

THE NEED FOR A HUMAN RIGHTS UNDERPINNING IN CLIMATE CHANGE GOVERNANCE — AN EXAMINATION OF THE PROPOSED GLOBAL PACT FOR THE ENVIRONMENT THROUGH A REFUGEE LAW CASE STUDY

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This paper argues that entrenching human rights in legally binding instruments is crucial to ensure that the approach towards climate change governance, understood here as the governance of the impacts of climate change as well as working beyond mitigation and towards justice and adaptation, is holistic in the protection of vulnerable people and their inclusion in the process of governance. Entrenching human rights in such an instrument lends weight and legitimacy to the instrument itself, and subsequently profoundly broadens and improves the scope of the principles underpinning the governance framework by including questions of rights and obligations. Beyond the benefits accrued by using the human rights framework, the proposed instrument also has the potential to still hold space for self-reflection, piecemeal developments and political will. The paper argues this through the case study of climate change refugees.

I. INTRODUCTION

The relevance of human rights to the phenomenon of climate change cannot be overstated.¹ Those who bear the brunt of climate change and resultant disasters often lose their homes and livelihoods, and are left to adapt to a climate that their way of life was never envisioned for. Those who are first and most

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affected by the effects of climate change are already marginalised and vulnerable groups.²

To envision an approach to mitigating and adapting to the problems associated with climate change, without considering human rights, would be an incomplete and incorrect appraisal of the problem at hand. A human rights-based approach would mean respecting substantive human rights, such as the right to health and a safe environment, and ensuring procedural human rights are complied with, including fair and meaningful participation. This approach should also be mindful of how different and intersecting identities and group memberships may compound vulnerabilities. This represents a shift from climate change policy, informed solely by concerns of science, management, technology, and finance, to climate justice, which examines how climate change is also an issue of justice and morality, impacting people unevenly and thus warranting an equitable response to the suffered injustice.³

The relatively recent movement towards a human rights-based understanding of climate change can be attributed mainly to Indigenous Peoples and small island nations, whose efforts have led to pioneering and revolutionary dialogue between the legal regimes addressing human rights and climate change.⁴ Perhaps, the Paris Agreement is the most remarkable achievement, with a strong focus on human rights, equality, and equity in its preamble.⁵ This contribution and cross-fertilisation are also germane for the legal and academic discourse pertaining not just to climate change but also to human rights. An example that makes this need evident is the definition of who qualifies as a refugee, especially when migration and displacement are caused by climate change phenomena, which currently fall outside the purview of refugee law.⁶

¹ Submission to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, *Office of the High Commissioner for Human Rights* (30 November–11 December 2015).

² Sumudu Atapattu and Andrea Schapper, *Human Rights and the Environment: Key Issues* (Routledge 2019) 249–262.

³ Farhana Sultana, 'Critical Climate Justice' (2022) 188(1) *The Geographical Journal* 118–124.

⁴ Andrea Schapper and Markus Lederer, 'Introduction: Human Rights and Climate Change: Mapping Institutional Inter-Linkages' (2014) 27(4) *Cambridge Review of International Affairs* 666–679; Sébastien Jodoin, Annalisa Savaresi and Margaretha Wewerinke-Singh, 'Rights-Based Approaches to Climate Decision-Making' (2021) 52 *Current Opinion in Environmental Sustainability* 46; Conference of the Parties, Report of the Conference of the Parties on its Sixteenth Session, Held in Cancun from 29 November to 10 December 2010 — Addendum — Part Two: Action Taken by the Conference of the Parties at its Sixteenth Session (15 March 2011) UN Doc FCCC/CP/2010/7/Add.1 Decision 1/CP.16 [14(f)].

⁵ Paris Agreement (adopted 12 December 2015, opened for signature 22 April 2016, entered into force 4 November 2016) 3156 UNTS 79 (Paris Agreement).

⁶ Rebecca Dowd and Jane McAdam, 'International Cooperation and Responsibility Sharing to Combat Climate Change: Lessons for International Refugee Law' (2017) 18 *Melbourne Journal of*

Entrenching human rights in legally binding instruments is crucial then to ensure that the approach towards climate change governance is grounded in justice and legal accountability. The Global Pact for the Environment is a proposed international treaty that aims to create a legally binding, “umbrella” agreement to unify and strengthen international environmental law.⁷ Climate change governance is understood here to encompass the governance of climate impacts, extending beyond mitigation alone. It includes justice-oriented and adaptive approaches that prioritise the protection of vulnerable populations, prioritizing their meaningful inclusion in governance processes.⁸ Further, entrenching human rights in such an instrument may lend additional normative weight and legitimacy to the instrument itself, while also broadening the scope of the governance framework by incorporating considerations of rights and corresponding obligations.

This paper thus supports the statement that human rights, as entrenched in instruments such as the proposed new Global Pact, if agreed upon by states, will profoundly improve the governance of climate change. Part II elaborates on the necessity of a human rights-based approach to climate change. Part III examines the impact of entrenching human rights in a proposed treaty, such as the Global Pact, on both the treaty and the field of climate change. Part IV attempts to demonstrate the profound impact of this approach by examining how the treatment of ‘climate refugees’ would be instrumentally benefited by the entrenchment of human rights. Cognisant of the challenges of such an approach, however, Part V seeks to examine the hurdles faced in the lead-up to, during, and after the process of entrenching human rights in the proposed Global Pact. Part VI concludes.

A caveat to be noted here is that this paper does not attempt to delve into the distinctions between fields such as environmental law and climate change law; instead, it focuses on the benefits of entrenching human rights in an instrument governing climate change.

II. HUMAN RIGHTS AND CLIMATE: THE IMPORTANCE AND BENEFIT OF HAVING HUMAN RIGHTS AS THE FOUNDATION OF CLIMATE CHANGE LAW

The effects of climate change are not always sudden or catastrophic and are often slow to be recognised. Shifts in climatic conditions are undermining crop cultivation, while extreme heat and cold waves are increasingly disrupting sectors such as agriculture and tourism. Climate change is also associated with a rising incidence of illness and infection, as well as documented increases in certain

International Law 180.

⁷ Towards a Global Pact for the Environment, Resolution A/72/L.51 (10 May 2018).

