonzalez, *Environmental Justice and International Environmental Law*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 77, 85 (Shawkat Alam et al. eds., 2013).

<sup>41</sup> See U.N. High Comm'r for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights* (Jan. 15, 2009), U.N. Doc. A/HRC/10/61.

<sup>42</sup> See *id.* at 8–15.

have allowed individuals and communities affected by environmental degradation to bring claims against their governments based on human rights violations caused by inadequate environmental protection.<sup>43</sup> These tribunals have concluded that failure to protect the environment may violate the rights to life, health, property, food, water, and an adequate standard of living as well as the collective rights of indigenous peoples to their ancestral lands and resources.<sup>44</sup> Human rights tribunals have emphasized that states have an obligation to refrain from directly violating human rights and a duty to protect these rights by regulating the conduct of private parties (such as corporations).<sup>45</sup>

## B. CLIMATE JUSTICE, CLIMATE DISPLACEMENT, AND THE PARIS AGREEMENT

Scholars, activists, and Southern states sought to infuse climate justice into the legal instruments governing climate change by arguing that the North has incurred a climate debt to the South for its historic and current contribution to climate change.<sup>46</sup> Between 1880 and 1990, the Global North produced 84 percent of the planet's fossil fuel-based carbon dioxide emissions and 75 percent of deforestation-related carbon dioxide emissions.<sup>47</sup> These emissions can remain in the atmosphere for more than two hundred years, and affect the climate for generations to come.<sup>48</sup> Although China is currently the world's top carbon dioxide emitter, the historic emissions of the Global North and the per capita emissions of Northern countries continue to surpass those of the Global

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<sup>43</sup> See generally John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. INT'L L. 163 (2009).

<sup>44</sup> See Dinah Shelton, *Environmental Rights and Brazil's Obligations in the Inter-American Human Rights System*, 40 GEO. WASH. INT'L L. REV. 733, 750–67 (2009); Alan Boyle, *Human Rights or Environmental Rights? A Reassessment*, 18 FORDHAM ENVTL. L. REV. 471, 487 (2007).

<sup>45</sup> See Knox, *supra* note 43, at 170–71, 178–79.

<sup>46</sup> See generally Andrew Simms, *ECOLOGICAL DEBT: GLOBAL WARMING AND THE WEALTH OF NATIONS* (2nd ed. 2009); Mickelson, *supra* note 35; Duncan McLaren, *Environmental Space, Equity and the Ecological Debt*, in *JUST SUSTAINABILITIES: DEVELOPMENT IN AN UNEQUAL WORLD* 19 (Julian Agyeman, Robert D Bullard & Bob Evans eds, 2003).

<sup>47</sup> See Mickelson, *supra* note 35, at 154–55.

<sup>48</sup> See Duncan Clark, *CARBON BRIEF, How Long Do Greenhouse Gases Stay in the Air?*, GUARDIAN (Jan. 16, 2012), <https://www.theguardian.com/environment/2012/jan/16/greenhouse-gases-remain-air> (explaining that “once in the atmosphere, carbon dioxide can continue to affect climate for thousands of years”).

South.<sup>49</sup> The UNFCCC implicitly recognizes this climate debt by observing “that the largest share of historical and current global emissions has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and developmental needs.”<sup>50</sup>

The UNFCCC adopts an important principle of international environmental law that serves to mitigate North-South inequality: the principle of common but differentiated responsibility (CBDR).<sup>51</sup> Principle 7 of the Rio Declaration articulates CBDR as follows:

In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.<sup>52</sup>

By adopting this principle, the UNFCCC acknowledges that the responsibility to address climate change should be proportionate to a country’s contribution to the problem and capacity to address it.<sup>53</sup> For this reason, the UNFCCC expressly directs the countries of the Global North to “take the lead in combating climate change and the adverse

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<sup>49</sup> See generally WORLDWATCH INSTITUTE, STATE OF THE WORLD 2009: INTO A WARMING WORLD (Linda Starke ed., 2009).

<sup>50</sup> UNFCCC, *supra* note 30, pmb1.

<sup>51</sup> See *id.* art. 3(1), which provides that the “Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”

<sup>52</sup> United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, princ. 7, U.N. Doc. A/CONF.152/26 (Vol. 1). The Rio Declaration was one of the most important outcomes of the 1992 United Nations Conference on Environment and Development (also known as the “Earth Summit”) in Rio de Janeiro, Brazil. The Earth Summit brought together delegations from 176 states as well as representatives from international organizations, the private sector, and non-governmental organizations. The Rio Declaration articulates 27 principles designed to balance environmental protection and economic development. See PIERRE-MARIE DUPUY & JORGE VIÑUALES, INTERNATIONAL ENVIRONMENTAL LAW 13–15 (2nd ed. 2018) (describing the outcome of the Earth Summit); see also Karin Mickelson, *The Stockholm Conference and the Creation of the South-North Divide in International Environmental Law and Policy*, in INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH 109, 121–25 (Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez & Jona Razzaque eds., 2015) (discussing North-South tensions during the Earth Summit).

<sup>53</sup> See Atapattu & Gonzalez, *supra* note 1, at 14 (citing DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 464 (4th ed. 2011)).

effects thereof<sup>54</sup> and to provide financing and technology transfer to the countries of the Global South.<sup>55</sup>

While the interpretation of CBDR has proved contentious,<sup>56</sup> the Paris Agreement reiterates the UNFCCC's explicit commitment to "equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."<sup>57</sup> The Paris Agreement also includes references to human rights (including the rights of migrants) and climate justice.<sup>58</sup> The preamble notes the importance of climate justice "when taking action to address climate change," and provides that "parties should . . . respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, *migrants*, children, persons with disabilities, and people in vulnerable situations."<sup>59</sup> These explicit references to human rights and climate justice in the Paris Agreement represent an important step forward that may provide a foundation for those seeking redress for human rights violations caused by climate change.<sup>60</sup>

Despite these justice-friendly provisions, the Paris Agreement may not be sufficient to avoid climate catastrophe and mass displacement. The objective of the Paris Agreement is to limit global temperature increases to well below 2°C in excess of pre-industrial levels (and to strive to limit the temperature increase to 1.5°C).<sup>61</sup> To achieve this objective, the Agreement adopts a "bottom up" approach whereby each country determines and communicates its greenhouse gas reduction pledge, known as Nationally Determined Contributions (NDCs).<sup>62</sup> Every five years, each country must revise and ratchet up its pledge, taking into account periodic assessments of the collective progress of the parties towards the Paris Agreement's objectives.<sup>63</sup>

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<sup>54</sup> See UNFCCC, *supra* note 30, art. 3(1).

<sup>55</sup> See *id.* art. 4(3)–(5).

<sup>56</sup> See Gonzalez, *supra* note 40, at 90–92; see generally Chukwumerije Okereke & Philip Coventry, *Climate Justice and the International Regime: Before, During, and After Paris*, 7 WIREs CLIM. CHANGE 834 (2016).

<sup>57</sup> Paris Agreement, *supra* note 4, art. 2(2).

<sup>58</sup> See *id.* pmbi.

