

effects of climate change can be held liable. These are mostly all in the potential realm of the combined use of domestic law with international law, including through climate change justice litigation.

HUMAN MOBILITY AND SLOW ONSET CLIMATE CHANGE

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When it comes to human mobility and slow onset climate change, international law has many gaps.¹ These lacunae are not surprising given the limitations of international law in governing migration more generally.² These weaknesses are exacerbated around climate change and human mobility; there is not much binding law on point, and that law is narrow in scope, focused on causes, and has a crisis orientation. This dearth of relevant law is particularly problem problematic when it comes to slow onset climate events—those that build up progressively over time rather than occurring in a single dramatic act. Contemporary international law struggles to recognize and remedy slow onset climate migration. This talk will engage with the question of how international law and institutions should address slow onset climate change.

Slow onset climate change is a form of slow violence, which is a term coined by Rob Nixon to describe harms caused by structural inequality.³ The key point that I draw from his work is that slow violence is often rendered invisible. This talk seeks to uncover the role that international law plays rendering invisible the harms that cause migrants to flee slow onset climate change. International law determines which harms will be validated and which will be overlooked. Often, harms perpetrated against the most vulnerable are rendered invisible.

Cross-border migration in the face of slow onset climate change simply does not fit into international law's categories. The reasons for movement are diffuse; this broad range of motivations creates complex causal chain. Drought and increased temperatures are one reason for migration. These factors interact with inadequate government planning and support, the vagaries of global markets, and other causes. At its heart, the key reason for slow onset climate migration is vulnerability. Many factors contribute to vulnerability and diminish resilience.

On a spectrum between voluntary and forced, slow onset climate migration can be hard to categorize. The climate change event is often not immediate but rather eventual. There is no dramatic large-scale flight. Decisions to migrate are temporary, seasonal, and individual.⁴ In the face of slow onset climate change, most people first move within their nation's borders. If they are unable to secure a sustainable existence, the next step is to move regionally. International migration is generally a last resort for those who cannot find solutions closer to home. As a result, an effective solution must be informed by a human mobility approach. Most slow onset climate migrants do not want to move; they would remain in their home country if their livelihood could be sustainable. And of course, only the strongest can undertake the dangerous migration path; the most vulnerable remain in place.⁵

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¹ Jaya Ramji-Nogales, *Slow-Onset Climate Justice and Human Mobility*, 93 *TEMPLE L. REV.* 671 (2021).

² Jaya Ramji-Nogales, *Migration Emergencies*, 68 *HASTINGS L.J.* 609 (2017).

³ ROB NIXON, *SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR* 2 (2011).

⁴ SANJULA WEERASINGHE, *INST. FOR THE STUDY OF INT'L MIGRATION, WHAT WE KNOW ABOUT CLIMATE CHANGE AND MIGRATION* 3 (2021).

⁵ Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Cecilia Jimenez-Damary, paras. 14–15, UN Doc. A/75/207 (July 21, 2020), at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/189/85/PDF/N2018985.pdf?OpenElement>.

International law has no binding or actionable framework to protect migrants who cross international borders in the face of climate change. Refugee law requires precise causal delineation: an identifiable perpetrator who threatens harm based on a protected ground.⁶ The harm must be imminent and the decision to migrate must be forced. In international environmental law, migration has been on the agenda for just over a decade, since the Cancun Adaptation Framework in 2010.⁷ Various task forces comprised of states and international organizations including the Nansen Initiative on Disaster-Induced Cross-Border Displacement, the Platform on Disaster Displacement, and the Migrants in Countries in Crisis Initiatives have addressed climate migration but there is no binding law on point. International environmental law is not a good fit to address the challenges facing slow onset climate migrants. The law often focuses on disaster; while slow onset situations are mentioned, they are much less central to the legal framework. That framework makes a sharp distinction between forced and voluntary movement. It also emphasizes the human rights obligations of home states rather than migrant-receiving states. Finally, international human rights law presents a high standard. The *Teitiota* case involved a national of Kiribati, whose home country would become uninhabitable within ten to fifteen years.⁸ The UN Human Rights Committee held that climate change could implicate right to life but did not do so in this case. While regional human rights law is a bit more progressive,⁹ international law generally is not as responsive to slow onset climate migration as it should be.

International law can and should play a key role in coordinating responses to slow onset climate migration. International legal responses should take a human mobility approach that enables individuals impacted by slow onset climate change to remain in their homes if they so choose or to move safely if they prefer to migrate. For those who wish to remain, Professor Carmen Gonzalez offers a climate justice framing for effective responses and Professor Maxine Burkett argues compellingly for climate reparations.¹⁰ These solutions involve financial support for development, adaptation, and mitigation potentially through reparations from corporations and states in the Global North. They emphasize crop diversity, soil conservation, and other sustainable practices. To that end, law and policy makers should start by taking direction from those most at risk of serious harm from slow onset climate change, including vulnerable subsistence farmers. International lawyers and institutions should rely local and indigenous knowledge to guide their solutions, learning from and offering support to local community organizations and cooperatives. International institutions could help to enhance communication between smallholding farmers and those who can assist them, and could engage in effective poverty reduction programs to enhance resilience. For those who wish to migrate, scholar Ama Francis has suggested regional free movement as a potential solution to slow onset climate change.¹¹ International legal responses to slow onset climate migration should be a part of coherent policies for all migrants, enabling human autonomy and dignity.

⁶ Convention Relating to the Status of Refugees, July 28, 1951, 189 UNTS 137, 152 (*entered into force* Apr. 22, 1954).

⁷ UN Framework Convention on Climate Change, The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention, para. 25, Dec. 1/CP.16, UN Doc. FCC/CP/2010/7/Add.1, at 6 (Mar. 15, 2011).

⁸ *Teitiota*, UN Doc. CCPR/C/127/D/2728/2016.

⁹ JANE MCADAM, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 61 (2012) (first citing *Yakye Axa v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (June 17, 2005); and then citing *Malawi African Assoc. v. Mauritania*, Communication 54/91, 61/91, 98/93, 164/97 à 196/97, 210/98 (African Commission on Human and Peoples' Rights May 11, 2000)).

¹⁰ Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 WIS. INT'L L.J. 366 (2019); Maxine Burkett, *Climate Reparations*, 10 MELB. J. INT'L L. 509 (2009).

¹¹ Ama Francis, *Climate-Induced Migration & Free Movement Agreements*, 73 J. INT'L AFF. 123 (2020).