⁸ Cinnamon Carlarne, Kevin R Gray and Richard Tarasofsky, ‘International Climate Change Law: Mapping the Field’ in Gray, Carlarne and Tarasofsky (eds), *The Oxford Handbook of International Climate Change Law* (Oxford University Press 2016) 4–26.

forms of violence.⁹ It is clear how these consequences of climate change impact several recognised human rights, such as the right to life, the right to health, the right to a safe and healthy environment, the right to food and water, the right to housing, the right to livelihood, the right to protection of culture, the right to self-determination and so on.¹⁰ These impacts of climate change on human rights have also been recognised by the Human Rights Council, which acknowledged the direct and indirect infringement of human rights.¹¹ The resolution noted ‘that climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of all the rights mentioned above, recalling that in no case may a person be deprived of their own means of subsistence’.¹²

More importantly, it has also recognised that undertaking a human rights-based approach to climate change governance can ‘inform and strengthen international and national policymaking in the area of climate change’.¹³ The affirmation in Resolution 10/4 that human rights obligations can inform climate policy could lead to the development of various integrated legal frameworks. At the procedural level, laws might require human rights impact assessments for climate policies and mandate meaningful consultation with affected communities, particularly vulnerable populations. This could extend to substantive environmental legislation that frames emissions reduction targets as human rights obligations and requires businesses to consider human rights in their climate mitigation efforts. Social protection laws could emerge to ensure a just transition for workers in fossil fuel industries and protect climate refugees, while economic legislation might establish carbon pricing mechanisms with social equity considerations and green financing regulations with human rights safeguards. Additionally, institutional framework laws could create oversight bodies to monitor human rights in climate action and establish grievance mechanisms for climate-related human rights violations. All these legal measures would work together to ensure that climate action simultaneously addresses environmental concerns and protects human rights, with particular attention to vulnerable populations who are most affected by climate change impacts.

The understanding employed here is that a human rights-based framework is one where the normative and conceptual underpinnings are based on international human rights standards, with a focus on respecting, protecting and promoting human rights.¹⁴ This also includes a focus not just on the right holders

⁹ Barry S Levy and Victor W Sidel, ‘Collective Violence Caused by Climate Change and How it Threatens Health and Human Rights’ (2014) 16(1) *Health and Human Rights Journal* 32.

¹⁰ Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer 2018) 15–57.

¹¹ Human Rights Council, Human Rights and Climate Change, (25 March 2009) UN Doc A/HRC/RES/26/27.

¹² *ibid.*

¹³ *ibid.*

¹⁴ Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer 2018) 179–196.

but also on those who owe obligations and bear duties towards these right holders, to rectify harms faced, and move away from discriminatory governance as well as unequal distributions of power.¹⁵ Importantly, this means that not only is the focus of a human rights-based approach on substantive rights, but also on procedural rights and ensuring that all stakeholders, especially those most vulnerable, are included in the governance process, enabling participation as well as ensuring accountability.¹⁶ This means that the process of law-making must be fair, transparent, and inclusive, supporting public participation and ensuring adequate and meaningful access to information. This also requires the establishment of effective mechanisms for redressal.¹⁷

Undertaking a human rights-based approach to climate change governance can thus clearly place obligations on the state to recognise its role in climate change governance and take responsibility and action towards preventing and redressing human rights infringement.¹⁸ This is a significant step away from viewing climate change as a phenomenon without considering its actual consequences for humans. The linking of human rights to climate change action has also fostered domestic-level action by state institutions based on the argument that climate change impacts leading to infringements of human rights is a violation of the state's human rights obligations.¹⁹ This domestic action is often based on human rights litigation, showing another avenue of climate change action that is opened up by linking climate change governance to human rights.²⁰

Additionally, entrenching human rights in climate change governance can bring in references to international and national human rights treaties relevant to the field of human rights law.²¹ This means that climate change governance frameworks must also not infringe human rights principles themselves. This can result in the helpful inclusion of best practices, such as human rights impact assessments, redressal mechanisms, rights-based implementation, and the monitoring and evaluation of climate change policies.²² Even beyond these inclusions, the climate change governance measure itself must be evaluated against human rights standards.²³ This could include policies that consider measures of various

¹⁵ *ibid* 201–231.

¹⁶ Sumudu Atapattu and Andrea Schapper, *Human Rights and the Environment: Key Issues* (Routledge 2019) 109–128.

¹⁷ *ibid* 129–153.

¹⁸ Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer 2018) 174.

¹⁹ *ibid* 179–196.

²⁰ *ibid* 242–243.

²¹ *ibid* 125–147.

²² Sumudu Atapattu and Andrea Schapper, *Human Rights and the Environment: Key Issues* (Routledge 2019) 64.

²³ Cristian Faustino and Fabrina Furtado, *The Green Economy, Forest Peoples and Territories: Rights Violations in the State of Acre, Fact-finding and Advocacy Mission*, World Rainforest Movement (2014).

types, such as mitigation, adaptation, and collaboration; at different levels, international, national, local; within different sectors, public, private or hybrid; and across several genres such as technological, legal, policy-based, natural and biological and so on. Furthermore, references to various human rights principles and instruments also help support the meaningful inclusion of communities in climate change governance, which have not only been historically disenfranchised but are also now among the first to face the adverse consequences of climate change.²⁴ An example of this is the inclusion of Indigenous practices and traditional knowledge in climate change mitigation, valuing these perspectives on an equal platform with usually privileged scientific and dominant narratives.²⁵ This respects and promotes the rights of Indigenous Peoples, valuing and recognising their way of life, while also achieving climate change mitigation and adaptation.²⁶

It is essential, however, to realise that a human rights-based approach cannot be undertaken uncritically. While human rights are often seen as universally held and accepted, which is usually considered a strength of the human rights field as a whole, this understanding could privilege a Western and dominant narrative of human rights.²⁷ The meaning of human rights in practice, particularly in the context of climate change governance, can vary depending on the cultural, geographical, and political context, as well as the availability of economic and legal support.

An example of the importance of the contextual understanding of human rights as a benchmark for evaluating climate change frameworks can be seen in the Reducing Emissions from Deforestation and Forest Degradation mechanism ("REDD+"). The REDD+ framework was established by the United Nations Framework Convention on Climate Change Conference of the Parties to reduce emissions resulting from forest degradation and deforestation, while promoting the sustainable management of forests and bolstering forest carbon stocks in developing nations.²⁸ The REDD+ framework has been criticised for being incompatible with Indigenous rights and practices.²⁹ The framework has also been

²⁴ Annalisa Savaresi, 'Traditional Knowledge and Climate Change: A New Legal Frontier?' (2018) 9(1) *Journal of Human Rights and the Environment* 32–50.

²⁵ Linda Walbott, 'Indigenous Peoples in UN REDD+ Negotiations: "Importing Power" and Lobbying for Rights through Discursive Interplay Management' (2018) 19(1) *Ecology and Society* 19, 21.