<sup>59</sup> *Id.* (emphasis added).

<sup>60</sup> See Sumudu Atapattu, *Climate Change, Human Rights, and COP 21: One Step Forward and Two Steps Back or Vice Versa?*, 17 GEO. J. INT'L AFF. 47, 52 (2016).

<sup>61</sup> See Paris Agreement, *supra* note 4, art. 2.

<sup>62</sup> See *id.* art. 3.

<sup>63</sup> See *id.* arts. 4, 14.

Studies of the impact of the aggregate NDCs have concluded that they will likely result in average global temperature increases of approximately 3°C.<sup>64</sup> An increase of 3°C above pre-industrial levels will likely submerge many small island states,<sup>65</sup> as well as significant portions of low-lying regions of the world, including Bangladesh, the Mekong Delta, and the Nile Delta.<sup>66</sup> It could also accelerate the melting of the Greenland and Antarctic ice sheets, potentially flooding many of the world's mega-cities, including New York, Shanghai, and Mumbai.<sup>67</sup>

Unless states address the major gap between the emissions reductions pledged and what is required to avert catastrophic climate change, the world will experience one of the greatest waves of migration and displacement in modern history. Climate change is anticipated to displace as many as 200 million people by 2050, both within and across national borders.<sup>68</sup> While climate change is rarely the sole cause of migration and displacement, it acts as a threat multiplier, exacerbating existing vulnerabilities and leaving people with little alternative but to flee.<sup>69</sup> Flooding and drought, for example, can threaten access to food and water, undermine livelihoods, exacerbate poverty, and produce political unrest.<sup>70</sup> The Small Island Developing States (SIDS) are particularly vulnerable to slow-onset climate-induced events (such as sea

<sup>64</sup> See Joeri Rogelj et al., *Paris Agreement Climate Proposals Need a Boost to Keep Warming Well Below 2°C*, 534 NATURE 631, 631, 634 (2016); Adrian E. Raftery et al., *Less than 2°C Warming by 2100 Unlikely*, 7 NATURE CLIMATE CHANGE 637, 637, 639–40 (2017), <http://www.nature.com/nclimate/journal/v7/n9/pdf/nclimate3352.pdf>; Elizabeth Johnston, *Deeper, Earlier Emissions Cuts Needed to Reach Paris Goals; Paris Agreement Must be Strengthened in Next Few Years to Limit Warming to 2°C*, CLIMATE INTERACTIVE (Apr. 19, 2016), <https://www.climateinteractive.org/analysis/deeper-earlier-emissions-cuts-needed-to-reach-paris-goals/>.

<sup>65</sup> See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014 SYNTHESIS REPORT 6, 48, 51, 67 (Rajendra K. Pachauri et al. eds., 2014) [hereinafter IPCC].

<sup>66</sup> See Robert Glennon, *The Unfolding Tragedy of Climate Change in Bangladesh*, SCI. AM.: GUEST BLOG (Apr. 21, 2017), <https://blogs.scientificamerican.com/guest-blog/the-unfolding-tragedy-of-climate-change-in-bangladesh/>; DISPLACEMENT SOLUTIONS, CLIMATE DISPLACEMENT IN BANGLADESH: THE NEED FOR URGENT HOUSING, LAND AND PROPERTY (HLP) RIGHTS SOLUTIONS 10 (2012), [https://unfccc.int/files/adaptation/groups\\_committees/loss\\_and\\_damage\\_executive\\_committee/application/pdf/ds\\_bangladesh\\_report.pdf](https://unfccc.int/files/adaptation/groups_committees/loss_and_damage_executive_committee/application/pdf/ds_bangladesh_report.pdf).

<sup>67</sup> See, e.g., IPCC, *supra* note 65, at 6, 48, 51, 67.

<sup>68</sup> See generally Koko Warner et al., *In Search of Shelter: Mapping The Effects Of Climate Change On Human Migration and Displacement* 21 (2009), [https://www.ciesin.columbia.edu/documents/clim-migr-report-june09\\_final.pdf](https://www.ciesin.columbia.edu/documents/clim-migr-report-june09_final.pdf); François Gemenne, *Why the Numbers Don't Add Up: A Review of Estimates and Predictions of People Displaced by Environmental Changes*, 21S GLOBAL ENVTL. CHANGE S41 (2011); KANTA KUMARI RIGAUD ET AL, GROUNDWELL: PREPARING FOR INTERNAL CLIMATE MIGRATION (World Bank, 2018).

<sup>69</sup> Schuyler Null & Lauren Herzer Risi, NAVIGATING COMPLEXITY: CLIMATE, MIGRATION, AND CONFLICT IN A CHANGING WORLD 17–18 (2016).

<sup>70</sup> Warner et al., *supra* note 68, at 1, 3–7, 13–17, 21.

level rise and recurring drought) due to their low elevation, small land mass, and limited freshwater resources; many are anticipated to vanish completely due to rising sea levels.<sup>71</sup> If the SIDS become uninhabitable, these states alone will contribute 65 million people to the world's total number of climate-displaced persons.<sup>72</sup>

While the UNFCCC is the primary international instrument dealing with climate change, it has not focused on climate displacement until very recently. At COP19 in Warsaw, Poland in November 2013, the parties established the Warsaw International Mechanism for Loss and Damage to examine compensation for damages caused by climate change.<sup>73</sup> Before the Paris Agreement, loss and damage had been treated as an aspect of adaptation, despite the demand by many Southern nations (especially the SIDS) for a mechanism to provide compensation for both slow-onset and rapid-onset harms that cannot be avoided through adaptation, including climate displacement.<sup>74</sup> The Paris Agreement breaks new ground by explicitly recognizing loss and damage as an independent provision beyond adaptation.<sup>75</sup> Furthermore, the decision adopting the Paris Agreement instructs the Warsaw Mechanism's executive committee to establish a task force to "develop recommendations for integrated approaches to avert, minimize, and address displacement related to the adverse impacts of climate change."<sup>76</sup> Finally, at COP22 in Marrakech in November 2016, the parties decided to continue to incorporate displacement "into relevant planning and action, as appropriate, and to encourage bilateral and multilateral entities to support such efforts."<sup>77</sup> In sum, although the Paris Agreement creates a

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<sup>71</sup> Bank and Frölich, *supra* note 11, at 6; Maxine Burkett, *Justice and Climate Migration*, CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE? 73, 80–81 (Simon Behrman & Avidan Kent eds. 2018). A complete list of the SIDs is available at: <https://sustainabledevelopment.un.org/topics/sids/list>.

<sup>72</sup> See Bank & Frölich, *supra* note 11, at 6 n.6.

<sup>73</sup> See U.N. Framework Convention on Climate Change, *Rep. of the Conference of the Parties on Its Nineteenth Session, Held in Warsaw from 11 to 23 Nov. 2013*, at 6, U.N. Doc. FCCC/CP/2013/10/Add.1 (Jan. 31, 2014).

<sup>74</sup> See Robert R.M. Verchick, *Can 'Loss and Damage' Carry the Load*, 376 PHIL. TRANSACTIONS OF THE ROYAL SOC'Y OF LONDON 20170070, at 4 (2018).