²⁶ Patricia Cochran et al, 'Erratum to: Indigenous Frameworks for Observing and Responding to Climate Change in Alaska' (2013) 120 *Climatic Change* 49, 59; Johanne Pelletier, Nancy Gélinas and MM Skutsch, 'The Place of Community Forest Management in the REDD+ Landscape' (2016) 7(8) *Forests* 1–24.

²⁷ Carol Farbotko and Heather Lazrus, 'The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu' (2012) 22 *Global Environmental Change* 382–390.

²⁸ 'What is REDD+?' *United Nations Climate Change* <<https://unfccc.int/topics/land-use/work-streams/redd/what-is-redd>> accessed 6 November 2025.

²⁹ Bethany Horner, 'A Human Rights-Based Approach to Climate Change: Lessons from Developments of the CDM and REDD+' (2015) 19 *New Zealand Journal of Environmental Law*

criticised for excluding Indigenous Peoples and local communities from not just their land and lives, but also from the process of governance, instead encroaching on their land and violating their rights.³⁰ It is then essential to scrutinise human rights protection in the context of these Indigenous Peoples, rather than solely in the broader scope of state compliance with climate change and human rights obligations, as understood in the West and the Global North.

Further, relying on the human rights-based framework can pose challenges. The strong link between human rights and rights-based litigation as a remedy for human rights violations also raises substantive and procedural hurdles, such as the availability of resources and the requirements for standing to bring a petition before the court.³¹ This may limit who may approach the courts, who are often hindered also by (non)availability of financial and political resources in litigation. These obstacles are exacerbated when faced by marginalised communities in the context of climate change litigation.³² Further, a human rights approach that focuses too much on state obligations, unfairly implicating states that have not contributed much towards climate change, often places a heavy burden on smaller states that have, in fact, faced a greater impact of climate change while wielding relatively lesser political power in terms of influencing such international instruments and measures.³³ For instance, Vanuatu has experienced devastating cyclones and other climate change-related disasters that have endangered its population, despite not being a major contributor to environmental degradation.³⁴

Lastly, it must also be acknowledged that the entrenching of human rights in the sphere of climate change governance itself may pose a challenge to the acceptance and implementation of climate change mitigation and adaptation policies. While it is undeniable that several aspects of climate change governance would benefit from reference to human rights, reaching a consensus on this may be challenging.³⁵

79–112; Julia Dehm, 'Indigenous Peoples and REDD+ Safeguards: Rights as Resistance or as Disciplinary Inclusion in the Green Economy?' (2016) 7(2) *Journal of Human Rights and the Environment* 170–217.

³⁰ Maureen Tehan et al, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities International, National and Local Law Perspectives on REDD+* (Cambridge 2018).

³¹ Joana Setzer and Lisa Vanhala, 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance' (2019) 10(3) *WIREs Climate Change* 580.

³² Lavanya Rajamani, 'Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability' (2007) 19(3) *Journal of Environmental Law* 293–321.

³³ John H Knox, 'Climate Change and Human Rights Law' (2009) 50(1) *Virginia Journal of International Law* 163.

³⁴ 'Vanuatu Urges World Court to Recognise Climate Change Harms' (*Reuters*, 3 December 2024) <<https://www.reuters.com/business/environment/world-court-open-climate-change-hearings-2024-12-02>> accessed 6 November 2025.

³⁵ Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer 2018) 231.

Despite these hurdles, however, it is imperative that the transformative potential of human rights in climate change governance be acknowledged and indeed worked towards. The making relevant of international human rights treaties and the resulting obligations to climate change governance lead to a more holistic and mindful approach to governance, one that is conscious of intersectionality and both procedural and substantive rights. Furthermore, concerns about standing can be addressed through specific measures to ensure state support and the relaxation of standing rules.³⁶

Similarly, the human rights-based approach can also evaluate climate change measures already in place, working towards ensuring that these measures are more human rights-conscious, making space for group and cultural rights.³⁷ This is not just in terms of recognising the true extent of harm that results from climate change and poor management of its effects, but also in terms of fostering equality-based redressal and a robust system of obligations and responsibilities.

III. THE NEED FOR ENTRENCHING HUMAN RIGHTS IN INSTRUMENTS SUCH AS THE *GLOBAL PACT FOR THE ENVIRONMENT*: EVALUATING THE VALUE ADDED TO THE FIELD OF CLIMATE CHANGE GOVERNANCE AND TO THE INSTRUMENT ITSELF

Although not mentioned thus far, a key human right in the context of climate change is the right to an ecologically sound environment.³⁸ The reason it was not examined in the previous section is that it has yet to be recognised in international human rights instruments. The Human Rights Council recognised this as a human right for the first time in 2021.³⁹ Despite its absence in codified instruments, regardless of the bindingness of the instrument, the right to an ecologically sound environment can be the underpinnings of other human rights that can be claimed in a climate change context. This is especially evident when examining Principle 1 of the Stockholm Declaration, which, although it does not explicitly recognise the human right to an ecologically sound environment, does recognise that it is imperative to have a certain quality of environment to ensure

³⁶ Lavanya Rajamani, 'Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability' (2007) 19(3) *Journal of Environmental Law* 293–321.

³⁷ Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer 2018) 210.

³⁸ 'Draft Global Pact for the Environment' (2017), art 1 <<https://globalpactenvironment.org/uploads/EN.pdf>> accessed 6 November 2025.

³⁹ UN Human Rights Council, Resolution adopted by the Human Rights Council on 18 October 2021, UN Doc A/HRC/RES/48/13 (18 October 2021).

the human rights to dignity and life.⁴⁰ It follows then that a degraded environment can, and indeed does, violate protected human rights. In the several decades following the Stockholm Declaration, however, it was only in the Paris Agreement on Climate Change that a treaty about the environment recognised human rights.⁴¹

In this light, there are three ways that human rights can be articulated and entrenched in the sphere of climate change governance:⁴²

Firstly, existing human rights can be relied upon; policymakers can derive environmental and climate change duties and rights from existing civil, political, social and cultural rights. This approach is focused on substantive rights and their interpretation. *Secondly*, procedural rights can be relied upon to work towards better redressal or outcomes. *Thirdly*, a distinct human right to an ecologically sound environment can be instituted.

At present, this third mechanism has only been pursued at the regional level. Looking at the draft of the proposed Global Pact, it is apparent that the instrument is a landmark development in that it does all three.⁴³ Articles 3 (Integration and Sustainable Development) and 4 (Intergenerational Equality), for instance, enshrine substantive human rights in the Global Pact. Articles 9 (Access to Information), 10 (Public Participation), and 11 (Access to Environmental Justice) enshrine procedural rights, while Article 1 establishes the distinct human right to an ecologically sound environment.

This strategy of undertaking all three approaches to entrenching human rights in climate change governance, however, is also a loaded decision. Choosing to include the human right to an ecologically sound environment as a distinct human right is a contested strategy. Many have argued that existing international human rights standards and environmental treaties are sufficient to tackle issues pertaining to the environment and climate change.⁴⁴ Efforts and resources, then, are better focused towards strengthening existing instruments to have better

⁴⁰ UN Conference on the Human Environment, Report of the United Nations Conference on the Human Environment, UN Doc A/CONF.48/14/Rev.1 (5-16 June 1972); César Rodríguez-Garavito, 'A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations' in John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge 2018) 155, 158–159.

⁴¹ Teresa Parejo Navajas and Nathan Lobel, 'Framing the Global Pact for the Environment: Why it's Needed, What it Does, and How it Does it' (2018) 30(1) *Fordham Environmental Law Review* 32.

⁴² *ibid.*

⁴³ 'Draft Global Pact for the Environment' (2017), arts 1, 3, 4, 7, 9, 10, 11, 12, 15 and 17 <<https://globalpactenvironment.org/uploads/EN.pdf>> accessed 6 November 2025.

⁴⁴ Teresa Parejo Navajas and Nathan Lobel, 'Framing the Global Pact for the Environment: Why it's Needed, What it Does, and How it Does it' (2018) 30(1) *Fordham Environmental Law Review* 48.

enforcement and implementation.⁴⁵ It cannot be denied that such focused efforts to bolster existing treaties are certainly a beneficial exercise. However, not only can the focus on existing treaties and rights be a measure that can operate in conjunction with a distinct human right to a healthy environment, but it is also argued that such a distinct right is necessary. Not only does such a right recognise the human aspect and the impact of climate change on humans, but it also provides a cohesive and unified principled underpinning to the field of climate change governance.⁴⁶

This cohesion has been lacking, considering the piecemeal, issue-specific development of treaties, along with the technical focus on the norms.⁴⁷ This means that for those adversely impacted by climate change, recourse had to be sought to allied human rights, such as the right to life, health, and food, among others, in order to seek relief from harms that could be clearly attributed to climate change.⁴⁸ These strategies, however, have had limited and unpredictable success.⁴⁹ Furthermore, the interpretation that existing laws do, in fact, lend themselves to deriving the human right to an ecologically sound environment is not universally accepted, and having an instrument like the Global Pact would make definite progress towards crystallising this as an enforceable human right.⁵⁰ In doing so, the Pact also makes headway towards strengthening, and perhaps ambitiously seeking to consolidate, the existing body of international environmental law and its piecemeal development.⁵¹

Not only would a recognised human right to an ecologically sound environment, along with other entrenched substantive and procedural human rights, be a recognition of growing regional and domestic efforts in this direction. This framework could also guide international, regional, and domestic climate change governance, where such resources, in terms of principles and instruments, may exist but lack the required principled and legal backing that the *Global Pact* could

⁴⁵ Maria Ivanova, 'Designing the United Nations Environment Programme: A Story of Compromise and Confrontation' (2007) 7 International Environmental Agreements: Politics, Law and Economics 339–340.

⁴⁶ Susan Biniarz, 'The UNGA Resolution on a "Global Pact for the Environment": A Chance to Put the Horse Before the Cart' (2019) 28(1) RECIEL 33–38.

⁴⁷ Yann Aguila, Adopting an International Covenant for the Protection of the Environment: Taking Environmental Rights Seriously, *Global Pact for the Environment* (2017) <<https://globalpactenvironment.org/uploads/Article-YA-International-Covenant-english.pdf>> accessed 6 November 2025.

⁴⁸ Dinah Shelton, 'Human Rights and the Environment: What Specific Environmental Rights have Been Recognized?' (2008) 35(1) Denver Journal International Law & Policy 166.

⁴⁹ Dinah Shelton, 'Background Paper No. 2: Human Rights and the Environment: Jurisprudence of Human Rights Bodies' (Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Geneva 14–16 January 2002);

⁵⁰ Teresa Parejo Navajas and Nathan Lobel, 'Framing the Global Pact for the Environment: Why it's Needed, What it Does, and How it Does it' (2018) 30(1) Fordham Environmental Law Review 36.

⁵¹ Christina Voigt, 'How a "Global Pact for the Environment" Could Add Value to International Environmental Law' (2019) 28(1) RECIEL 13–24.

provide.⁵² This would assist domestic legislation and judicial interventions, especially since in countries such as India, such regulation and governance in the spheres of human rights, climate change, and environmental law are often triggered, or at least catalysed, through reliance on existing international standards and instruments.⁵³ Such an instrument can also help guide sector-specific governance, such as financing and supporting industry or investment, based solely on undertaking a human rights-based climate and disaster risk assessment.⁵⁴

At this juncture, it is also essential to reflect on the binding nature of the Global Pact. The proposed Global Pact is envisioned as a legally binding instrument, akin to a hard law. This would mean states would have to assent to it and ratify it, often then requiring states to take domestic action to ensure enforceability and compliance. This process would lead to domestic and regional climate change regulation and governance, resulting in not only the widespread acceptance of a rights-based approach to climate change but also the development of mechanisms for implementation, monitoring, compliance, and redressal.⁵⁵ Domestic and regional climate change codes would be either written or updated, leading to improved protection for those affected by climate change. Further, the entrenching of human rights in the Global Pact would also make clear the linkages between climate change and human rights, making relevant international human rights standards from treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESCR), and also allowing for redressal and recourse to be sought through institutions that may not have been originally envisioned for climate change harms, such as the European Court for Human Rights.⁵⁶ The opposite is also then possible, where concerns about environmental rights being harmed by climate change become relevant to questions within the field of human rights. This is especially fertile in the sphere of refugee protection, as shall be seen in the next section of the paper.

⁵² John Knox, 'The Global Pact for the Environment: At the Crossroads of Human Rights and the Environment' (2019) 28(1) *RECIEL* 40–47; Teresa Parejo Navajas and Nathan Lobel, 'Framing the Global Pact for the Environment: Why it's Needed, What it Does, and How it Does it' (2018) 30(1) *Fordham Environmental Law Review* 47.

⁵³ Aparna Chandra, 'India and International Law: Formal Dualism, Functional Monism' (2017) 57 *Indian Journal of International Law* 25–45.

⁵⁴ Laura Schäfer, Vera Künzel and Pia Jorks, 'A Human Rights-Based Approach to Climate and Disaster Risk Financing' (2020) *Politics and Society* 1–36.