<sup>75</sup> See *id.*; Paris Agreement, *supra* note 4, art 8.

<sup>76</sup> Paris Agreement, *supra* note 4, para. 50.

<sup>77</sup> United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its Twenty-Second Session*, ¶ 9 FCCC/CP/2016/10/Add.1 (Jan. 31, 2017).

mechanism to address climate displacement, this taskforce is in its infancy and its future trajectory is therefore uncertain.<sup>78</sup>

## II. LEGAL AND POLICY APPROACHES TO PROTECT CLIMATE DISPLACED PERSONS

In light of the apparent inevitability of large-scale climate displacement, this Part discusses the legal and policy frames, in addition to those established under the Paris Agreement, that provide or might provide legal protection to climate displaced persons. This Part examines a variety of approaches to climate displacement, evaluates them through the lens of climate justice and human rights, and discusses the legal frameworks that correspond to each approach.

### A. THE NATIONAL SECURITY APPROACH

Environmental activists, government officials, and concerned scientists in the Global North have often used the specter of mass migration to prod states into adopting aggressive measures to mitigate climate change.<sup>79</sup> The notion of mass displacement has often been cast in sensationalist language,<sup>80</sup> and has stoked racism and xenophobia by triggering the fear of black and brown bodies<sup>81</sup> crashing on European or Australian shores, or scaling US border fences. The result is a military response—the hardening of borders and the construction of walls.<sup>82</sup> Rather than evoke empathy for the plight of migrants, or responsibility for causing climate change, the national security frame exacerbates

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<sup>78</sup> See Mariam Traore Chazalnoel & Dina Jonesco, *Advancing the Global Governance of Climate Migration through the United Nations Framework Convention on Climate Change and the Global Compact on Migration*, in CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE? 103, 109 (Simon Behrman & Avidan Kent eds. 2018).

<sup>79</sup> See ASHLEY DAWSON, *EXTREME CITIES: THE PERIL AND PROMISE OF URBAN LIFE IN THE AGE OF CLIMATE CHANGE* 193 (2017); Chris Methmann & Angela Oels, *From 'Fearing' to 'Empowering' Climate Refugees: Governing Climate-Induced Migration in the Name of Resilience*, 46(1) SECURITY DIALOGUE 51, 55–56 (2015).

<sup>80</sup> See Hedda Ransan-Cooper et al., *Being(s) Framed: The Means and Ends of Framing Environmental Migrants*, 35 GLOBAL ENVTL. CHANGE 106, 110 (2015).

<sup>81</sup> See Dayna Nadine Scott & Adrian A. Smith, *The Abstract Subject of the Climate Migrant Displaced by the Rising Tides of the Green Energy Economy*, 8 J. OF HUM. RTS AND THE ENV'T 30, 42 (2017).

<sup>82</sup> See Scott & Smith, *supra* note 81, at 41; Mark Karlin, *Climate Refugees Face Militarized Borders*, ALTERNET (March 16, 2018), <https://www.alternet.org/environment/climate-change-refugees-face-militarized-borders>; Andrew Baldwin, *Racialisation and the Figure of the Climate-Change Migrant*, 45 ENV'T AND PLAN. 1474, 1479, 1483 (2013).

climate injustice by constructing migrants as barbarians threatening the sovereignty of civilized nations and by reinforcing racialized distinctions between “us and them, citizen and foreigner, friend and enemy.”<sup>83</sup>

This specter of mass migration from South to North is inconsistent with documented patterns of displacement during the current refugee crisis. Of the 68.5 million individuals forcibly displaced worldwide in 2017, the majority—40 million—remain within their country of origin.<sup>84</sup> When they do cross borders, most refugees wind up in neighboring countries in the Global South, which currently host 85 percent of the world’s refugees.<sup>85</sup> “Only a relatively small, albeit increasing proportion of refugees worldwide have managed to come to the Global North, mostly to Germany, France, Italy, Sweden, and the United States.”<sup>86</sup> In the Global South, Turkey currently hosts the largest number of refugees, followed by Pakistan, Uganda, Lebanon, Iran, Bangladesh, and Sudan.<sup>87</sup>

Although the term “climate refugee” is often invoked to describe climate-displaced persons, the 1951 Refugee Convention does not offer protection to these individuals.<sup>88</sup> The Refugee Convention only protects the small minority of migrants who can prove that they have a well-founded fear of persecution in their country of origin for reasons of race, religion, nationality, membership in a particular social group, or political opinion.<sup>89</sup> Persons displaced by climate change do not fall under this definition.<sup>90</sup> Nevertheless, some states have agreed to admit persons fleeing conflict or natural disasters on humanitarian grounds even though they do not individually face persecution, and could expand this policy to

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<sup>83</sup> Hedda Ransan-Cooper et al., *supra* note 80, at 110; *see also* Methmann & Oels, *supra* note 79, at 56; Baldwin, *supra* note 81, at 1481; DAWSON, *supra* note 79, at 199.

<sup>84</sup> *See* GLOBAL TRENDS, *supra* note 12, at 2.

<sup>85</sup> *See id.* at 2.

<sup>86</sup> Bank & Fröhlich, *supra* note 71, at 3.

<sup>87</sup> *See* GLOBAL TRENDS, *supra* note 12, at 3.

<sup>88</sup> *See* Convention Relating to the Status of Refugees, art. I, July 28, 1951, 189 U.N.T.S. 150 [hereinafter Refugee Convention]; Jane McAdam & Ben Saul, *An Insecure Climate for Human Security? Climate-induced Displacement and International Law*, in HUMAN SECURITY AND NON-CITIZENS: LAW, POLICY AND INTERNATIONAL AFFAIRS 357, 357–58 (Alice Edwards & Carla Ferstman eds., 2010); Christine Gibb & James Ford, *Should the United Nations Framework Convention on Climate Change Recognize Climate Migrants?*, 7 ENVTL. RES. LETTERS 1, 2 (2012), <http://iopscience.iop.org/article/10.1088/1748-9326/7/4/045601/pdf>.

<sup>89</sup> Refugee Convention, *supra* note 88, art 1.

<sup>90</sup> *See* Jolanda van der Vliet, *‘Climate Refugees’: A Legal Mapping Exercise*, in CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE? 16, 22 (Simon Behrman & Avidan Kent eds., 2018).

include climate-displaced persons.<sup>91</sup> While this is theoretically possible, the resistance in Europe and elsewhere to the admission of migrants and refugees suggests that this is unlikely.<sup>92</sup>

Rather than providing a safe harbor for refugees, the United States, Europe, and Australia are increasingly criminalizing migration and erecting greater barriers to entry, including sea, air, and land patrols, drone surveillance, and President Trump's infamous border wall.<sup>93</sup> Since 2014, more than 10,000 migrants have lost their lives trying to cross the Mediterranean to Europe.<sup>94</sup> Those who do manage to penetrate the Global North's militarized borders are often confined in detention facilities with no right to legal representation and with the burden to prove refugee status by documenting their well-founded fear of persecution in order to avoid deportation.<sup>95</sup>

Amending the Refugee Convention or interpreting it broadly to include climate-displaced persons has been proposed by legal scholars as one solution to climate change-induced migration.<sup>96</sup> However, states have demonstrated a lack of political will to adopt this approach as migration policy grows increasingly contentious.<sup>97</sup> Even if states were to provide refugee-like protections to climate migrants, these "climate refugees" would likely face the obstacles described above—increasingly militarized borders, detention, lack of legal representation, and the perhaps insurmountable burden of proving that their multi-faceted and complex decision to migrate can be attributed to climate change.