⁵⁵ Teresa Parejo Navajas and Nathan Lobel, 'Framing the Global Pact for the Environment: Why it's Needed, What it Does, and How it Does it' (2018) 30(1) *Fordham Environmental Law Review* 50–53.

⁵⁶ Helen Keller, Corina Heri and Réka Piskóty, 'Something Ventured, Nothing Gained? Remedies Before the ECtHR and their Potential for Climate Change Cases' (2022) 22(1) *Human Rights Law Review* 1–26; Helen Keller and Abigail D Pershing, 'Climate Change in Court: Overcoming Procedural Hurdles in Transboundary Environmental Cases' (2022) 3 *European Convention on Human Rights Law Review* 23–46.

The focus of a binding international instrument on climate change governance that adopts a human rights approach will also facilitate the establishment of clear compliance duties, along with the attribution of duties and obligations, particularly to states and possibly to private institutions such as corporations.⁵⁷ The language of human rights then enables the institutionalisation and enforcement of responsibility and compensation if climate change impacts result in the violation of human rights. This is because respecting and protecting human rights while remedying their violations are now largely accepted as part of a state's obligations.⁵⁸

While this does sound like a very positive and profound impact that the proposed Global Pact can produce on climate change governance, it would be remiss not to acknowledge possible challenges. At the outset, a strong commitment to not just enforceable human rights, but also the new human right to an ecologically sound environment, would be detrimental to the ability of such a binding instrument to attract broad participation.⁵⁹ Some states will assent, and others will use their political power to influence the final draft of the Global Pact, potentially making it different or watered down compared to the proposed draft. It is likely that states with greater political power and influence may disagree, often when smaller island nations, which are more likely to face the brunt of climate change, do agree. This raises the question of how much weight should be ascribed to state agreement, and consequently, how much weight should be ascribed to the need for a binding instrument, such as the proposed Global Pact.

In response to these challenges, however, three arguments are submitted. *Firstly*, even if, for an essentially global assent to a human rights-based Global Pact, it is necessary to instead move towards a non-legally binding soft law instrument, it is still essential to entrench these human rights to at least create a suitable framework to guide governance, even if it is narrower than what the instrument was originally envisioned as. This is a better outcome than a narrower instrument, but a legally binding instrument, being agreed to but then seen as the bare minimum to be achieved.⁶⁰ *Secondly*, the development of international environmental law instruments and the field itself is testament to fact that the boundaries of binding and non-binding, and hard and soft law instruments are not as

⁵⁷ Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer 2018) 174.

⁵⁸ John H Knox, Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, (2014) UN Doc A/HRC/25/53, 6.

⁵⁹ Louis Kotzé and Duncan French, 'A Critique of the Global Pact for the Environment: A Stillborn Initiative or the Foundation for Lex Anthropocenae?' (2018) 18 Int Environ Agreements 811–835; José Juste Ruiz, 'The Process Towards a Global Pact for the Environment at the United Nations: From Legal Ambition to Political Dilution' (2019) 28(1) RECIEL 479–489.

⁶⁰ Christina Voigt, 'How a "Global Pact for the Environment" Could Add Value to International Environmental Law' (2019) 28(1) RECIEL 21.

clear as it may seem, with the bindingness an instrument often depending on not just context and political events, but also on the location of a specific provision within a specific instrument itself.⁶¹ In such a scenario, then, the binding nature of the proposed Global Pact may not be such a deterrent when seen within the larger context of international environmental law. *Finally*, the inclusion of human rights, while some may see it as a hurdle, is a reason for wide acceptance.⁶² Based on the seemingly universal applicability and acceptance of human rights, this may provide grounds for acceptance, even if only for political and reputational motivations.

An explicit human right to an ecologically sound environment, when entrenched in an environmental instrument and bolstered by substantive and procedural human rights, can help build and strengthen existing frameworks for climate change governance to protect better those who face the harms of climate change. The prevalence of issue-specific measures in the climate change regime has resulted not only in poor coordination but also in the prioritisation of some causes over others, where the causes that slip through the cracks are usually related to the vulnerable and marginalised and are hence seen as less important.⁶³ The creation of a new treaty in the form of the Global Pact for the Environment can also go towards revitalising the existing body of climate change governance instruments and institutions, and can be relied upon as an overarching guiding principle to fill gaps, normative or otherwise, that arise due to the heavy presence of issue-specific treaties. While it is contested whether these gaps can or should be filled, the Global Pact for the Environment would certainly have a profound impact on climate change governance by undertaking this ambitious project.⁶⁴

In fact, in creating and codifying the distinct human right to a healthy environment, along with the entrenching of other substantive and procedural rights, the proposed Global Pact for the Environment has been seen as possibly taking the place of a third international covenant, codifying and consolidating human rights relating to the environment, following the ICCPR and the ICESCR in their codification of the Universal Declaration of Human Rights.⁶⁵ The ICCPR and the ICESCR are fundamental and foundational instruments that ground international human rights standards globally. The proposed Global Pact for the Environment, in seeking to follow this trajectory, would certainly have a profound impact on climate change governance.

⁶¹ Lavanya Rajamani, *Innovation and Experimentation in the International Climate Change Regime* (The Hague Academy of International Law 2020) 94–152.

⁶² Sandra Fredman, *Comparative Human Rights Law* (Oxford Academic 2018) 29–58.

⁶³ Christina Voigt, 'How a "Global Pact for the Environment" Could Add Value to International Environmental Law' (2019) 28(1) RECIEL 21.

⁶⁴ Duncan French and Louis Jacobus Kotzé, "'Towards a Global Pact for the Environment": International Environmental Law's Factual, Technical and (Unmentionable) Normative Gaps' (2019) 28(1) RECIEL 25–32.

⁶⁵ Louis Kotzé and Duncan French, 'A Critique of the Global Pact for the Environment: A Stillborn Initiative or the Foundation for Lex Anthropocenae?' (2018) 18 Int Environ Agreements 824.

IV. HEGEMONIC HUMAN RIGHTS?

A. ECOCENTRISM

At this point, however, it must be acknowledged that the choice to centre human rights can also be seen as a choice to exclude a more nature and eco-centric approach to climate change.⁶⁶ Mainstream climate governance has largely been anthropocentric, focusing on mitigating climate change to safeguard human welfare, economic stability, and national security. However, eco-centric perspectives challenge this human-centred approach, advocating for governance frameworks that prioritise the intrinsic value of nature itself.⁶⁷ Rooted in deep ecology, Indigenous philosophies, and emerging legal paradigms, eco-centric climate governance seeks to protect ecosystems not merely for their utility to humans, but as entities with inherent rights and moral standing.⁶⁸

One of the most significant developments in eco-centric governance is the recognition of nature's legal rights. Countries such as Ecuador and Bolivia have enshrined the Rights of Nature in their constitutions, affirming that ecosystems have the right to exist, thrive, and regenerate.⁶⁹ Judicial rulings in India have granted legal personhood to rivers, forests, and glaciers, reinforcing the idea that climate governance must extend protections beyond human interests.⁷⁰ These approaches challenge conventional environmental laws, which often frame nature as property rather than as a rights-bearing entity.