The national security approach reinforces climate injustice by militarizing borders and jeopardizing "the kind of peaceful international

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<sup>91</sup> See Sumudu Anopama Atapattu, *A New Category of Refugees?: 'Climate Refugees' and a Gaping Hole in International Law*, in CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE? 34, 41 (Simon Behrman & Avidan Kent eds., 2018); Platform on Disaster Displacement, *State-led, Regional, Consultative Processes: Opportunities to Develop Legal Frameworks on Disaster Displacement*, in CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE? 126, 135 (Simon Behrman & Avidan Kent eds., 2018).

<sup>92</sup> See *Europe's Hostile Environment Deters Asylum Seekers*, THE WEEK (June 19, 2018), <http://www.theweek.co.uk/94383/is-europe-s-hostile-environment-turning-off-asylum-seekers>.

<sup>93</sup> See DAWSON, *supra* note 79, at 196–98; Karlin, *Climate Refugees Face Militarized Borders*, *supra* note 82.

<sup>94</sup> See DAWSON, *supra* note 79, at 196.

<sup>95</sup> See *id.* at 197, 202.

<sup>96</sup> See Beatriz Felipe Pérez, *Beyond the Shortcomings of International Law: A Proposal for the Legal Protection of Climate Migrants*, in 'CLIMATE REFUGEES': BEYOND THE LEGAL IMPASSE 218, 218–19 (Simon Behrman & Avidan Kent eds., 2018).

<sup>97</sup> See Elin Jakobsson, *Norm Formalization in International Policy Formulation: A Framework for Analysis*, in 'CLIMATE REFUGEES': BEYOND THE LEGAL IMPASSE 63–64 (Simon Behrman & Avidan Kent eds., 2018).

cooperation and development initiatives needed to respond equitably and effectively to climate change.”<sup>98</sup> It obscures the North’s responsibility for climate change. It also obscures the injustice of a global economic order (dominated by the North) that exacerbates economic inequality and thereby increases the vulnerability of certain communities and states to climate change. Instead of encouraging the North to invest in climate change adaptation in the Global South, to provide refuge to climate displaced persons, and to finance migrant relocation and resettlement elsewhere pursuant to the principle of CBDR, the national security approach constructs migrants as threats to public order. Indeed, the national security approach may serve to justify human rights abuses against migrants—in detention camps, on the high seas, and in the desolate and dangerous migrant routes along the US-Mexican border.

## B. THE HUMANITARIAN APPROACH

A second approach to climate displacement portrays climate migrants as passive victims in urgent need of foreign assistance—the symbolic human face of climate change.<sup>99</sup> A classic example is the image of the Pacific Islanders in the debates over climate change. “In the dominant discourse, the island states are depicted as isolated, vulnerable, and in need of development, and as small, poor, and not equipped for economic growth.”<sup>100</sup>

The humanitarian frame reinforces climate injustice by casting the countries of the Global North as the saviors of the downtrodden rather than the agents of their demise.<sup>101</sup> Like the national security frame, the humanitarian approach obscures the North’s responsibility for causing climate change. It classifies Northern assistance to the states and peoples of the Global South as a response to misfortune rather than injustice, and as charity rather than as redress for centuries of uncontrolled greenhouse gas emissions. The humanitarian frame also disregards how migrants understand their own experience and may deprive them of the opportunity to exercise self-determination with respect to potential strategies for responding to climate change.<sup>102</sup>

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<sup>98</sup> See Betsy Hartmann, *Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse*, 22 J. OF INT. DEV. 233, 234 (2010).

<sup>99</sup> Ransan-Cooper, *supra* note 80, at 109.

<sup>100</sup> Bank & Fröhlich, *supra* note 11, at 7.

<sup>101</sup> Ransan-Cooper, *supra* note 80, at 109.

<sup>102</sup> *Id.*; see also Bank & Fröhlich, *supra* note 11, at 7–8.

The Nansen Initiative is an example of a voluntary framework based on the humanitarian approach.<sup>103</sup> The Nansen Initiative is the only legal framework that sets out a series of principles to better protect and assist persons who are displaced across national borders by disasters, including those associated with climate change.<sup>104</sup> Launched by Norway and Switzerland in 2012 as a state-led intergovernmental process, the Nansen Initiative was endorsed by more than one hundred governmental delegates in Geneva in 2015,<sup>105</sup> and resulted in the 2016 establishment of the successor Platform on Disaster Displacement to implement the Nansen Initiative's recommendations.<sup>106</sup> Rather than calling for a new treaty, the Platform focuses on integrating effective practices on cross-border disaster displacement into existing normative frameworks.<sup>107</sup>

While the Nansen Initiative is a step forward relative to the national security frame, its approach to climate displacement is flawed in several respects. First, the Nansen Initiative's emphasis on charity rather than historic responsibility is incompatible with climate justice because it absolves the North of its obligation to compensate the South for its current and historic contributions to climate change. Climate displacement is an injustice, "not a random, faultless act of God."<sup>108</sup> A charity-based approach that fails to hold states accountable for their greenhouse gas emissions is contrary to both distributive and corrective justice. Second, the Nansen Initiative's reliance on voluntary implementation by states of humanitarian protection measures will likely flounder in the face of major political resistance. Given the North's ongoing exclusion of people fleeing conflicts—including conflicts in Afghanistan, Iraq, and Syria that were instigated or supported by the North—it is doubtful that Northern countries will suddenly open their arms to climate-displaced persons. Third, the Nansen Initiative's state-

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<sup>103</sup> See generally 1 THE NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE (2015), <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>; Francois Gemenne and Pauline Brucker, *From Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration Can Learn from the Governance of Internal Displacement*, 27 INT'L J. REFUGEE LAW 245, 258 (2015).

<sup>104</sup> See Atapattu, *supra* note 91, at 43.

<sup>105</sup> See Platform on Disaster Displacement, *supra* note 91, at 6–7, 127–28.

<sup>106</sup> See Jane McAdam, *From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement*, 39 U.N.S.W. L.J. 1518, 1520 (2016).

<sup>107</sup> See Platform on Disaster Displacement, *supra* note 91, at 136.