B. *THE GLOBAL IN THE GLOBAL*

Not only does the discussion on eco-centrism above reflect a shift in focus on climate change and climate governance, but it also falls on the dividing line between Western human rights frameworks and non-Western frameworks that are informed by specific cultural contexts. Climate change governance, specifically,

⁶⁶ Louis Kotzé and Duncan French, 'The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene' (2018) 7(1) *Global Journal of Comparative Law* 5–36.

⁶⁷ Alessandro Pelizzon, 'Rights of Nature' in *Ecological Jurisprudence: The Law of Nature and the Nature of Law (Contemporary Environmental Law and Policy)* (Springer 2025).

⁶⁸ Deborah McGregor, Steven Whitaker and Mahisha Sritharan, 'Indigenous Environmental Justice and Sustainability' (2020) 43 *Current Opinion in Environmental Sustainability* 35–40; George Sessions, 'The Deep Ecology Movement: A Review' (1987) 11(2) *Environmental Review* 105–25; Jeremie Gilbert and others, 'Understanding the Rights of Nature: Working Together Across and Beyond Disciplines' (2023) 51 *Human Ecology* 363–377.

⁶⁹ Guzmán, Juan José, 'Decolonizing Law and Expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador' (2019) *Deusto Journal of Human Rights* 59–86.

⁷⁰ Jolly S and Menon KSR, 'Of Ebbs and Flows: Understanding the Legal Consequences of Granting Personhood to Natural Entities in India' (2021) 10(3) *Transnational Environmental Law* 467–492; Lidia Cano Pecharroman, 'Rights of Nature: Rivers that Can Stand in Court' (2018) 7(1) *Resources* 13.

but human rights generally, has historically been shaped by Western legal and political frameworks, often prioritising scientific, economic, and state-centric solutions.⁷¹ Global South nations and traditional knowledge systems offer alternative governance models that emphasise community resilience, ecological harmony, and intergenerational justice.⁷² Their governance models often revolve around relational accountability, where humans are seen as stewards rather than owners of the environment.⁷³

C. LOCALISED GLOBALISM

The failure of Western-led initiatives such as REDD+ to adequately integrate Indigenous land rights highlights the tension between top-down climate policies and bottom-up community governance. Thus, it is imperative that a truly substantive and contextual human rights-based understanding of climate change governance create the requisite space, through the focus on substantive equality and procedural rights of meaningful participation, to include within climate change governance such eco-centric perspectives. For the Global Pact to truly be global, these critical engagements with the dominant rights-based framework cannot be ignored, despite the advocated focus on a human rights-based approach to climate change governance. This could include increased participation in the drafting and interpretation of such instruments, along with a continuing process of localisation. Many argue for decolonising climate governance by amplifying the voices of Indigenous peoples and Global South nations, ensuring fair representation in climate negotiations, and redistributing resources for adaptation and resilience.⁷⁴

It is also important to challenge the dominant narratives surrounding the philosophical underpinnings of human rights and environmental ethics.⁷⁵ This suggests that, irrespective of the historical background to treaties and instruments such as the ICCPR and the ICESCR, they must be engaged with a goal

⁷¹ Jose-Manuel Barreto, 'Epistemologies of the South and Human Rights: Santos and the Quest for Global and Cognitive Justice' (2014) 21(2) *Indian Journal of Global Legal Studies* 395–422.

⁷² Erik Gómez-Baggethun, Esteve Corbera and Victoria Reyes-García, 'Traditional Ecological Knowledge and Global Environmental Change: Research Findings and Policy Implications' (2013) 18(4) *Ecology and Society*.

⁷³ See for instance Constitución de la República del Ecuador 2008, art 71–74 ('They grant the Rights of Nature').

⁷⁴ Graeme Reed, Angele Alook and Deborah McGregor, 'Decolonizing Climate Agreements Strengthens Policy and Research for All Future Generations' (2024) 15(1) *Nature Communications*.

⁷⁵ Makau wa Mutua, *Human Rights Standards: Hegemony, Law and Politics* (State University of New York Press 2016) ch 1; Antony Anghie, 'International Human Rights Law and a Developing World Perspective' in Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Routledge 2013).

to de-colonialise,⁷⁶ and move beyond market-based rationality,⁷⁷ generally, but also specifically in the context of climate change governance for the purposes outlined above. This being said, the contributions of the Global South in human rights frameworks should not be overlooked and must be considered in the larger evaluation of applicable human rights frameworks and their interpretation.

V. THE VALUE OF ENTRENCHING HUMAN RIGHTS IN CLIMATE CHANGE TO AID CLIMATE GOVERNANCE: CASE STUDY OF CLIMATE CHANGE ‘REFUGEES’

Entrenching human rights in climate change governance could broaden ideas of governance and protection. An area in which this could be specifically conducive is in the recognition and support of those displaced by climate change and related, or climate change ‘refugees’. Although the politics of this nomenclature is not discussed here, the term climate change refugees is used to both recognise the similar refugee-like conditions often faced by those displaced by climate change and related disasters, and to link the discussion to the field of refugee law as a subset of human rights law, highlighting the benefits of dialogue between these legal regimes.⁷⁸

As the adverse realities of climate change are realised, people will be displaced by climate change, and related disasters will rise, as is already evident. This will first be felt by those residing in small island nations. However, the recourse that they can seek under the Convention Relating to the Status of Refugees (Refugee Convention) appears to be limited.⁷⁹ The Refugee Convention, in its drafting and framing, defined ‘refugees’ as a person who faced the imminent threat of persecution and the state obligated to protect them was either unable or unwilling to do so.⁸⁰ This centring of refugee protection on persecution and state obligation has made it difficult to apply this protection to those displaced by climate change and related disasters, as it is difficult to establish the nature of persecution and who caused the climate change harm resulting in displacement, and consequently bears the burden of protecting and supporting climate change adaptation for those displaced.⁸¹

⁷⁶ Colin Samson, *The Colonialism of Human Rights: Ongoing Hypocrisies of Western Liberalism* (Polity 2020) ch 1.

⁷⁷ Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008) ch 7.

⁷⁸ Sumudu Atapattu, ‘Climate Change and Displacement: Protecting “Climate Refugees” within a Framework of Justice and Human Rights’ (2020) 11(1) *Journal of Human Rights and the Environment* 86–113.

⁷⁹ Stellina Jolly and Nafees Ahmad, *Climate Refugees in South Asia Protection under International Legal Standards and State Practices in South Asia* (Springer 2019) 79–122.

⁸⁰ Convention Relating to the Status of Refugees (opened for signature 28 July 1951, entered into force 22 April 1954) 189 UNTS 150; James C Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge 2014).

⁸¹ Jane McAdam, ‘Current Developments — Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement’ (2020)

Furthermore, in the spheres of environmental law and climate change law, displacement has only begun to be considered a real harm faced by a growing number of the Earth's population in the past decade.⁸² This is despite the recognition in 1990 that the largest impact of climate change would be on migration, as noted in the New York Declaration for Refugees and Migrants.⁸³ Subsequently, through instruments such as the Global Compact on Migration, the Task Force on Climate Displacement, the Sendai Framework for Disaster Risk Reduction, the Nansen Initiative and the Platform for Disaster Displacement, the recognition of climate change refugees has grown.⁸⁴ However, these are non-binding instruments and often fall short in their classification of who qualifies for protection, what constitutes displacement (whether internal or not), and how it occurs (for instance, through planned relocation).⁸⁵

Possible solutions, which are indeed of high calibre, include either expanding the scope of the Refugee Convention to include climate change refugees or creating a separate, legally binding instrument specifically dealing with those displaced by climate change and related disasters.⁸⁶ The latter is often offered as a solution when discussions around the feasibility of the former result in the conclusion that not only may it be politically unviable to attempt to amend the Refugee Convention, but it may also be detrimental to do so.⁸⁷ These political considerations may also make it difficult to envision a separate treaty as a readily accepted solution in the international community.⁸⁸

Here as well, the framework of human rights and the cross-fertilisation across the field of climate change and human rights can be of assistance.

114(4) American Journal of International Law 708–725.

⁸² Duncan French and Louis Kotzé, 'Towards a Global Pact for the Environment: International Environmental Law's Factual, Technical and (Unmentionable) Normative Gaps' (2019) 28(1) RECIEL 25–32.

⁸³ New York Declaration for Refugees and Migrants (adopted 19 September 2016) UN GA A/Res/71/1.

⁸⁴ Global Compact for Safe, Orderly and Regular Migration, Intergovernmentally Negotiated and Agreed Outcome (13 July 2018); Resolution Adopted by the General Assembly on 3 June 2015 [without reference to a Main Committee] A/69/L.67, 69/283; Sendai Framework for Disaster Risk Reduction 2015–2030.

⁸⁵ Sumudu Atapattu, 'Climate Change and Displacement: Protecting "Climate Refugees" within a Framework of Justice and Human Rights' (2020) 11(1) Journal of Human Rights and the Environment 86–113.

⁸⁶ Stellina Jolly and Nafees Ahmed, *Climate Refugees in South Asia Protection under International Legal Standards and State Practices in South Asia* (Springer 2019) 115; David Hodgkinson and others, 'Copenhagen, Climate Change "Refugees" and the Need for a Global Agreement' (2009) 4(2) Public Policy 155–179.

⁸⁷ Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law' (2008) 30(4) Law and Policy 502–529.

⁸⁸ Lauren Nishimura, '"Climate Change Migrants": Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies' (2015) 27(1) International Journal of Refugee Law 107–134.

Entrenching human rights in an instrument such as the Global Pact can support the inclusion of persons displaced by climate change and related disasters in a legal regime that can better offer protection in two ways. First, it could support and broaden existing instruments, providing a basis for considering those displaced by climate change as climate change refugees by referencing the interrelation of climate change and human rights, which could then legitimate a broader understanding of the Refugee Convention, or by strengthening existing instruments that specifically already do speak of persons displaced by climate change and related disasters but are not legally binding, such as the Global Compact on Migration. Second, a binding Global Pact that clearly references the human right to an ecologically sound environment may also prompt the creation of either legislation or another governance framework at the domestic and regional levels that caters to climate change refugees.⁸⁹ The language of this right, as framed, also provides the necessary vocabulary for those displaced by climate change and related disasters to approach institutions seeking relief.⁹⁰ This will also aid in recognising the political aspect of such displacement without restricting the issue of climate change to emission reductions and lifestyle changes.⁹¹ Such a strategy would enable regional and domestic responses best suited to the context, while still addressing the absence of robust protection for those displaced due to climate change and related disasters, in a manner most likely to overcome political hurdles.

The entrenchment of human rights, even beyond the human right to an ecologically sound environment, also makes it possible to rely on other universally agreed-upon rights as found in international human rights law standards, such as the right to be protected against any cruel, degrading, and inhuman treatment.⁹² This standard can then be incorporated into the analysis to determine whether a climate change refugee has a valid claim resulting from displacement due to climate change and related disasters. Much like refugee law looks to other human rights instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁹³ the ICESCR and the ICCPR, reference to the proposed Global Pact can bring in the clear right to an ecologically sound environment when read with the duties of the state in

⁸⁹ Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law' (2008) 30(4) *Law and Policy* 502–529.

⁹⁰ Guy S Goodwin-Gill, Jane McAdam and Emma Dunlop, 'Displacement Related to the Impacts of Disasters and Climate Change' in Guy S Goodwin-Gill and Jane McAdam (eds), *The Refugee in International Law* (4th edn, Oxford 2007).

⁹¹ Chris Methman and Angel Oels, 'From "Fearing" to "Empowering" Climate Refugees: Governing Climate-Induced Migration in the Name of Resilience' (2015) 46(1) *Security Dialogue* 57.

⁹² Jane McAdam, 'Current Developments — Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement' (2020) 114(4) *American Journal of International Law* 708–725.

⁹³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (opened for signature 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

pursuance of this right. Overarchingly, the presence of the Global Pact as both a climate change instrument and a human rights instrument in the space of refugee law can broaden the analysis in refugee law cases. Such an inquiry could have yielded a different outcome in the case of *Teitiota v New Zealand*,⁹⁴ where Mr Teitiota had fled Kiribati due to the adverse effects of climate change on his human rights and subsequently applied for refugee status in New Zealand.