<sup>108</sup> See Burkett, *supra* note 71, at 82.

led approach runs the risk of neglecting the perspectives and concerns of climate migrants, thereby raising procedural justice issues.<sup>109</sup> Finally, the Nansen Initiative applies only to migration caused by severe weather events, and may therefore not cover climate-displaced persons who migrate due to slow-onset events such as sea level rise.<sup>110</sup>

While the Nansen Initiative focuses on responding to the urgent needs of migrants *after* the disaster has occurred, another humanitarian approach—the Sendai Framework for Disaster Risk Reduction—promotes international cooperation to reduce the risk of disasters, including climate displacement, *before* they occur.<sup>111</sup> Although this framework has certain advantages, including its bottom-up approach to disaster risk reduction and its emphasis on socio-economic vulnerability, the Sendai Framework, like its predecessor Hyogo Framework, is also based on the North supporting the South as a matter of charity and is therefore inconsistent with a climate justice approach.<sup>112</sup>

### C. THE MIGRATION MANAGEMENT APPROACH

Migration management refers to a state-governed regulation of mobility to prevent the disruptive threats posed by mass migration.<sup>113</sup> This approach is promoted by the International Organization for Migration (IOM), whose mission includes “meeting the growing operational challenges of migration management” while upholding “the human dignity and well-being of migrants.”<sup>114</sup> Instead of regarding displaced persons as passive victims or threats to national security, this approach treats “climate migration” as an adaptation strategy.<sup>115</sup>

The migration management frame depicts climate migrants as active agents who take responsibility for their own social and economic

<sup>109</sup> *See id.*

<sup>110</sup> *See* Atapattu, *supra* note 91, at 43, 45.

<sup>111</sup> *See* Sendai Framework for Disaster Risk Reduction (2015), [https://www.preventionweb.net/files/43291\\_sendaiframeworkfordrren.pdf](https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf). The Sendai Framework was endorsed by the UN General Assembly in 2015. G.A. Res. 69/283, at 2 (June 3, 2015).

<sup>112</sup> *See generally* Paul J. Govind & Robert R.M. Verchick, *Natural Disaster and Climate Change, in* INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH 491, 494 (Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez, and Jona Razzaque eds, 2015) (discussing the predecessor to the Sendai Framework).

<sup>113</sup> *See* Scott & Smith, *supra* note 81, at 43.

<sup>114</sup> *See* Jaya Ramji-Nogales, *Migration Emergencies*, 68 HASTINGS L.J. 609, 639–40 (2017) (quoting *Mission*, INT’L ORG FOR MIGRATION, <http://www.iom.int/members-and-observers>).

<sup>115</sup> *See* Romain Felli, *Managing Climate Insecurity by Ensuring Continuous Capital Accumulation: ‘Climate Refugees’ and ‘Climate Migrants’*, 18 NEW POL. ECON. 337 (2013).

well-being rather than relying on the protection of the state.<sup>116</sup> The climate migrant becomes an entrepreneur engaged in self-help who enhances the resilience of vulnerable communities by working abroad and sending home remittances.<sup>117</sup> Migration—particularly temporary labor migration—is viewed as an insurance strategy based on income diversification that also finances (through remittances) climate change adaptation for family members left behind.<sup>118</sup> Instead of treating the displacement caused by climate change as a disaster to be avoided at all costs, migration becomes an opportunity to improve lives and promote “climate-smart” development as long as it is carefully managed by states and institutions of global governance.<sup>119</sup>

The migration management approach places the burden of climate change adaptation on the world’s most climate-vulnerable populations instead of requiring the North to transfer resources to the South to finance climate change adaptation and prevent displacement.<sup>120</sup> Remittances, rather than financial contributions from the Global North, will finance the measures necessary to promote climate resilience.<sup>121</sup> As one observer points out:

Whereas climate refugees were depicted as (potential) helpless victims of climate change-induced *forced* migration, the language of climate migration as adaptation radically transforms the location of social agency and, consequently, the responsibility for climate change consequences. Rather than understanding “climate refugees” as victims of climate change produced by industrialized countries, and thus as in need of justice (which could take the form of funding for adaptation), these individuals are turned, through a “positive story,” into entrepreneurial migrants who not only can lift themselves out of poverty but may also contribute to the “resilience” of their “vulnerable” communities.<sup>122</sup>

The migration management frame’s embrace of labor migration as adaptation is problematic for several additional reasons. First, because it does not obligate the North to open its borders to these

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<sup>116</sup> *Id.* at 350; Methmann & Oels, *supra* note 79, at 59.

<sup>117</sup> See Romain Felli, *supra* note 115, at 339.

<sup>118</sup> See Giovanni Bettini, Sarah Louise Nash & Giovanna Gioli, *One step forward, two steps back? The fading contours of (in)justice in competing discourses on climate migration*, 183 *GEOGRAPHICAL J.* 348, 352–53 (2017); Methmann & Oels, *supra* note 79, at 60.

<sup>119</sup> See Methmann & Oels, *supra* note 79, at 59, 62.

<sup>120</sup> Bettini, Nash & Gioli, *supra* note 118, at 350–51.

<sup>121</sup> See Methmann & Oels, *supra* note 79, at 63.

<sup>122</sup> Felli, *supra* note 115, at 350.

“entrepreneurial” climate-displaced persons, this approach may subject climate migrants to the vicissitudes of Northern labor markets and to increasingly restrictive Northern immigration policies. Second, there is currently no formalized system to protect the rights of those who migrate as a form of adaptation. If these migrants are unskilled or undocumented, there is a risk that they will be subjected to unsafe and exploitative working conditions.<sup>123</sup> While there is a human rights treaty that protects the rights of migrant workers—the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families—the affluent countries of the Global North have neither signed nor ratified this treaty.<sup>124</sup> As of February 14, 2019, there were fifty-four parties to this treaty, all of whom are located in the Global South, with the exception of Albania and of Bosnia and Herzegovina.<sup>125</sup> Finally, economically disenfranchised communities rarely have the resources to participate in international labor markets and may not have the ability to move from vulnerable geographic locations.<sup>126</sup>

One solution offered by the migration management approach to the potential immobility of vulnerable communities is planned relocation.<sup>127</sup> Planned relocation can be voluntary or forced, and may be undertaken as a preventative measure to move people out of hazardous locations or as a permanent solution for those who have already been displaced.<sup>128</sup> Koko Warner, one of the world’s leading researchers on climate change-induced migration,<sup>129</sup> chronicles the evolution of migration as adaptation in the UNFCCC negotiations between COP13 in Bali in 2007 and COP16 in Cancun in 2010, and explains that the Cancun Climate Adaptation Framework represents a first formal step

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<sup>123</sup> *Id.* at 354.

<sup>124</sup> See G.A. Res. 45/158, Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (Dec. 18, 1992), <https://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>; (entered into force July 1, 2003) [hereinafter UN Convention on Migrant Workers]; United Nations, Office of the High Commissioner for Human Rights, *Status of Ratification Interactive Dashboard*, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-13.en.pdf> (last accessed October 11, 2018) (Use the “Select a Treaty” menu to select the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families).

<sup>125</sup> See *id.*

<sup>126</sup> See Methmann & Oels, *supra* note 79, at 61.

<sup>127</sup> See *id.* at 61.

<sup>128</sup> See Scott & Smith, *supra* note 81, at 44.

<sup>129</sup> See Dr. Koko Warner, *Human migration and displacement in the context of adaptation to climate change: the Cancun Adaptation Framework and potential for future action*, 30 ENV’T & PLAN. C 1061–77 (2012).

toward the UNFCCC's acceptance of the migration management frame, including planned relocation. At the demand of the United States, the parties to the Cancun Climate Adaptation Framework replaced the term "climate refugees" as a subject of adaptation-related "understanding, coordination, and cooperation" among the parties with the phrase "climate change induced displacement, migration and planned relocation."<sup>130</sup>

The reference to planned relocation in the Cancun Adaptation Framework represents a paradigm shift in the climate regime that raises significant human rights concerns. There is a long history of planned relocations in the Global South to accommodate large-scale infrastructure projects, such as dams, highways, and mines.<sup>131</sup> "The impacts on the lives of people driven from their homes by such ventures can be just as severe in scope and duration as those experienced by people displaced by conflict, violence and disasters."<sup>132</sup> These impacts include not only the loss of jobs, lands, and livelihoods, but also the severance of ties to places essential to the community's spiritual and cultural practices and self-definition.<sup>133</sup> This history of planned relocation should serve as a cautionary note about the dangers of top-down governmental decision-making and the importance of ensuring that community members are well-informed of the options, have a sense of control over the destination and the process of movement, and provide their full, prior, and informed consent. Whether the costs justify the benefits of moving is a highly political decision best left to the affected community.<sup>134</sup>

In sum, the migration management frame sidesteps the obligation of the North to provide compensation for loss and damage caused by climate change by redefining climate displacement as a

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<sup>130</sup> See U.N. FCCC, 16th Sess., Decision 1/CP.16, para.14(f) (Mar. 15, 2011), <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>; Koko Warner, *Global Environmental Change and Migration: Methodological Considerations from Ground-breaking Global Survey*, 33 POPULATION & ENV'T 8, 9 (2011).

<sup>131</sup> See Bank & Fröhlich, *supra* note 11, at 8; Scott & Smith, *supra* note 81, at 44.

<sup>132</sup> NADINE WALICKI & MARITA SWAIN, NORWEGIAN REFUGEE COUNCIL & INTERNAL DISPLACEMENT MONITORING CTR., PUSHED ASIDE: DISPLACED FOR 'DEVELOPMENT' IN INDIA 8 (2016), <http://www.internal-displacement.org/sites/default/files/publications/documents/201607-ap-india-pushed-aside-en.pdf>.

<sup>133</sup> See Scott & Smith, *supra* note 81, at 44–49.

<sup>134</sup> See Giovanni Bettini, *Where Next? Climate Change Adaptation, Migration and the (Bio)politics of Adaptation*, 8 GLOBAL POL'Y 33, 35 (2017).

strategy of self-help and empowerment for affected communities.<sup>135</sup> This approach does not require the North to open its borders to climate-displaced persons or to offer such migrants the legal protections required by the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.<sup>136</sup> The migration management approach also absolves the North from its obligation to reduce its carbon footprint by treating climate change as inevitable and beyond human control.<sup>137</sup> Finally, the migration management approach raises human rights concerns to the extent that it authorizes the forced relocation of communities that lack the resources to migrate.<sup>138</sup>

#### D. WHITHER CLIMATE JUSTICE?

The national security, humanitarian, and migration management approaches discussed above have one important commonality: they are all problematic from a climate justice perspective. The national security frame portrays climate migrants as security threats to be neutralized by the Global North through militarized borders—a clash between the civilized North and the chaotic, barbaric South. The humanitarian frame depicts climate migrants as passive victims in need of rescue by Northern Saviors—a form of charity rather than corrective justice. The migration management frame classifies climate migrants as self-reliant entrepreneurs to whom the Global North owes no responsibility, even though it is the Global North that has rendered their homes uninhabitable.

A justice-based approach to climate displacement must recognize that climate change is a form of structural violence caused by the emissions of the planet's most affluent inhabitants. Climate change is an injustice, not a random misfortune. Those who committed the injustice have a responsibility to vulnerable communities displaced by climate change—to prevent displacement and, if that is not possible, to compensate those who are harmed. The final Part of this article examines

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<sup>135</sup> See Methmann & Oels, *supra* note 79, at 62–63.

<sup>136</sup> See generally UN Convention on Migrant Workers, *supra* note 124 (for example, the UN protections safeguard migrant workers from arbitrary expulsion and require the same working conditions enjoyed by nationals); Jennifer Hau, *Promise and Prospects of the UN's Convention on Migrant Workers*, MIGRATION POL'Y INST. (Mar. 1, 2005), <https://www.migrationpolicy.org/article/promise-and-prospects-uns-convention-migrant-workers>.

<sup>137</sup> Methmann & Oels, *supra* note 79, at 63.

<sup>138</sup> See *id.* at 61.

the contribution of the SDGs to the protection of climate-displaced persons.

### III. THE SUSTAINABLE DEVELOPMENT GOALS

Sustainable development is widely regarded as the foundational norm for environmental governance.<sup>139</sup> Defined as “development that meets the needs of the present without compromising the ability of future generations to meet their needs,”<sup>140</sup> sustainable development initially required the balancing of two pillars—economic development and environmental protection.<sup>141</sup> The binary nature of sustainable development was modified at the 1995 World Summit for Social Development, which added a third pillar: social development.<sup>142</sup> As explained in the Summit’s Copenhagen Declaration:

[E]conomic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering of the poor to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice.<sup>143</sup>

Influenced by the Copenhagen Declaration, the 2002 Johannesburg Declaration on Sustainable Development<sup>144</sup> affirmed “collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development—economic development, social development, and environmental protection—at the

<sup>139</sup> See DAVID HUNTER, JAMES SALZMAN & DURWOOD ZAELEKE, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 114 (5th ed. 2015).

<sup>140</sup> See U.N. World Commission on Environment and Development, *Our Common Future*, U.N. Doc A/42/427, at 41 (1987).

<sup>141</sup> See Ruth Gordon, *Unsustainable Development*, in *INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH* 50, 63–64 (Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez & Jona Razzaque eds., 2015) (explaining that the concept of sustainable development sought to reconcile environment and development, but defined the latter as perpetual economic growth, thereby perpetuating the very practices “that have caused global inequality and threaten the environment.”).

<sup>142</sup> World Summit for Social Development, *Copenhagen Declaration and Programme of Action*, ¶ 6, U.N. Doc. A/CONF.166/9 (Mar. 6–12, 1995).

<sup>143</sup> *Id.*

<sup>144</sup> See generally World Summit for Sustainable Development, *Johannesburg Declaration on Sustainable Development*, A/CONF.199/20 (Sept. 4, 2002).

local, national, regional and global levels.”<sup>145</sup> The commitments made by states in the Copenhagen Declaration clarify the meaning of the social pillar. These commitments include: poverty eradication, full employment, promotion of human rights and human dignity, equality between men and women, universal and equitable access to quality education, and the highest attainable standard of physical and mental health.<sup>146</sup>

The SDGs represent a “historic shift for the United Nations toward one ‘sustainable’ development agenda after a long history of trying to integrate economic and social development with environmental sustainability.”<sup>147</sup> In addition to providing an integrated framework for sustainable development, the SDGs give this nebulous concept detailed content and then supply specific targets that can be used to track progress toward each goal.<sup>148</sup>

The SDGs and the Paris Agreement are interdependent and cannot be implemented in isolation from one another.<sup>149</sup> A study conducted by the World Resources Institute concluded that 154 of the 169 targets embedded in the SDGs are reinforced by the NDCs under the Paris Agreement.<sup>150</sup> A tool developed by the Stockholm Environment Institute and the German Development Institute identifies the synergies and opportunities for coordination that can enhance SDG and NDC implementation.<sup>151</sup>

<sup>145</sup> *Id.* ¶ 5. While the Copenhagen Declaration added the social pillar to sustainable development, Agenda 21 adopted at the 1992 United Nations Conference on Environment and Development (UNCED) also recognized the importance of social development, including combatting poverty, protecting health and promoting sustainable human settlements, Earth Summit Agenda 21, United Nations Programme of Action from Rio (1992), available at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

<sup>146</sup> See generally, Copenhagen Declaration, *supra* note 143.