Removing the requirement to fulfil the very high threshold of proving that the state must have undertaken a deliberate act or omission that resulted in the refugee like conditions in Kiribati which forced Mr Teitiota to flee may have resulted in a more sympathetic outcome for Mr Teitiota, when viewed with the finding that states could not forcibly return persons to places where climate change seriously harmed or threatened their right to life. Further, the removal of Mr Teitiota and sending him back to Kiribati itself could be framed as an act of cruel, degrading and inhuman treatment as it would result in the violation of basic human rights.⁹⁵ This is cemented by reference to the Global Pact that emphasises the duty of the state to take measures to protect the environment, which, when coupled with the right of all persons to ‘live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment’ is a significantly lower threshold in terms of state duty as understood in evaluating refugee claims.⁹⁶ While it is not suggested that the threshold of the state responsibility in terms of refugee law be necessarily diluted, viewing the duty of the state in the sphere of environmental responsibilities and the right of persons to live in an ecologically sound environment can lead to more favourable results in cases where displacement and migration have occurred due to climate change threatening the right to life. Human rights, specifically in the space of climate change legal discourse, can thus be used to address concerns of climate refugees.

Furthermore, existing principles within climate change governance, such as the polluter-pays principle, which requires that the costs of preventing, mitigating, and remedying environmental harm be borne, to the greatest extent possible, by those responsible, already provide a basis for allocating duties, responsibilities, and obligations. This allocation functions as a necessary corollary to rights-holder-based paradigms within human rights-based approaches.⁹⁷ This is especially important to facilitate refugee and displacement claims for those affected by climate change and related disasters, as it is often difficult to pin down responsibility to one state specifically, especially when those affected may not be from states

⁹⁴ Human Rights Committee, *Ioane Teitiota v New Zealand* (24 October 2019) UN Doc CCPR/C/127/D/2728/2016.

⁹⁵ Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (2nd edn, Oxford 2019) 533.

⁹⁶ Article 1, Towards a Global Pact for the Environment: Resolution/adopted by the General Assembly, UNGA Res 72/L.51 (10 May 2018).

⁹⁷ *ibid*; Stellina Jolly and Nafees Ahmed, *Climate Refugees in South Asia Protection under International Legal Standards and State Practices in South Asia* (Springer 2019) 106.

that are the major contributors to climate change at all, for instance, those in the worst-affected small island nations.⁹⁸ Broadening the scope of who can be held responsible and in what capacity is a crucial complement to the field of human rights, as it is affected by climate change and its governance. This, however, must be accompanied by acknowledging the multi-causality of climate displacement, necessitating a shift away from the refugee law paradigm of identifying a state at fault, and focusing instead on the adaptation and protection of the person displaced, with responsibilities and liabilities derived from that as the starting point.⁹⁹ This person-centric approach is facilitated by the human rights lens, while the focus on adaptation and mitigation is supported by the climate change lens.

It can be concluded then that for the difficulties in the climate change refugee arena to be surmounted, entrenching human rights in an instrument such as the proposed *Global Pact* has a profound impact on climate change governance in this specific sector. Not only does this allow for drawing on human rights instruments, but it also enables the lens of human rights to be broadened by relying on developments in the sphere of climate change governance.¹⁰⁰ Given that it is unlikely and difficult to amend the Refugee Convention to specifically include climate change refugees in the text, if refugee rights, as a subset of human rights law, are instead entrenched in climate change instruments that states agree to, which is then read with the Refugee Convention, states may have a more robust framework to refer to in order to support climate change refugees.¹⁰¹

Drawing on the two fields also helps to ground the focus on the impact on a person's human rights and the need to protect and assist them in adaptation, thereby helping to surmount barriers, such as proving persecution. This espouses the idea of complementary protection, as is the responsibility of the state, derived from international protection frameworks found in the international human rights framework as a whole, of which both refugee protection and climate change governance can be seen as intersecting fields, if not subsets.¹⁰² While not explored much here, this move towards dialogue and cross-fertilization is helpful not just

⁹⁸ Human Rights Committee, *Ioane Teitiota v New Zealand* (24 October 2019) UN Doc CCPR/C/127/D/2728/2016.

⁹⁹ Jane McAdam, 'Current Developments — Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement' (2020) 114(4) *American Journal of International Law* 715.

¹⁰⁰ Yann Aguila, Adopting an International Covenant for the Protection of the Environment: Taking Environmental Rights Seriously, *Global Pact for the Environment* (2017) <<https://globalpactenvironment.org/uploads/Article-YA-International-Covenant-english.pdf>> accessed 6 November 2025; Christina Voigt, 'How a "Global Pact for the Environment" Could Add Value to International Environmental Law' (2019) 28(1) *RECIEL* 13–24.

¹⁰¹ Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law' (2008) 30(4) *Law and Policy* 502–529.

¹⁰² Vincent Chetail, 'Moving Towards an Integrated Approach of Refugee and Human Rights Law' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 202.

between the larger, and seemingly more separate, disciplines of human rights and climate change, but also between closely allied, if not overlapping, fields of climate change, climate justice, environmental justice, and so on, allowing for a more robust adaptation and protection based approach without the fetters of being part of one field and not another.¹⁰³

VI. CONCLUSION

The human rights violations occurring due to climate change on people across the globe highlight the close linkage between the fields of climate change and human rights. Entrenching human rights in an instrument such as the *Global Pact* will have a profound, positive impact on climate change governance in several ways, regardless of the ultimate form the instrument takes. Beyond the benefits accrued by using the human rights framework, the proposed instrument also has the potential to still hold space for self-reflection, piecemeal developments and political will.

A critical consideration in addressing the climate refugee crisis is the application of soft law as a policy tool. While soft law instruments, such as non-binding declarations and guidelines, offer an alternative in the absence of a binding international treaty, their feasibility and effectiveness remain subjects of debate. A potential solution lies in adopting a hybrid model, where soft law serves as an interim measure to enable immediate action, laying the groundwork for the eventual development of a binding international framework. This approach allows for the testing and refinement of strategies, ensuring a smoother transition to legally enforceable mechanisms.

Alternatively, the continued reliance on soft law could be justified in cases where political or diplomatic barriers make the adoption of binding instruments impractical. Enhancing the effectiveness of soft law could involve integrating mechanisms such as peer review, monitoring, and alignment with existing legal frameworks to bolster compliance and accountability. These approaches highlight the potential for soft law to either evolve into hard law or maintain its relevance as a flexible and adaptable policy tool. By examining the implications of these strategies, it becomes evident that soft law can play a pivotal role in fostering international cooperation, ensuring state accountability, and addressing the unique challenges faced by climate refugees.

¹⁰³ *Asghar Leghari v Federation of Pakistan* 2018 SCC OnLine Pak SC 108.