<sup>147</sup> Norichika Kanie et al., *Introduction: Global Governance through Goal-Setting*, in GOVERNING THROUGH COALS: SUSTAINABLE DEVELOPMENT GOALS AS GLOBAL GOVERNANCE INNOVATION 1 (Norichika Kanie & Frank Biermann eds., 2017).

<sup>148</sup> See generally Oran R. Young, *Conceptualization: Goal Setting as a Strategy for Earth System Governance*, in GOVERNING THROUGH COALS: SUSTAINABLE DEVELOPMENT GOALS AS GLOBAL GOVERNANCE INNOVATION (Norichika Kanie & Frank Biermann eds., 2017).

<sup>149</sup> ACTION FOR SUSTAINABLE DEVELOPMENT, *Connecting the UN’s Sustainable Development Goals & the Paris Climate Agreement* (Feb. 26, 2017), <https://action4sd.org/uncategorised/connecting-the-sustainable-development-goals-and-the-paris-climate-agreement-a-human-rights-based-approach/>.

<sup>150</sup> Eliza Northrop et al., *Examining the Alignment Between the Intended Nationally Determined Contributions and Sustainable Development Goals* (World Resources Institute, Working Paper, 2016).

<sup>151</sup> Leila Mead, *Online Tool and Database Analyze NDC-SDG Links* (Nov. 9, 2017), <http://sdg.iisd.org/news/online-tool-and-database-analyze-ndc-sdg-links/>.

This Part examines the implications of the SDGs for efforts to address the plight of climate-displaced persons. The first subsection focuses on SDG 13, which deals specifically with climate change. The second subsection discusses how the SDGs address migration more generally.

#### A. SDGS RELEVANT TO CLIMATE CHANGE

SDG 13, which requires states to take urgent action to combat climate change and its impacts, does not mention migration or displacement.<sup>152</sup> However, the targets through which this goal will be achieved do have some implications for efforts to prevent climate-induced displacement. Target 13.1 requires states to “strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries.”<sup>153</sup> Achievement of this target is essential in order to prevent displacement before it occurs. Target 13.a recognizes common but differentiated responsibility (CBDR), at least implicitly, by calling upon developed countries to comply with their commitment to jointly mobilize \$100 billion annually by 2020 to address the mitigation needs of developing countries and to fully implement the Green Climate Fund.<sup>154</sup> Compliance by Northern countries with these financing commitments will provide valuable assistance to countries in the Global South to adopt the mitigation and adaptation measures necessary to prevent displacement. Targets 13.2 and 13.3 require the integration of climate change into national policies and “education, awareness-raising and human institutional capacity on climate change mitigation, adaptation, impact reduction and early warning.”<sup>155</sup> In a similar vein, Target 13.b requires the promotion of mechanisms for capacity-building in the least developed countries and SIDS with respect to climate-related planning and management, particularly programs that focus on certain vulnerable groups (women, youth, and marginalized communities).<sup>156</sup> Capacity-building is undoubtedly essential to mitigation, adaptation, and disaster risk reduction.

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<sup>152</sup> G.A. Res. 70/1, at 23 (Sept. 25, 2015).

<sup>153</sup> *Id.* at 23.

<sup>154</sup> *Id.*; see also DUPUY & VIÑUALES, *supra* note 52, at 178–79 (explaining the Green Climate Fund finances mitigation and adaptation projects undertaken by UNFCCC members from the Global South).

<sup>155</sup> See G.A. Res. 70/1, *supra* note 153.

<sup>156</sup> See *id.*

However, the failure of SDG 13 to explicitly discuss climate-induced migration may contribute to policy “blind spots” that result in inadequate protection for climate displaced persons. For example, in implementing Target 13.1 (strengthening resilience), countries should consider the fact that displaced persons often relocate to areas of high environmental risk, including low-lying areas and urban slums lacking basic infrastructure.<sup>157</sup> In implementing Target 13.2 (integrate climate change into national planning), countries should consider the impacts of climate-induced rural-to-urban migration, including food insecurity, greater energy use, and increased carbon emissions in urban areas.<sup>158</sup> In implementing Target 13.3 (education and capacity-building), countries should take into account the language and cultural practices of climate migrants (both internally displaced persons and those who cross national borders).<sup>159</sup> Failure to take these concerns into account may result in climate policies that marginalize and exclude climate-displaced persons.

In addition to SDG 13, other SDGs are also relevant to climate change and climate justice. For example, SDG 7, which requires universal access to affordable, reliable, and modern energy, contains several targets designed to promote energy efficiency and the transition to renewable energy.<sup>160</sup> Because disaster risks are magnified by poverty, food insecurity, poor health, inequality, and substandard housing, several other SDGs are relevant to climate justice and climate displacement to the extent that they seek to reduce the vulnerability of marginalized groups. These include SDG 1 (end poverty), SDG 2 (zero hunger), SDG 3 (health and well-being), SDG 4 (quality education), SDG 5 (gender equality), SDG 6 (clean water and sanitation), SDG 10 (reduce inequality), SDG 11 (inclusive, safe, resilient, and sustainable cities and human settlements), and SDG 16 (peace, justice, and strong institutions).<sup>161</sup>

In short, the SDGs call for climate change mitigation, adaptation, and disaster risk reduction, but they do not address climate displacement. The next section examines migration-related SDGs to determine their implications for climate justice and climate displacement.

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<sup>157</sup> Katy Long et. al., *Citizenship, Migration and the 2030 Agenda for Sustainable Development*, in *MIGRATION AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT* 109 (Overseas Development Institute, Sept. 2017).

<sup>158</sup> *Id.* at 111.

<sup>159</sup> *See id.*

<sup>160</sup> G.A. Res. 70/1, *supra* note 153, at 19.

<sup>161</sup> *See id.* at 14.

## B. SDGs RELEVANT TO MIGRATION

As an initial matter, the UN General Assembly resolution adopting the SDGs notes the positive contributions of migrants to sustainable development, and calls for “full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees, and of displaced persons.”<sup>162</sup> The resolution goes on to recognize that forced displacement is a threat to development<sup>163</sup> and identifies migrants, refugees, and internally displaced persons as vulnerable people who must be empowered.<sup>164</sup> At a time when migrants and refugees are widely demonized, this is a welcome acknowledgement of the human rights and valuable social contributions of migrants.

While there is no single SDG dedicated specifically to migration, Target 10.7 is arguably the centerpiece of migration in the 2030 Sustainable Development Agenda.<sup>165</sup> Target 10.7 calls for the facilitation of “safe, regular and responsible migration and mobility of people” and the implementation of “well-managed migration policies.”<sup>166</sup> This language appears to endorse the migration management approach to human mobility discussed in Part II above.

Several targets associated with SDG 8 (economic growth and decent work for all) may provide protection to climate-displaced persons.<sup>167</sup> Target 8.5 calls for full and productive employment and decent work for all women and men.<sup>168</sup> This target, if implemented vigorously, could help protect climate migrants from the economic exploitation that often accompanies irregular or undocumented migration. Target 8.7 calls for the eradication of forced labor, modern slavery, and human trafficking.<sup>169</sup> As Michael Gerrard points out in a recent article, climate-induced displacement is likely to lead to considerable increases in human trafficking and forced labor unless action is taken to reduce climate vulnerability and hold traffickers,

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<sup>162</sup> *See id.* at 8.

<sup>163</sup> *See id.* at 5.

<sup>164</sup> *See id.* at 7.

<sup>165</sup> *See id.* at 21.

<sup>166</sup> *See id.*

<sup>167</sup> *See id.* at 19.

<sup>168</sup> *See id.*

<sup>169</sup> *See id.* at 20.

employers, and downstream supply chains accountable.<sup>170</sup> Target 8.8 calls for the protection of labor rights and the promotion of safe and secure working environments for all workers, including migrant workers generally, women migrants in particular, and those in precarious employment.<sup>171</sup> These targets all recognize the human rights of all workers and seek to end abusive practices.

Several other SDGs may be relevant to climate-displaced persons. SDG 16 deals with the promotion of peaceful and inclusive societies, access to justice for all, and effective, accountable, and inclusive institutions.<sup>172</sup> The reference to inclusivity in Goal 16 can be read as a call for freedom of association and political space for activism—a recognition of the role of migrants as agents in political struggle. SDG 5, which deals with gender equality, is a reminder that we must always assess climate change and climate displacement through the lens of gender if we are ever to achieve gender equality.<sup>173</sup> One well-documented example of gender inequality related to climate change is the increase in violence against women during climate-related disasters.<sup>174</sup> Finally, SDG Target 17.18 requires the use of disaggregated indicators to assess progress toward all of the SDGs so that vulnerable people do not slip through the cracks.<sup>175</sup> This target calls for a significant increase in “the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.”<sup>176</sup> The inclusion of migrants in this list is a major step toward addressing their invisibility in national and international policy-making.

In sum, the SDGs do seek to enhance the status of migrants, but fail to make an explicit connection between migration and climate change. They do not address the ways that climate change will trigger migration or the challenges that climate-induced migration will pose to the achievement of *all* SDGs, including the SDGs related to climate

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<sup>170</sup> See generally Michael B. Gerrard, *Climate Change and Human Trafficking After the Paris Agreement*, 72 U. MIAMI L. REV. 345, 347 (2018).

<sup>171</sup> See G.A. Res. 70/1, *supra* note 153, at 20.

<sup>172</sup> See *id.* at 25.

<sup>173</sup> See *id.* at 18.

<sup>174</sup> See Nancy A. Wonders, *Climate Change, The Production of Gendered Insecurity and Slow Intimate Partner Violence*, in INTIMATE PARTNER VIOLENCE, RISK AND SECURITY: WOMEN'S LIVES IN A GLOBAL WORLD 34, 34–47 (2018).

<sup>175</sup> See G.A. Res. 70/1, *supra* note 153, at 27.

<sup>176</sup> See *id.*

change. To the extent that they offer an approach to mass migration—whether triggered by climate change or by other causes—the SDGs appear to endorse the migration management approach discussed and critiqued in Part II of this article.

#### IV. CONCLUSION

Climate change is one of the most pressing social justice issues of our time—not only because of the magnitude of the harm it inflicts, but also because of its disproportionate impact on those who have contributed least to the problem. The millions of people who will be displaced from their homes in decades to come are also the people with the lowest per capita carbon footprint.<sup>177</sup> While the SDGs fail to grapple with the issue of climate displacement, the Paris Agreement is a promising vehicle for the urgent action required to avert a humanitarian disaster. The Paris Agreement is promising because it has already created a place-holder for climate displacement under its Article 8 loss and damage mechanism, and because it provides that countries should comply with their human rights obligations when taking action to address climate change.<sup>178</sup> The Paris Agreement also incorporates important principles (including common but differentiated responsibility) that are essential for a just and equitable allocation of responsibility for climate displacement based on historic contribution to climate change.<sup>179</sup>

An approach to climate displacement grounded in climate justice must recognize the differential responsibility of states for climate change and require not only aggressive mitigation measures but also financial and technical contributions to mitigation, adaptation, and disaster risk reduction in vulnerable countries. The primary goal should be to avert displacement at all costs. In this respect, the fatal flaw of the Paris Agreement is the inadequacy of the mitigation commitments in the NDCs. The fundamental shortcoming of the SDGs is their uncritical commitment to sustained economic growth (as reflected in SDG 8)<sup>180</sup> that may result in the collapse of the ecosystem services necessary to support human society.<sup>181</sup>

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<sup>177</sup> See Gerrard, *supra* note 171, at 355–56.

<sup>178</sup> Paris Agreement, *supra* note 4, art. 8.

<sup>179</sup> *Id.* art. 2.

<sup>180</sup> See G.A. Res. 70/1, *supra* note 153, at 19.

<sup>181</sup> See SIMON L. LEWIS & MARK A. MASLIN, *THE HUMAN PLANET* 14–15 (2018).

If mitigation, adaptation, and disaster risk reduction are not sufficient to avert displacement, then the leading greenhouse gas-emitting states have a moral duty to make the victims whole by providing financial compensation, relocation assistance, and a mechanism to finance and facilitate migration. While a full analysis of how this regime might operate is beyond the scope of this paper, an important element is the obligation to accept climate-displaced persons in proportion to a country's contribution to the problem. This obligation would avoid replicating contemporary inequities, such as the fact that the Global South currently hosts 85 percent of the world's refugees.<sup>182</sup> Policies of anti-racism, anti-xenophobia, and inclusion would need to be adopted, and the human rights of displaced persons (including civil and political rights; social, economic, and cultural rights; and the right of peoples to self-determination) would need to be respected.

The current approach to international migration is antiquated and incapable of handling the large numbers of people presently flowing across national borders.<sup>183</sup> While an overhaul of international migration law is long overdue, the climate crisis creates an opportunity to create a migration governance mechanism that puts human beings front and center and is designed to facilitate, rather than hinder, their mobility. In the absence of such a mechanism, the human rights violations that plague the current system will only escalate as millions of desperate people flee their homes to escape the ravages of climate change.

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<sup>182</sup> See Global Trends, *supra* note 12, at 2.

<sup>183</sup> See Ramji-Nogales, *supra* note 114, at 615, 654; Nakamura, *supra* note 9.